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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30573; Amdt. No. 470]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, October 25, 2007.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City,

OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 24, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, October 25, 2007.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

■ 2. Part 95 is amended to read as follows:

Revisions to IFR Altitudes & Changeover Points Amendment 470 Effective Date October 25, 2007

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes			
§ 95.4024 RNAV Route Q24 Is Amended to Read in Part			
LAKE CHARLES, LA VORTAC *18000—GPS MEA #DME/DME/IRU MEA	PAYTN, AL FIX	#20000	45000
§ 95.4035 RNAV Route Q35 Is Added to Read			
KIMBERLY, OR VORTAC	CORKR, AZ FIX	*29000	45000

From	To	MEA	MAA
*DME/DME/IRU MEA			
CORKR, AZ FIX *DME/DME/IRU MEA	DRAKE, AZ VORTAC	*22000	45000
From	To	MEA	

§ 95.6001 Victor Routes—U.S.**§ 95.6012 VOR Federal Airway V12 Is Amended to Read in Part**

NAPOLEON, MO VORTAC	FRANC, MO FIX	3000
FRANC, MO FIX	COLUMBIA, MO VOR/DME	2600
COLUMBIA, MO VOR/DME	STITH, MO FIX	*2600
*2100—MOCA		
STITH, MO FIX	FORISTELL, MO VORTAC	2600

§ 95.6258 VOR Federal Airway V258 Is Amended to Read in Part

BECKLEY, WV VORTAC	ZOOMS, WV FIX	*10000
*6200—MOCA		
ZOOMS, WV FIX	ROANOKE, VA VORTAC	6300

§ 95.6316 VOR Federal Airway V316 Is Amended to Read in Part

IRONWOOD, MI VORTAC	SAWYER, MI VOR/DME	*6000
*3600—MOCA		

§ 95.6519 VOR Federal Airway V519 Is Amended to Read in Part

BLUEFIELD, WV VORTAC	BECKLEY, WV VORTAC	*9000
*6300—MOCA		

[FR Doc. E7-19238 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 748**

[Docket No. 070824480-7482-01]

RIN 0694-AE13

**Authorization Validated End-User:
Addition of India as an Eligible
Destination****AGENCY:** Bureau of Industry and
Security, Commerce.**ACTION:** Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add India as an eligible destination for exports, reexports and transfers under Authorization Validated End-User (VEU). BIS established Authorization VEU in a final rule published in the **Federal Register**.

DATES: This rule is effective October 2, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694-AE13 (VEU India), by any of the following methods:
E-mail: publiccomments@bis.doc.gov.
Include "RIN 0694-AE13 (VEU India)" in the subject line of the message.

Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694-AE13 (VEU India).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694-AE13 (VEU India))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Chairman, End-User

Review Committee, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; by telephone (202) 482-6105; or by e-mail to mrithmire@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for "validated end-users" (VEUs) located in eligible destinations to which eligible items (commodities, software and technology, except those controlled for missile technology or crime control reasons) may be exported, reexported or transferred without a license. This authorization is set forth in section 748.15 of the EAR. This final rule designates India in section 748.15 of the EAR as an eligible destination for exports, reexports and transfers under Authorization VEU.

Designating India as an eligible destination under Authorization VEU builds upon the advances made in the U.S.-India High Technology Cooperation Group (HTCG) and the Next Steps in Strategic Partnership (NSSP). Excellent cooperation in these fora has enabled the United States to reduce controls on the export of certain dual-use items to India. Making India a destination eligible for Authorization VEU is the logical next step in U.S.-

India bilateral collaboration in high-technology trade.

Authorization VEU is intended to further streamline U.S.-India trade in dual-use technologies. It will authorize the export, reexport and transfer of certain controlled U.S. technology without a license to end-users engaged in civilian end-uses in India who have demonstrated their ability to use sensitive items responsibly. As India continues to demonstrate its commitment to harmonize its export controls with those of the major multilateral control regimes, BIS anticipates that more end-users and items will be approved for Authorization VEU.

This final rule amends paragraph (b) of section 748.15 of the EAR to add India as an eligible destination for exports, reexports and transfers of dual-use items under Authorization VEU.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 15, 2007 (72 FR 46137, August 16, 2007), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694-0088, "Multi-Purpose Application", which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control

number 0694-0088 are not expected to increase significantly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is not formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quartermann, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 748.15 is amended by adding paragraph (b)(2) to read as follows:

§ 748.15 Authorization Validated End-User (VEU).

- * * * * *
- (b) * * *
- (2) India.
- * * * * *

Dated: September 25, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7-19359 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 213

[DOD-2006-OS-0107]

RIN 0790-A118

Support for Non-Federal Entities Authorized To Operate on DoD Installations

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes policy and assigns responsibilities under DoD Directive 5124.8 for standardizing support to non-Federal entities authorized to operate on DoD installations. It designates the Secretary of the Army as the DoD executive agent for support to Boy Scout and Girl Scout local councils and organizations in areas outside of the United States; support for the national Boy Scout jamboree; the annual DoD audit of the American Red Cross (ARC) accounts and the subsequent report to Congress; and necessary ARC deployment support. It also designates the Secretary of the Air Force as the DoD executive agent for conducting the Armed Forces Entertainment program. It will have minimal impact on the public.

DATES: *Effective Date:* This rule is effective November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Pam Crespi, 703-602-5004.

SUPPLEMENTARY INFORMATION: On April 18, 2007 (72 FR 19411) the Department of Defense published a proposed rule for public comment. No comments were received.

Executive Order 12866, "Regulatory Planning and Review"

This regulatory action is not a significant regulatory action, as defined by Executive Order 12866 and does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

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

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The regulatory action is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule establishes policy and assigns executive agent responsibilities but taken cumulatively, those changes would not have a significant impact on a substantial number of small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The regulatory action does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

The regulatory action does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 213

Federal buildings and facilities.

■ Accordingly, 32 CFR part 213 is added to read as follows:

PART 213—SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DOD INSTALLATIONS

Sec.

213.1 Purpose.

213.2 Applicability and scope.

213.3 Definition.

213.4 Policy.

213.5 Responsibilities.

Authority: 10 U.S.C. 2554 and 2606.

§ 213.1 Purpose.

(a) Authorizes 32 CFR part 212.

(b) Establishes policy and assigns responsibilities under DoD Directive 5124.8¹ for standardizing support to non-Federal entities authorized to operate on DoD installations.

(c) Designates the Secretary of the Army as the DoD Executive Agent (DoD EA) according to DoD Directive 5101.1:²

(1) For DoD support to the Boy Scouts of America (BSA) and Girl Scouts of the United States of America (GSUSA) local councils and organizations in areas outside of the United States 10 U.S.C. 2606. DoD support will also cover the periodic national jamboree according to 10 U.S.C. 2606.

(2) To perform the annual audit of the American Red Cross (ARC) accounts and to prepare and submit the annual report to Congress according to 36 U.S.C. 300110.

(3) To provide the ARC with the necessary deployment support.

(d) Designates the Secretary of the Air Force as the DoD EA responsible for conducting the Armed Forces Entertainment (AFE) program.

§ 213.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components") and non-Federal entities authorized to operate on DoD installations.

(b) Shall not revise, modify, or rescind any Memorandum of Understanding (MOU) between a non-Federal entity and the U.S. Government or the Department of Defense or their implementing arrangements in existence as of the effective date of this Directive. Additionally, the Directive shall not revise, modify, or rescind any MOU between the Department of Justice (DoJ) and the Department of Defense that is in existence as of the effective date of this Directive. Any such agreements shall, as they expire, come up for renewal, or as circumstances otherwise permit, be revised to conform to this Directive and any implementing guidance.

(c) Does not apply to banks or credit unions addressed in DoD Directive

1000.11³ or the Civil Air Patrol according to 10 U.S.C. 2554, 2606 and 9441.

§ 213.3 Definition.

Non-federal entities. A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal Government. This Directive addresses only those entities that may operate on DoD installations with the express consent of the installation commander or higher authority under applicable regulations. Non-Federal entities may include elements of state, interstate, Indian tribal, and local government, as well as private organizations.

§ 213.4 Policy.

It is DoD policy that:

(a) DoD support for non-Federal entities shall be in accordance with relevant statutes as well as DoD 5500.7-R⁴. In accordance with DoD 5500.7-R and to avoid preferential treatment, DoD support should be uniform, recognizing that non-Federal entity support of Service members and their families can be important to their welfare.

(b) Under DoD Directive 5124.8 procedures shall be established as Instructions and agreements for the operation of non-Federal entities on DoD installations and for the prohibition of official sanction, endorsement, or support by the DoD Components and officials, except as authorized by DoD 5500.7-R and applicable law. Instructions and agreements must be compatible with the primary mission of the Department and provide for Congressionally authorized support to non-Federal entities on DoD installations.

(c) In accordance with DoD 5500.7-R, installation commanders or higher authority may authorize, in writing, logistical support for events, including fundraising events, sponsored by non-Federal entities covered by this part.

(d) Installation commanders or higher authority may coordinate with non-Federal entities in order to support appropriated or nonappropriated fund activities on DoD installations, so long as the support provided by the non-Federal entities does not compete with appropriated or nonappropriated fund activities.

(e) Non-Federal entities are not entitled to sovereign immunity and the

¹ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

² Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

³ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

⁴ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

privileges given to Federal entities and instrumentalities.

§ 213.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Be responsible for implementing all policy matters and Office of the Secretary of Defense oversight of non-Federal entities on DoD installations.

(2) Develop procedures and execute any necessary agreements to implement policy for the operation of non-Federal entities on DoD installations.

(3) Assign responsibilities to the DoD Components to accomplish specific oversight and administrative responsibilities with respect to non-Federal entities operating on DoD installations.

(4) Oversee the activities of the designated DoD EA, assessing the need for continuation, currency, effectiveness, and efficiency of the DoD EA according to 10 U.S.C. 2554 and 2606. Make recommendations for establishment of additional DoD EA assignments and arrangements as necessary.

(b) The Secretary of the Army, as the designated DoD EA, and according to 10 U.S.C. 2554 and 2606, shall:

(1) Perform the audit of the annual ARC accounts and prepare and submit the annual report according to 36 U.S.C. 300110 and this part.

(2) Coordinate support to the BSA and GSUSA according to DoD Instruction 1015.9⁵ and this part.

(3) Provide necessary deployment support to ARC according to an approved DoD and ARC MOU. Initially, the Army will cover costs, except those paid by the ARC. The Army will then be reimbursed, upon its request, by the entity directly benefiting from the ARC support.

(4) Designate a point of contact to coordinate matters regarding the DoD EA responsibilities, functions, and authorities.

(c) The Secretary of the Air Force, as the designated DoD EA with responsibility for conducting the AFE program, shall administer the AFE program according to 10 U.S.C. 2554 and 2606, DoD Instruction 1330.13⁶, and this part to include the following:

(1) Annually determine with the other DoD Components and the PDUSD(P&R) the scope of the program.

(2) Budget, fund, and maintain accountability for approved appropriated fund expenses. Develop and implement supplemental guidance to identify allowable expenses and reimbursements.

(3) Provide centralized services for selecting, declining, scheduling, and processing entertainment groups for overseas.

(4) Designate a point of contact to coordinate matters regarding the DoD EA responsibilities, functions, and authorities.

Dated: September 26, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7-19449 Filed 10-1-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-07-095]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), at Scotts Hill, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Figure Eight Swing Bridge, at AIWW mile 278.1, at Scotts Hill, NC. Beginning November 1, 2007, until January 31, 2008, this deviation allows the drawbridge to remain closed-to-navigation each day from 6:30 p.m. to 6 a.m., from 9 a.m. to 11 a.m., and from 1 p.m. to 4 p.m., to facilitate sandblasting and painting operations. In addition, commercial vessel openings will be provided at night if at least three hours notice is given by calling (910) 686-0635 or via marine radio on Channel 13.

DATES: This deviation is effective from 6:30 p.m. on November 1, 2007 to 6 a.m. on January 31, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222.

Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

SUPPLEMENTARY INFORMATION: The Figure Eight Swing Bridge has a vertical clearance in the closed position to vessels of 20 feet, above mean high water (MHW). Also, the vertical clearance in this location is limited to 85 feet, above MHW, by the overhead power line.

The Figure Eight Homeowners Association (the bridge owner) has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.821(a)(3) to close the drawbridge to navigation to facilitate sandblasting, cleaning and painting of the bridge superstructure.

To facilitate this operation, the Figure Eight Swing Bridge will be maintained in the closed-to-navigation position each day beginning November 1, 2007, until January 31, 2008, from 6:30 p.m. to 6 a.m., from 9 a.m. to 11 a.m., and from 1 p.m. to 4 p.m. In addition, commercial vessel openings will be provided at night if at least three hours notice is given by calling (910) 686-0635 or via marine radio on Channel 13. At all other times, the drawbridge will operate in accordance with 33 CFR 117.821(a)(3). In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

We have analyzed this temporary deviation under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The environmental impact that this temporary deviation will have is minimal because of the drawbridge being closed to vessels to perform routine repair and maintenance will not result in a change in functional use, or an impact on a historically significant element or setting.

Dated: September 21, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7-19414 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-15-P

⁵ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

⁶ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[Docket No. CGD08-07-010]****RIN 1625-AA11****Regulated Navigation Area;
Cumberland River, Clarksville, TN****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is extending the time period for a Regulated Navigation Area (RNA) on the Cumberland River (CMR) mile marker (MM) 126 to mile marker MM 127. All vessel traffic transiting beneath the R. J. Corman Railroad Bridge at MM 126.5 is restricted to the right descending bank (RDB) on the CMR and tows transiting this RNA cannot be wider than 80 feet or longer than 800 feet, excluding the length of the tow boat. The original RNA ended August 2, 2007. This rule extends the ongoing RNA from September 4 to October 31, 2007.

DATES: This temporary rule is effective from 4 p.m. on August 31, 2007 through 11:30 a.m. October 31, 2007.

ADDRESSES: The Coast Guard is not soliciting comments on this temporary RNA. However, you may mail comments and related material to Coast Guard Sector Ohio Valley, 600 Martin Luther King Drive, Louisville, KY 40202, attention: Prevention Department. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Ohio Valley between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Phillip Ison, Coast Guard Sector Ohio Valley, telephone (502) 779-5448.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard originally established this RNA on April 17, 2007. We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 United States Code (USC) 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective immediately. The R. J. Corman Railroad Bridge on the Cumberland River was struck by a barge and was severely damaged. Repairs to this bridge

have not been completed. This RNA continues to be needed to prevent further damage to the bridge and to protect vessels transiting under the bridge.

Background and Purpose

On March 29, 2007 at approximately 11:15 p.m., the R. J. Corman Railroad Bridge, located at MM 126.5 on the Cumberland River (CMR) was struck by a barge being pushed by a towing vessel. The bridge sustained extensive damage. The Coast Guard set a safety zone at 7 p.m. on March 30, 2007 on the CMR from MM 126 through MM 127 halting all vessel traffic until the structural integrity of the bridge was evaluated. The operator of the bridge reported to the Coast Guard that the bridge damage was isolated to the left descending bank (LDB) bridge pier of the bridge above the waterline. The bridge operator also informed the Coast Guard that vessels could safely transit under the bridge on the right descending bank (RDB) of the CMR. The Coast Guard is restricting vessel movements to the RDB and is limiting tow sizes to ensure that vessels pass safely under the bridge and do not cause additional damage to the bridge. Bridge repairs were estimated to have been completed by early August 2007; however, repair work will not be completed until late October 2007.

Discussion of Rule

The Coast Guard is establishing a Regulated Navigation Area (RNA) on the CMR mile marker (MM) 126 to mile marker MM 127. All vessel traffic transiting beneath the R. J. Corman Railroad Bridge at MM 126.5 is restricted to the RDB on the CMR and tows transiting this RNA cannot be wider than 80 feet or longer than 800 feet, excluding the length of the tow boat. This RNA is effective from 4 p.m. on August 31, 2007 through 11:30 a.m. October 31, 2007. This RNA may be cancelled earlier if the Coast Guard determines that it is safe for vessel traffic to transit under the bridge span adjacent to the LDB.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessel traffic including tow and barge traffic is being allowed to move through this RNA and this RNA

will be cancelled when the Coast Guard determines that it is safe to open traffic to both sides of the R. J. Corman Railroad Bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This RNA will not have an impact on a substantial number of small entities because this rule will not significantly impact the regular flow of commercial vessel traffic conducting business within the RNA. Further, the RNA will not have a significant impact because it will be in place for a limited period of time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to Coast Guard Sector Ohio Valley at the address listed under **ADDRESSES** explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact Sector Ohio Valley at (502) 779-5412.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action”

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits in paragraph (34)(g) because it is a regulated navigation area. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–826 to read as follows:

§ 165.T08–826 Cumberland River, TN-regulated navigation area.

(a) The following is a Regulated Navigation Area (RNA): all waters of the Cumberland River (CMR) from MM 126 CMR to MM 127 CMR.

(b) Within the RNA described in paragraph (a), vessels are restricted to the right descending bank (RDB) of the Cumberland River and tows cannot be wider than 80 feet or longer than 800 feet, excluding the length of the tow boat.

(c) This rule is effective from 4 p.m. on August 31, 2007 through 11:30 a.m. October 31, 2007.

Dated: September 7, 2007.

J.H. Korn,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 07–4857 Filed 10–1–07; 8:45am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 27, and 90

[WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86; FCC No. 07–171]

Service Rules for the 698–806 MHz Band and Revision of the Commission’s Rules Regarding Enhanced 911 Emergency Calling Systems, Wireless Radio Services, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document summarizes an Order on Reconsideration adopted by the Commission in this proceeding. The Order on Reconsideration announces changes to the composition of the governing board of the Public Safety Broadband Licensee (the board) as set forth in the Commission’s 700 MHz Second Report and Order (22 FCC Rcd

15289 (2007)) (Second Report and Order). The National Public Safety Telecommunications Council (NPSTC) is removed from the board. The Forestry Conservation Communications Association (FCCA), the American Association of State Highway and Transportation Officials (AASHTO), and the International Municipal Sign Association (IMSA) are added to the board. The board's at-large members, jointly selected on delegated authority by the Commission's Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau, are increased from two to four. These changes increase the total number of board members from eleven to fifteen.

DATES: Effective October 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Carol Simpson, Public Safety and Homeland Security Bureau, at (202) 418-2391, or Jerry.Cowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

Background. On July 31, 2007, the Commission adopted a Second Report and Order revising the rules governing the upper 700 MHz band. In the Second Report and Order, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In this regard, the Commission established a single nationwide license for this spectrum—the Public Safety Broadband License. Further, the Commission stated that it would assign this license to a single entity—the Public Safety Broadband Licensee (PSBL).

The Second Report and Order established certain criteria for the Public Safety Broadband Licensee eligibility, including that no commercial interest may be held in the PSBL, no commercial interest may participate in the management of the PSBL, the PSBL must be a non-profit organization, and the PSBL must be broadly representative of the public safety community. Further, the Second Report and Order requires that the PSBL be governed by a voting board consisting of eleven members, one each from the nine organizations representative of public safety listed below, and two at-large members selected by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau, jointly on delegated authority. The nine organizations that are to be represented on the board, with each organization represented by one voting board member, are: The Association of Public Safety Communications Officials (APCO); the National Emergency

Number Association (NENA); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs (IAFC); the National Sheriffs' Association; the International City/County Management Association (ICMA); the National Governor's Association (NGA); the National Public Safety Telecommunications Council (NPSTC); and the National Association of State Emergency Medical Services Officials (NASEMSO).

On September 14, 2007, representatives of FCCA, AASHTO, and IMSA filed a notice of ex parte presentation recommending that the Commission, on its own motion, add FCCA, AASHTO, and IMSA as voting members to the PSBL board of directors. For the reasons discussed below, the Commission makes certain changes to the composition of the PSBL board of directors on our own motion.

Discussion. As noted above, one of our main criteria for the PSBL is that it be as broadly representative of the public safety community as possible. While the original nine organizations the Commission named would provide a substantial degree of such representation, the Commission finds that making the following changes to the board of directors would further serve this particular criterion and the public interest. First, the Commission names FCCA, AASHTO, and IMSA as additional organizations to be represented on the board as voting members. FCCA was established in 1944 and coordinates frequencies within the Forestry—Conservation spectrum. In this capacity, FCCA provides services for forestry and conservation, police, fire, EMS and local government agencies. AASHTO represents highway and transportation departments in all 50 states, the District of Columbia, and Puerto Rico, including the air, highway, public transportation, rail, and water transportation modes. IMSA dates back to 1896 and offers programs in a variety of public safety disciplines including public safety telecommunications, traffic control, work zone safety, and fire detection and reporting systems. Based on the particular expertise each of these organizations represents, the Commission finds that inclusion of these three organizations would further help to broaden representation of the public safety community in the PSBL board of directors.

Second, because FCCA, AASHTO, and IMSA are members of NPSTC, the Commission will remove NPSTC as one of the named organizations that may be represented as a voting member of the PSBL. Finally, the Commission finds

that increasing the number of at-large members from the current two to four would provide additional flexibility to maximize the effectiveness of the PSBL. Accordingly, four at-large members will be selected by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau, jointly on delegated authority. This will bring the total number of board members to fifteen.

Ordering Clauses. Accordingly, it is ordered that pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 301, 302, 303, 307, 308, 309, 310, 314, 316, 319, 324, 332, 333, 337 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 301, 302, 303, 307, 308, 309, 310, 314, 316, 319, 324, 332, 333, 337 and 403, this order on reconsideration in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86 is adopted.

It is further ordered that, that pursuant to 5 U.S.C. 553(d)(3) and 47 CFR 1.427(b), this order on reconsideration will become effective upon publication in the **Federal Register**.

It is further ordered that, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 5(c), the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau are granted delegated authority to implement the policies set forth in this order on reconsideration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7-19445 Filed 10-1-07; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XD00

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 directed fishing allowance (DFA) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 28, 2007, until 1200 hrs, A.l.t., December 31, 2007.

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

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

The 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI as a DFA of 12,129 metric tons is established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and a reallocation (72 FR 52493, September 14, 2007). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from

responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 26, 2007.

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

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

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

Dated: September 26, 2007.

James P. Burgess

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

[FR Doc. 07-4856 Filed 9-27-07; 2:13 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XC99

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 directed fishing allowance (DFA) of Pacific cod specified for catcher processor vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 28, 2007, until 1200 hrs, A.l.t., December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery

Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific cod TAC allocated to catcher processor vessels using pot gear in the BSAI as a DFA of 2,668 metric tons is established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and a reallocation (72 FR 52493, September 14, 2007). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC allocated to catcher processor vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 26, 2007.

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

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

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

Dated: September 26, 2007.

James P. Burgess

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

[FR Doc. 07-4855 Filed 9-27-07; 2:13 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 72, No. 190

Tuesday, October 2, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

RIN 3206-AI19

Reemployment Rights

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations on the detail and transfer of Federal employees to international organizations. The proposed changes will make the regulation consistent with recent statutory changes on determining the rate of basic pay an employee is entitled to receive when reemployed after service with an international organization. The changes also modernize regulatory language.

DATES: Submit comments on or before December 3, 2007.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

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

- *E-mail:* employ@opm.gov. Include "RIN 3206-AI19" in the subject line of the message.

- *Fax:* (202) 606-2329.

- *Mail:* Angela Bailey, Deputy Associate Director, Center for Talent and Capacity Policy, Division for Strategic Human Resources Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700.

- *Hand Delivery/Courier:* OPM, Room 6500, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Pam Galemore at (202) 606-0960, FAX at (202) 606-2329, TDD at (202) 418-3134, or e-mail at pamela.galemore@opm.gov.

SUPPLEMENTARY INFORMATION: This regulation is being revised for consistency with section 3582(b) of title 5, United States Code. Section 2504 of

Public Law 105-277 amended the statute by eliminating employee entitlement to be paid an "equalization allowance" upon return to Federal service. The equalization allowance was a payment equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the employing agency had the employee been detailed to the international organization. Because of this amendment, an employee who transferred, with the consent of the employing agency, to an international organization on or after October 21, 1998, is entitled, upon reemployment, only to the rate of basic pay the employee would have received had the employee remained in the civil service. We have removed section 352.310 of the current regulations to reflect this change.

We have revised section § 352.309, to provide for easier understanding of agency responsibilities and employee entitlements, and explain action required to retain an employee's coverage under the retirement, health benefits, and group life insurance system when the employee transfers to an international organization.

In addition, the revised regulation clarifies that the Department of State, rather than OPM, is delegated the authority for designating any organization as an international organization.

This revision also modernizes regulatory language.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees, Reemployment rights.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to amend part 352 of title 5, Code of Federal Regulations, as follows:

PART 352—REEMPLOYMENT RIGHTS

Subpart C—Detail and Transfer of Federal Employees to International Organizations

1. The authority citation for part 352, subpart C, continues to read:

Authority: 5 U.S.C. 3584, E.O. 11552, 3 CFR, 1966-1970 Comp., p. 954; Section 352.313 also issued under 5 U.S.C. 7701, *et seq.*

§ 352.303 [Removed and reserved]

2. Section 352.303 is removed and reserved.

3. Section 352.304 is revised to read as follows:

§ 352.304 International organizations covered.

(a) An agency may detail or transfer an employee under this subpart, without prior approval, to an organization which the Department of State has designated as an international organization.

(b) An agency may detail or transfer an employee under this subpart to any other public international organization or international organization preparatory commission only when the Department of State agrees that the organization concerned could be designated as an international organization covered by sections 3343 and 3581 of title 5, United States Code.

4. Section 352.305 is revised to read as follows:

§ 352.305 Eligibility for detail.

An employee is eligible for detail to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart, except the following:

(a) A Presidential appointee (other than a postmaster, a Foreign Service officer, or a Foreign Service information officer), regardless of whether the appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the

competitive service under Schedule C of part 213 of this chapter.

(c) A person serving under a non-career, limited emergency, or limited term appointment in the SES.

(d) A person serving under a temporary appointment.

5. Section 352.306 is revised to read as follows:

§ 352.306 Length of details.

A detail or series of details must not exceed 5 consecutive years, except that when the Secretary of State, on the recommendation of the head of the agency, determines it to be in the national interest, the 5-year detail may be extended for up to an additional 3 years. A detail or series of details or combination of details and transfers must not exceed 8 years in the aggregate throughout an employee's Federal career.

6. Section 352.308 is amended by revising paragraph (d) to read as follows:

§ 352.308 Effecting employment by transfer.

* * * * *

(d) *Recording requirement.* The agency must furnish the employee with a leave statement, showing the annual and sick leave balances at the time of transfer. In addition, the notification of personnel action effecting the employee's separation for transfer, must include:

(1) Identification of the international organization to which the employee is transferring,

(2) A clear statement of the period of consent, during which the employee has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and

(3) The legal and regulatory conditions for reemployment.

7. Section 352.309 is revised to read as follows:

§ 352.309 Retirement, health benefits, and group life insurance.

(a) *Agency action.* An employee who is transferred to an international organization is entitled to retain coverage for retirement, health benefits, and group life insurance purposes if he or she so chooses. The period during which coverage, rights, and benefits are retained under this paragraph, during employment with the international organization, is deemed employment by the United States. At the time an employing Federal agency consents to the transfer of an employee, the agency must advise the employee in writing of the employee's right to continue retirement, health benefits, and group

life insurance coverage, as applicable, for the duration of the assignment or transfer. The notice must explain the conditions for continued coverage and the employee's obligations and responsibilities with regard to continued coverage. The notice must also explain that, if the employee elects to retain coverage, the agency will continue to make the agency contributions to the funds, and the employee's coverage will continue as long as employee payments are currently deposited in the respective funds.

(b) *Employee Action.* The employee must acknowledge, in writing, receipt of the notice and state whether or not he or she wishes to retain coverage under the retirement, health benefits, and group life insurance systems or any of them by continuing the required employee payments. The employee must make a written election to retain benefits, as applicable, and make arrangements for the required employee payments. An employee who transfers to an international organization is not eligible to participate in the Thrift Savings Plan (TSP) while employed by the international organization even if he or she elects to retain Federal retirement coverage. However, upon reemployment, an employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with an international organization, and receive make-up agency contributions and lost earnings on the agency contributions, as provided under § 352.311(e).

(c) *Agency responsibility.* For retirement and group life insurance purposes, the employing agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code. The agency is also responsible for collecting, accounting for, and depositing in the respective funds all retirement, health benefits, and group life insurance employee payments required to be made for the purpose of protecting the rights of the employee so transferred; and for accounting for and depositing in the respective funds all agency contributions. The agency must furnish the employee with specific information as to how, when, and where the payments are to be submitted.

(d) *Coverage.* Employee payments are considered to be currently deposited if received by the agency before, during, or within 3 months after the end of the pay

period covered by the deposit. If the contributions are not currently deposited, coverage terminates on the last day of the pay period for which the required contributions were currently deposited, subject to a 31-day extension of group life insurance and health benefits coverage as provided in parts 870 and 890 of this chapter and to the conversion benefits provided in parts 870 and 890 of this chapter. Coverage so terminated may not be re-established before the employee actually enters on duty, on the first day in a pay status in an agency. However, terminated retirement, health benefits, and group life insurance coverage must be reinstated retroactively when, in the judgment of OPM, the failure to make the required current deposit was due to circumstances beyond the employee's control and the required payments were deposited at the first opportunity. Coverage under a system other than the civil service retirement system must be reinstated retroactively if the agency which administers the retirement system determines that the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments were deposited at the first opportunity.

§ 352.310 [Removed and reserved]

8. Section 352.310 is removed and reserved.

9. Sections 352.311 through 352.314 are revised to read as follows:

§ 352.311 Reemployment.

(a) An employee who transferred to an international organization with the consent of the employing agency is entitled to be reemployed in his or her former position, or one of like seniority, status, and pay within 30 days of applying for reemployment if the employee:

(1) Is separated, either voluntarily or involuntarily, without cause, within the term of employment with an international organization; and

(2) Applies for reemployment with the employing agency or its successor no later than 90 days after separation from the international organization.

(b) Pay upon reemployment will be set at that to which the employee would have been entitled had the employee remained with the employing agency.

(c) When an employee's reemployment right is to a position in the SES, reemployment may be to any position in the SES for which the employee is qualified. The employee must be returned at not less than the SES rate of basic pay as determined under 5 CFR part 534, subpart D, at

which the employee was being paid immediately before transfer to the international organization, or if pay has been adjusted under § 352.314(c), at not less than the adjusted pay level.

(d) The period of separation caused by the employment of the employee with the international organization and the period necessary to effect reemployment are creditable service for all appropriate civil service employment purposes.

(e) An employee who elected to retain Federal retirement coverage while employed by the international organization and has made all deposits required for such coverage may make contributions to the TSP which he or she missed as a result of the service with the international organization, and receive make-up agency contributions and lost earnings on the agency contributions, consistent with applicable TSP requirements.

§ 352.312 When to apply.

An employee may apply for reemployment, in writing, either before or after separation from the international organization. If the employee applies before separation, the 30-day period prescribed in § 352.311 begins either with the date of the application or 30 days before the employee's date of separation from the international organization, whichever is later. If the employee applies for reemployment after separation, the application must be received by the employing agency no later than 90 days after separation from the international organization.

§ 352.313 Failure to reemploy and right of appeal.

(a) When an agency fails to reemploy an employee within 30 days of receiving the employee's application, it must notify the employee, in writing, of the reasons and of the employee's right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from the date of the application for reemployment, the employee is entitled to appeal the agency's failure to issue a decision to the Merit Systems Protection Board under the provisions of the Board's regulations.

(c) An employee may submit an appeal, alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581–3584 of title 5, United States Code, or of this part, to the Merit Systems

Protection Board under the provisions of the Board's regulations.

§ 352.314 Consideration for promotion and pay increases.

(a) The employing agency must consider an employee who is detailed or transferred to an international organization for all promotions for which the employee would be considered if not absent. A promotion based on this consideration is effective on the date it would have been effective if the employee were not absent.

(b) When the position of an employee who is absent on detail or transfer to an international organization is upgraded during the employee's absence, the employing agency must place the employee in the upgraded position.

(c) The employing agency must consider an employee who is detailed or transferred to an international organization from an ungraded pay system for all pay increases for which the employee would be considered if not absent. An increase is effective on the date it would have been effective if the employee were not absent.

[FR Doc. E7–19447 Filed 10–1–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 212

[DoD–2006–OS–0041; 0790–AB04]

Procedures and Support for Non-Federal Entities Authorized To Operate on Department of Defense (DoD) Installations

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposed to update responsibilities and procedures to define and reestablish a framework for non-Federal entities (NFEs) (previously called private organizations) authorized to operate on DoD installations.

Requires heads of DoD Components to conduct periodic reviews of facilities, programs, services, and membership provisions of NFEs operating on DoD installations and authorizes installation commanders or higher authority to determine if an NFE detracts from DoD programs and to eliminate duplication. Identifies those NFEs having statutory authorization for particular support and restates DoD policy on sponsorship of NFEs by DoD personnel acting in an official capacity, specifically as it applies to chartering Boy Scout

organizations authorized to operate on DoD installations.

DATES: Comments must be received by December 3, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Pam Crespi, 703–602–5004.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, “Regulatory Planning and Review”

It has been determined that 32 CFR part 123 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility

Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule makes some changes in the regulation and updates some references but taken cumulatively, those changes would not have a significant impact on a substantial number of small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

Executive Order 13132, "Federalism"

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 212

Armed forces, Foreign relations, Statistics, Taxes.

Accordingly, 32 CFR part 212 is proposed to be revised to read as follows:

PART 212—PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DEPARTMENT OF DEFENSE (DOD) INSTALLATIONS

Sec.

- 212.1 Purpose.
- 212.2 Applicability.
- 212.3 Definitions.
- 212.4 Policy.
- 212.5 Responsibilities.
- 212.6 Procedures.

Appendix A to Part 212—Non-Federal Entities Having Statutory Authorization for Particular Support

§ 212.1 Purpose.

This part updates responsibilities and procedures to define and reestablish a framework for non-Federal entities authorized to operate on DoD installations.

§ 212.2 Applicability.

(a) This part applies to:

- (1) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD

Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

(2) Non-Federal entities authorized to operate on DoD installations.

(b) This part shall not apply to:

(1) Military relief societies.

(2) Banks or credit unions according to DoD Directive 1000.11.¹

(3) Support provided under Innovative Readiness Training according to DoD Directive 1100.20.²

§ 212.3 Definitions.

(a) *Non-Federal Entities.* A non-Federal entity is generally a self-sustaining, non-Federal organization, incorporated or unincorporated. This Instruction addresses only those entities that operate on DoD installations with the express consent of the installation commander or higher authority. Membership of these organizations consists of individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government. Non-Federal entities may include elements of State, interstate, Indian tribal, and local governments as well as private organizations.

(b) *United States.* As used in this part, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, Wake Island, and any other territory or possession of the United States, and associated navigable waters, including the territorial seas.

(c) *DoD Installation.* A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.

§ 212.4 Policy.

It is DoD policy that procedures be established for the operation of non-Federal entities on DoD installations to prevent official sanction, endorsement, or support by the DoD Components except as authorized in DoD 5500.7-R³ and applicable law. Non-Federal entities are not entitled to sovereign immunity and privileges accorded to Federal entities and instrumentalities. The DoD Components shall take action to preclude unauthorized expenditures of appropriated funds, commissary

surcharge, or nonappropriated funds (NAF) in support of these organizations.

§ 212.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness, under the authority and guidance of the Under Secretary of Defense for Personnel and Readiness, shall be responsible for implementing policy and oversight of non-Federal entities on DoD installations.

(b) The Heads of the DoD Components shall:

- (1) Implement this part.
- (2) Be aware of all non-Federal entities operating under their jurisdiction.

(3) Conduct reviews to ensure installation commanders periodically review facilities, programs, and services provided by non-Federal entities operating on DoD installations. Also, installation commanders will review membership provisions and the original purpose for which each organization was originally approved. Substantial changes to those original conditions shall necessitate further review, documentation, and approval for continued permission to operate on the installation.

§ 212.6 Procedures.

(a) To prevent the appearance of official sanction or support by the Department of Defense:

(1) Non-Federal entities may not use the seals, logos, or insignia of the Department of Defense or any DoD Component, DoD organizational unit, or DoD installation on organization letterhead, correspondence, titles, or in association with organization programs, locations, or activities.

(2) Non-Federal entities operating on DoD installations may use the name or abbreviation of the Department of Defense, a DoD Component, organizational unit, or installation in its name provided that its status as a non-Federal entity is apparent and unambiguous and there is no appearance of official sanction or support by the Department of Defense. The following applies:

(i) The non-Federal entity must have approval from the head of the appropriate DoD organization before using the name or abbreviation.

(ii) Any use of the name or abbreviation of a DoD Component, organizational unit, or installation must not mislead members of the public to assume a non-Federal entity is an organizational unit of the Department of Defense.

(iii) A non-Federal entity must prominently display the following

¹ Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

² See footnote 1 to § 212.2(b)(2).

³ See footnote 1 to § 212.2(b)(2).

disclaimer on all print and electronic media mentioning the entity's name confirming that the entity is not a part of the Department of Defense: "THIS IS A NON-FEDERAL ENTITY. IT IS NOT A PART OF THE DEPARTMENT OF DEFENSE OR ANY OF ITS COMPONENTS AND IT HAS NO GOVERNMENTAL STATUS." This disclaimer must also be provided in appropriate oral communications and public announcements when the name of the entity is used.

(b) Activities of non-Federal entities covered by this Instruction shall not in any way prejudice or discredit the DoD Components or other Federal Government Agencies.

(c) Installation commanders shall approve written agreements that indicate permission to operate on the installation and any logistical support that will be provided. DoD personnel acting in an official capacity will not execute any charter that will serve as the legal basis for the non-Federal entity. The nature, function, and objectives of a non-Federal entity covered by this Instruction shall be delineated in a written constitution, by-laws, charter, articles of agreement, or other authorization documents before receiving approval from the installation commander to operate on the installation. That documentation shall also include:

(1) Description of eligible membership in the non-Federal entity.

(i) No person because of race, color, creed, sex, age, disability, or national origin shall be unlawfully denied membership, unlawfully excluded from participation, or otherwise subjected to unlawful discrimination by any non-Federal entity or other private organization covered by this part.

(ii) Installation commanders will distribute information on procedures for individuals to follow when they suspect unlawful discrimination by the organization.

(2) Designation of management responsibilities, including the accountability for assets, satisfaction of liabilities, disposition of any residual assets on dissolution, and other documentation that shows responsible financial management.

(3) A certification indicating that members understand they are personally liable if the assets of the non-Federal entity are insufficient to discharge all liabilities.

(4) Guidance relating to professional scouting organizations operating at U.S. military installations located overseas

can be found in DoD Instruction 1015.9.⁴

(i) In accordance with DoD 5500.7-R, DoD personnel acting in an official capacity shall not execute charters that serve as the legal basis for the creation of Boy Scouts organizations (including Boy Scouts, Cub Scout Packs, or Venturer Crews).

(ii) While such chartering is not allowed, nothing in this part is intended to preclude DoD support to Boy Scouts authorized by other DoD Instructions, to preclude Boy Scouts activities on DoD installations, or to preclude DoD personnel in their personal capacity from sponsoring Boy Scouts organizations. Existing charters executed by DoD personnel in their official capacity shall be terminated, or amended to substitute sponsorship by an appropriate individual, volunteer, groups or organization, consistent with DoD policy.⁵

(d) A non-Federal entity covered by this part shall not offer programs or services on DoD installations that compete with appropriated or NAF activities, but may, when specifically authorized, supplement those activities.

(1) Installation commanders, or higher authorities, will determine if the services of a non-Federal entity conflict with or detract from local DoD programs. The cognizant commander has discretionary authority over the operations of non-Federal entities on DoD installations. Commanders are authorized to eliminate duplication of services, particularly when these services compete with the installation's revenue-generating activities.

(2) Background checks are required for employees and volunteers of non-Federal entities who have contact with children under the age of 18 in DoD operated, contracted, or community-based programs, which are used to supplement or expand child care or youth services, according to DoD Instruction 1402.5.⁶

(e) Non-Federal entities covered by this part shall be self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There shall be no financial assistance to such an entity from a NAF Instrumentality (NAFI) in the form of contributions, repairs, services, dividends, or other donations of money or other assets. Fundraising

and membership drives are governed by DoD 5500.7-R.

(f) Non-Federal entities are not entitled to DoD support. However, support may be provided when it is consistent with the military mission of the DoD Component concerned. Such support may be provided only when it can be offered within the capability of the installation commander without detriment to the commander's ability to fulfill the military mission and when it is permitted under applicable Status of Forces Agreements. The DoD Components may provide logistical support to non-Federal entities with appropriated funds according to DoD 5500.7-R and applicable law. NAFI funds or assets shall not be directly or indirectly transferred to non-Federal entities according to DoD Instruction 1015.14⁷ (Reference (h)).

(g) Personal and professional participation in non-Federal entities by DoD employees is governed by DoD 5500.7-R. DoD personnel acting in an official capacity will not execute charters that serve as the legal basis for any non-Federal entity or other private organization.

(h) Neither appropriated fund activities nor NAFIs may assert any claim to the assets, or incur or assume any obligation, of any non-Federal entity covered by this Instruction, except as may arise out of contractual relationships. Property shall not be abandoned on the installation by a non-Federal entity and may only be acquired by the DoD installation by purchase or through donation.

(i) The non-Federal entity shall have adequate insurance, as defined by the DoD Component concerned, to protect against liability and property damage claims or other legal actions that may arise due to its activities, its acting members, or the operation of its equipment or devices. The DoD Components will not assume liability (through insurance or other means) for any activities or assets of non-Federal entities.

(j) Non-Federal entities shall comply with applicable fire and safety regulations, environmental laws, local, State, and Federal tax codes; and any other applicable statutes or regulations.

(k) Income shall not accrue to individual members of a non-Federal entity except through wages and salaries as employees of the non-Federal entity or as award recognition for services rendered to the non-Federal entity or military community. This prohibition is not meant to preclude operation of investment clubs, in which the

⁴ See footnote 1 to § 212.2(b)(2).

⁵ Paragraph mandated by "Partial Settlement Agreement Between Plaintiffs and Secretary Rumsfeld", United States District Court for the Northern District of Illinois, Eastern Division, No. 1999 CV 02424 (*Eugene Winkler, et al., v. Chicago School Reform Board of Trustees, et al.*)

⁶ See footnote 1 to § 212.2(b)(2).

⁷ See footnote 1 to § 212.2(b)(1).

investment of members' personal funds result in a return on investment directly and solely to the individual members.

(l) Employees of non-Federal entities are not employees of the United States or of an instrumentality of the United States. Applicable laws on labor standards for employment shall be observed, including worker's compensation insurance. Employees of non-Federal entities shall not participate in NAF employee benefit

programs based upon their affiliation with the non-Federal entity.

(m) Non-Federal entities that have statutory authorization for particular support are listed at Appendix A to this part.

(n) Certain unofficial activities conducted on DoD installations do not need formal authorization because of the limited scope of their activities. Examples are office coffee funds, flower funds, and similar small, informal

activities and funds. The DoD Components shall establish the basis upon which such informal activities and funds shall operate.

Appendix A to Part 212—Non-Federal Entities Having Statutory Authorization for Particular Support

Many non-Federal entities have statutory and/or Department authorization for particular support. Most are listed as follows:

Non-federal entity	Authority
Certain banks and credit unions	12 United States Code (U.S.C.) 1770.
United Service Organizations	36 U.S.C. 220101. Memorandum of Understanding (MOU).
Labor organizations	5 U.S.C. Chapter 71. DoD 1400.25–M, ⁸ subchapter 711.
Combined Federal Campaign	E.O. 12353. 5 CFR 950. DoD Directive 5035.1. ⁹ DoD Instruction 5035.5. ¹⁰
American Registry of Pathology	10 U.S.C. 177.
Henry M. Jackson Foundation for the Advancement of Military Medicine	10 U.S.C. 178.
American National Red Cross	10 U.S.C. 2552. 10 U.S.C. 2602. Secretary of the Army Memorandum. MOU.
Boy Scouts Jamborees ¹¹	10 U.S.C. 2554.
Girl Scouts International Events (Transportation)	10 U.S.C. 2555. DoD Instruction 1015.14.
Shelter for Homeless	10 U.S.C. 2556.
National Military Associations; Assistance at National Conventions	10 U.S.C. 2558. DoD Directive 5410.18. ¹² DoD Instruction 5410.19. ¹³
National Veterans' Organizations (Beds and Barracks)	10 U.S.C. 2551.
United Seamen's Service Organization	10 U.S.C. 2604. MOU.
Scouting: Cooperation and Assistance in Foreign Areas	10 U.S.C. 2606. DoD Instruction 1015.14.
Civil Air Patrol	10 U.S.C. 9441. 10 U.S.C. 9442. 36 U.S.C. 40301.
Assistance for certain youth and charitable organizations	32 U.S.C. 508. DoD Directive 1100.20.
Presidential Inaugural Ceremonies	10 U.S.C. 2553.
Specified Sporting Events (Olympics)	10 U.S.C. 2564. DoD Directive 2000.15. ¹⁴
Fire Protection Agreements	42 U.S.C. 1856.
Armed Services Young Men's Christian Association	10 U.S.C. 2012. 10 U.S.C. 4744. 32 U.S.C. 508. MOU.
The Military Department of each State and territory	32 U.S.C. 101

⁸ See footnote 1 to § 212.2(b)(2).

⁹ See footnote 1 to § 212.2(b)(2).

¹⁰ See footnote 1 to § 212.2(b)(2).

¹¹ A Federal district judge has ruled that support to the Boy Scouts under 10 U.S.C. § 2554 is unconstitutional, and has enjoined DoD from providing future support under that statute. DoD has appealed that order. Unless the order is overturned on appeal, DoD cannot provide any support to the Boy Scouts using this statute. Contact your local legal office for further guidance.

¹² See footnote 1 to § 212.2(b)(2).

¹³ See footnote 1 to § 212.2(b)(2).

¹⁴ See footnote 1 to § 212.2(b)(2).

September 26, 2007.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, DoD.*

[FR Doc. E7-19446 Filed 10-1-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD08-07-023]

RIN 1625-AA09

Drawbridge Operation Regulations; Milhomme Bayou, Stephenville, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the Stephenville Bridge across Milhomme Bayou, mile 12.2, at Stephenville, St. Martin Parish, Louisiana. Currently the bridge opens on signal, but due to the minimal waterway traffic, the bridge owner requested this change. The proposed rule will require the draw of the bridge to open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency, and shall open on demand should a temporary surge in waterway traffic occur.

DATES: Comments and related material must reach the Coast Guard on or before December 3, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130-3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671-2128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08-07-023], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

St. Martin Parish has requested that the operating regulation on the Stephenville Bridge be changed in order to operate the bridge more efficiently. The Stephenville Bridge locate on Milhomme Bayou at mile 12.2 in Stephenville, St. Martin Parish, Louisiana has a vertical clearance of 5.8 feet above mean high water, elevation 3.5 feet Mean Sea Level (MSL) in the closed position and unlimited in the open position. The Stephenville Bridge opens on signal as required by 33 CFR 117.5, and this operating schedule has been in effect since 2002 when the current bridge replaced an existing bridge in the area. The previous bridge's operating schedule was, "shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. During the advance notice period, the draw shall open on less than two hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur."

Since the completion of the current bridge, the waterway traffic has been minimal and during the past twelve months an average of 5 boats per day have requested an opening. Most of the boats requesting openings are commercial vessels consisting of tugboats with barges and shrimp trawlers that routinely transit this waterway and are able to give advance notice.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [CGD08-07-022], has been issued to allow St. Martin Parish to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. The Coast Guard will review the logs of the drawbridge and evaluate public comments from this Notice of Proposed Rulemaking and the above referenced Temporary Deviation to determine if a permanent special drawbridge operating regulation is warranted.

The Test Deviation allows the draw of the Stephenville Bridge to open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Discussion of Proposed Rule

The proposed rule change to 33 CFR part 117 would require that a one hour advance notice be given for St. Martin parish to open the Stephenville Bridge. Presently and historically the waterway has minimal waterway traffic and the bridge owner could use the tenders more efficiently if at least one hour notice is required. During emergencies, the bridge owner will open the bridge as soon as possible and open on demand when a surge in waterway traffic occurs.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

A special regulation existed on the replaced bridge and the Coast Guard did not receive complaints regarding the drawbridge operating schedule during the many years that bridge was operated under a special regulation. The current and historical waterway traffic is very minimal with an average of 5 signals to open a day and most signals come from commercial vessels able to schedule an opening. The bridge is also only requiring a one hour advance notice,

and will open as soon as possible for emergencies. Also the bridge will open on demand should a temporary surge in waterway traffic occur.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect a limited number of small entities. These entities include operators of tug boats and trawlers using the waterway. This proposed rule will have no impact on any small entities because they are able to give notice prior to transiting through this bridge and most vessel operators that require an opening are currently providing advance notice.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), an “Environmental Analysis Check List” or “Categorical Exclusion Determination” is not required for this rule. Comments on this section will be considered before we make the final decision on whether

to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117 Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Section 117.481 is added to read as follows:

§ 117.481 Milhomme Bayou

The draw of the Stephenville Bridge, mile 12.2 (Landside Route) at Stephenville, LA shall open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency, and shall open on demand should a temporary surge in waterway traffic occur.

Dated: September 21, 2007.

Joel R. Whitehead,

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

[FR Doc. E7–19422 Filed 10–1–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. NHTSA–2007–27830]

RIN 2127–AJ99

Vehicle Identification Number Requirements

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Based on concerns that the supply of unique available Vehicle Identification Numbers is diminishing, NHTSA is proposing to amend the agency's Vehicle Identification Number (VIN) regulation. The amendment would ensure that there will be a sufficient number of unique manufacturer identifiers and VINs for the current 17-character VIN system to use for at least another 30 years. This NPRM also proposes other changes to

the VIN requirements, such as proposing to require that certain vehicle characteristics of low speed vehicles (LSVs) must be reflected in the VIN of LSVs. This rulemaking also responds to a petition for rulemaking from SAE International (SAE).

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than November 16, 2007. Proposed effective date of final rule: assuming that a final rule is issued, NHTSA proposes that the changes adopted by the rule would be mandatory beginning with model year 2010 and later model year vehicles manufactured on or after September 1, 2009.

ADDRESSES: You may submit comments identified by the above DOT Docket Number by any of the following methods:

If filing comments by September 27, 2007, please use:

- **Web Site:** <http://dms.dot.gov>.

Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted between September 28, 2007, and October 1, 2007.

If filing comments on or after October 1, 2007, use:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- **Fax:** 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.dms.dot.gov> or <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> until September 27, 2007, or the street address listed above. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the Internet access to the docket will be at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Mr. Ken Hardie, Office of Rulemaking (Telephone: 202–366–6987) (Fax: 202–493–2739). For legal issues, you may call Ms. Rebecca Schade, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

NHTSA requires vehicles to be marked with vehicle identification numbers (VINs) to simplify vehicle identification information retrieval and to increase the accuracy and efficiency of vehicle recall campaigns (49 Code of Federal Regulations (CFR) Part 565, "Vehicle Identification Number Requirements"). The VIN has become the key identifier in data systems that track compliance with Federal and state safety programs and that manage and analyze information on vehicle

manufacturing processes, registrations, insurance programs, crash investigations and safety research. Organizations that utilize VINs in data systems include NHTSA, manufacturers, state motor vehicle departments, law enforcement agencies, insurance companies, and motor vehicle safety researchers.

49 CFR Part 565 stipulates the system under which each new vehicle sold in the United States receives a unique VIN. When Part 565 went into effect beginning in October of 1980, it was anticipated that the permutations available under the 17-character system described in Part 565 would provide a sufficient number of unique VINs and manufacturer identifiers such that, as required by Part 565, “the VINs of any two vehicles manufactured within a 30-year period shall not be identical.” That 30-year period is anticipated to expire in 2010.

Based on concerns that the supply of unique available VINs is shrinking, SAE’s Vehicle Identification Number/World Manufacturer Identifier Technical Committee (“the committee” or “the petitioner”)¹ petitioned² NHTSA to modify the requirements of Part 565 such that unique VINs would be able to be provided for at least another thirty years. NHTSA is issuing this proposal so that unique VINs will continue to be available for vehicles manufactured for sale in this country.

II. Petitioner’s Suggested Changes; NHTSA’s Decisions on the Petition

This section sets forth the petitioner’s suggested changes to the VIN requirements. These are marked in bullet format, and are followed by NHTSA’s response to each suggested change. As discussed below, NHTSA generally agrees with most of the petitioner’s suggestions. To the extent the agency does not agree, the reasons for doing so are explained.

NHTSA generally concurs with the petitioner’s suggested amendments to the VIN requirements (except as noted) because the agency tentatively

concludes that the changes would achieve two objectives: They would increase the number of manufacturer identifiers and VINs available for the foreseeable future, thus preserving the one vehicle-one VIN structure, and they would preserve the 17-character VIN system, thereby avoiding the potential imposition of substantial costs on the many current users of VINs in data systems. NHTSA agrees with the petitioner that the current supply of manufacturer identifiers available for large manufacturers in this country could expire in the near future. That, coupled with the rising likelihood of duplicate VINs occurring, would adversely impact the many organizations that maintain an orderly system for identifying and tracking vehicles.

a. The Content Requirements of the VIN

The VIN regulation (49 CFR Part 565) requires that VINs must consist of 17 characters in a fixed format. The VIN regulation (at § 565.6) separates the 17-character VIN into four sections: (a) Section 1: Positions 1–3, the manufacturer identifier; (b) Section 2: Positions 4–8, attributes of the specific type of vehicle involved; (c) Section 3: Position 9, the check digit; and (d) Section 4: Positions 10–17, additional vehicle-specific information.

Section 1: Positions 1–3, the Manufacturer Identifier (§ 565.6(a))

The VIN regulation requires this section to consist of three characters that uniquely identify the manufacturer, make, and type of the motor vehicle if the manufacturer produces 500 or more motor vehicles of its type annually. If the manufacturer produces fewer than 500 motor vehicles of its type annually, these characters along with three characters of the fourth section (positions 12–14) shall uniquely identify the manufacturer, make, and type of the motor vehicle.

The petitioner was particularly concerned about the supply of unique manufacturer identifiers for large U.S. manufacturers. NHTSA contracts with SAE to coordinate the assignment of manufacturer identifiers (§ 565.7(a)). In issuing the identifiers, SAE ensures that the identifier complies with both Part 565 and the requirements of International Standard 3780, *Road vehicles—world manufacturer identifier (WMI) code (dated 1983)*. In International Standard 3780, Ref. No. ISO 3780–1983 (E), the manufacturer identifier is referred to as the World Manufacturer Identifier (WMI). International Standard 3780 requires the first character of the WMI to represent

the geographic area of the world in which the subject vehicle was manufactured. The second character of a WMI must indicate the country (although the standard does not specify how to determine what country should be indicated, e.g., place of manufacture, place of final assembly, place of company headquarters, etc.). In contrast, § 565.6(a) currently requires that manufacturers communicate manufacturer, make, and type of motor vehicle in the first three positions of a VIN.

- The petitioner states that, to comply with Part 565, large manufacturers (as defined in the standard) in this country with multiple makes of vehicles have needed multiple manufacturer identifiers, which the petitioner believes is draining the supply of manufacturer identifiers/WMIs for producers in this country. The petitioner requests eliminating the Part 565 requirement that the manufacturer identifier identify the vehicle “make,” stating that, “The elimination of the ‘make’ would allow for the use of a ‘corporate’ WMI for each vehicle ‘type’ with the vehicle ‘make’ described elsewhere in the VIN.” According to SAE, not only do U.S. manufacturers have a large number of vehicle makes for which separate manufacturer identifiers are now required, more than fifty new large manufacturer identifiers are issued to them each year. SAE indicates that only approximately 400–450 large manufacturer identifiers remain in the current system.

NHTSA’s response: We are proposing the suggested change regarding vehicle make. The most pressing concern relating to the VIN system is the rapidly dwindling number of unique available manufacturer identifiers for large manufacturers in the U.S., as described above. The proposed changes would positively affect the supply of those identifiers available for large manufacturers in two ways. First, by moving vehicle make from the manufacturer identifier to the second section of the VIN, there would be a substantial reduction in the proliferation of new manufacturer identifiers for large manufacturers. Since manufacturers in the U.S. would no longer need to communicate vehicle make in the identifier to comply with Part 565, they would not have to obtain new manufacturer identifiers in the near future and possibly ever. (This NPRM proposes to amend Table 1 of Part 565 to establish the “vehicle make” as a required information element for each vehicle type. See discussion relating to Section 2, *infra*.)

¹ Organizations represented on the committee included: General Motors, International Truck and Engine Corporation, RL Polk & Company, The Hill Group, Freightliner Truck Division, American Association of Motor Vehicle Administrators, American Suzuki Motor Corporation, Harley Davidson Motor Company, Motorcycle Industry Council, Ford Motor Company, Transport Canada, National Insurance Crime Bureau (NICB), DaimlerChrysler Corporation, and NHTSA. Representatives from Clifford Thames IMS in the United Kingdom, the Highway Loss Data Institute, and Caterpillar, Inc. were also given the opportunity to comment on the committee’s work.

² Petition dated October 31, 2005; corrected February 23, 2006. A letter granting the petition was sent March 7, 2006.

Second, since they will no longer need to communicate vehicle make in the identifier to comply with Part 565, many major manufacturers in the U.S. will have an immediate excess of manufacturer identifiers. It is anticipated that over time many of these large manufacturers will release some, perhaps many, of the manufacturer identifiers that have been previously issued to them.³ These released manufacturer identifiers could then be assigned to other manufacturers as needed. Comments are requested on the likelihood and implications of manufacturers releasing previously-issued identifiers that are no longer in use. The agency is particularly interested in receiving comments on this from large manufacturers.

Exactly how many WMIs these changes to Part 565 would make available to the VIN system cannot be determined. The initial supply of 3,267 large manufacturer identifiers has lasted for 30 years. Under the proposed revisions to Part 565, the only time large manufacturers will need a new manufacturer identifier is when they begin to manufacture a new vehicle type. The only other drain on the supply of available manufacturer identifiers will come from new large manufacturers that emerge. The agency believes that the proposed changes to the VIN system, particularly removing vehicle make from the information that must be communicated in the manufacturer identifier, should result in a supply of available manufacturer identifiers that will last for approximately the next 30 years.

- Section 565.6(a) specifies a production threshold of 500 units for determining whether a WMI must be comprised of three VIN positions or of six positions. The petitioner states that in practice, U.S. manufacturers assigned six character WMIs produce nearly 900 units annually before the SAE replaces their six-character WMIs with "large manufacturer" (three-character) WMIs. The petitioner suggests that the threshold for using a six-character WMI should be raised to 900 units "to align the regulation with actual practice."

NHTSA's response: We agree that the production threshold should be raised, but propose to raise it to 1000 units rather than 900 units as suggested by the petitioner. Currently, Part 565 requires small manufacturers (making fewer than 500 vehicles of a given type per year) to have a six-character manufacturer identifier, using VIN positions 12–14 in

addition to positions 1–3 for their manufacturer identifier. Small manufacturers then use the last three VIN positions (15–17) for sequentially numbering their vehicles. The petition indicated that small manufacturers often seek a large manufacturer identifier after the threshold of 500 vehicles has been exceeded. Whenever this occurs, the small manufacturer is in technical violation of Part 565. Moreover, the small manufacturer remains in technical violation by continuing to produce vehicles, because it has all the numbers from 501 to 999 left to number its vehicles sequentially before it faces the more serious problem of no longer being able to do so.

The petition requested a threshold in Part 565 of 900 vehicles, so that a manufacturer that reaches this level of production would still have 99 numbers left before running out of available numbers for sequentially numbering vehicles. The petitioner anticipates that reaching a 900-unit threshold would prompt a manufacturer to approach SAE to obtain a large manufacturer identifier before it runs out of numbers.

NHTSA has two concerns with the 900-vehicle threshold proposed by the petition. First, specifically incorporating a new threshold of 900 units into Part 565 would perpetuate the current situation, albeit in fewer instances, where it is easily possible for a manufacturer to be in technical violation of Part 565. Second, there is little apparent benefit to setting the cutoff at 900 vehicles as opposed to 999, particularly in this era of virtually instant communication.

NHTSA therefore proposes to amend Part 565 such that a "high-volume manufacturer," which the regulation would define as one producing 1,000 or more vehicles, must use a three-digit manufacturer identifier, and a "low-volume manufacturer," which would be defined as a manufacturer that produces fewer than 1,000 vehicles, must use a six-digit manufacturer identifier. This should eliminate the problem of small manufacturers finding themselves in technical violation, because they will run out of unique available VINs (which will prevent them from selling additional vehicles produced) at the same time that they need to seek a new manufacturer identifier. Comments are requested on the threshold of 999 units, and on whether the VIN regulation should specify that all requests to the SAE for manufacturer identifiers should include "proposed production levels for vehicles of this type." (The latter approach was suggested by the petitioner.)

- The petitioner states that the SAE has assigned WMIs such that the presence of a "9" in the third VIN position indicates that the VIN contains a six-character WMI. The petition states that the committee has discovered that users of VIN information are typically unaware of this information, and requests that § 565.6(a) include a reference to this number "9" in the third position "to aid field comprehension of the VIN structure."

The agency agrees with this reasoning and is proposing to add a sentence explaining the significance of the "9" to this section.

Section 2: Positions 4–8, Attributes of the Specific Type of Vehicle Involved (§ 565.6(b))

The VIN regulation (§ 565.6(b)) specifies that the second section must consist of five characters, occupying positions four through eight in the VIN, which uniquely identify the attributes of the vehicle as specified in Table 1 of Part 565. The regulation specifies that positions four and five be alphabetic characters and that position six must be a numeric value for all passenger cars, multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds (lbs)) or less. The regulation also specifies that position seven must be a numeric value for those vehicles.

- The petitioner states that § 565.6(b)'s limitations on use of alphabetic and numeric values are more restrictive than both the SAE and ISO standards for vehicle identification, resulting in what the petitioner believes to be "VIN structures that are difficult to decode" or in "less refinement and resolution in VIN information available to users of the VIN content." The petitioner believes that allowing either alphabetic or numeric characters in positions four through six of the VIN would result in greater flexibility to manufacturers, allow for more descriptive vehicle information, and achieve harmonization with the ISO identification standard. Moreover, the petitioner states that if alphabetic characters in position seven of the VIN were permitted, "the number of possible combinations would increase from the approximately 53,000 currently available to slightly more than 826,000 possible combinations." Petitioner suggests that the change would ensure that no identical VINs will exist in a 60-year period,⁴ which consists of the 30-

³ Some of the large manufacturers represented on the SAE committee indicated that this could likely occur.

⁴ The general requirements of the VIN regulation specify that the VINs of any two vehicles

year period covered by the current regulation plus the additional 30 years that would result from the changes proposed in this NPRM.

NHTSA's response: We have tentatively decided that the petitioner's approach has merit. According to the petitioner's estimates, the proposed changes should add at least several hundred thousand new unique available VINs, and probably many more. For example, the petition calculates that just for the changes proposed for positions 4–7 of the VIN, there should be a total of 826,551 combinations as compared to 52,900 available under the current Part 565. This number is derived from the fact that there will be a total of 33 characters (23 alphabetic plus 10 numeric) available in each of positions 4–6 and 23 characters in position 7 under the proposed changes, whereas under the current Part 565 there are 23 characters (alphabetic only) available in positions 4 and 5 and 10 characters available (numeric only) in positions 6 and 7. Thus:

Current total combinations, positions 4–7: $23 \times 23 \times 10 \times 10 = 52,900$

Proposed total combinations, positions 4–7: $33 \times 33 \times 33 \times 23 = 826,551$.

Additionally, in any given year the factors that will further affect the number of unique VINs available to any specific manufacturer include, among others: the 33 characters available in position 8 of the VIN, which will allow for permutations in just the second section of the VIN (positions 4–8) in the millions (the maximum possible would be $826,551 \times 33 = 27,276,183$); the number of manufacturer identifiers a manufacturer has or that are available to be issued to that manufacturer; the change in the VIN digit for the model year (see discussion, *infra*); the number of plants a manufacturer has since each plant is indicated by a specific character in position 11 of the VIN (see discussion, *infra*); and the sequential numbering of vehicles. The cumulative effect of these factors increases substantially the current number of VINs available under Part 565.

Comments are requested on the proposed changes. Chief among the concerns of the petitioner when formulating the suggested revisions to the VIN requirements was how to expand significantly the quantity of

unique available manufacturer identifiers and VINs without imposing significant costs associated with data systems that use or rely on 17-character VINs. The petitioner believes that the suggested changes to the VIN system would achieve those goals. NHTSA has tentatively agreed with this determination. Comments are requested on whether this conclusion is correct.

- As mentioned earlier in this preamble, this NPRM proposes to amend Table 1 of Part 565 to establish the “vehicle make” as an information element required in positions four through eight of the VIN for each vehicle type. This change complements the proposal that vehicle make be removed from the manufacturer identifier (Section 1 of the current VIN).
- An attribute of passenger cars that is specified in Table 1 is “restraint system type.” The petitioner states: “To make identification of restraint system more effective, we request amendment of Part 565.6(b) to require that a manufacturer shall uniquely identify the type and location of all restraint devices on every passenger car.” NHTSA agrees that the proposal has merit, since information on the type and location of all restraint devices in the vehicle could be useful to safety researchers and other analysts. Moreover, NHTSA requests comments on whether this information should be required for all passenger vehicles, not just passenger cars.

Section 3: Position 9, the Check Digit (§ 565.6(c))

The third VIN section consists of one character in the 9th position, called the “check digit.” This reflects a mathematical computation specified in § 565(c)(1) through (4) that is based on the other VIN characters and serves as a check against typographical errors that may occur in transcribing a VIN.

- The petitioner asked that a table it developed be added to § 565.6(c)(4) to “clarify the check digit value.” The petitioner explained that the table provides a reference for the correct check digit value to use based on both a fractional and decimal equivalent remainder. The petitioner stated: “The committee believes that the inclusion of a decimal equivalent remainder is important due to widespread use of electronic calculation devices.” The petitioner therefore suggested changing the sample check digit calculation shown currently in Table V of § 565.6(c)(5) to include a decimal equivalent remainder.

NHTSA's response: We agree that including the suggested table would likely help clarify the correct check digit value to be used, to the extent that there

is confusion on this issue. Changing the sample calculation to include a decimal equivalent remainder makes sense given the addition of the proposed table. Comments are requested on whether these changes are necessary or helpful.

Section 4: Positions 10–17, Additional Vehicle-Specific Information (§ 565.6(d))

The fourth section consists of eight characters occupying positions 10–17, and includes sequential numbering of vehicles. Positions 10 and 11 are for the model year and plant of manufacture, respectively. For manufacturers of 1,000 or more vehicles of a given type, positions 12 through 17 are used to sequentially number groups of similar vehicles that are manufactured by the manufacturer.

- For manufacturers initially intending to produce fewer than 500 of a type of vehicle, VIN positions 12–14 are additional characters used for the manufacturer identifier specific to the manufacturer. The petitioner states that the VIN regulation implies that VIN position twelve must be numeric, and specifically requires that positions thirteen and fourteen be numeric. The petitioner requests that the regulation be amended to explicitly allow VIN positions twelve through fourteen to use alphabetic or numeric characters when those positions are used as part of the manufacturer identifier of a small manufacturer.

NHTSA's response: We concur that for manufacturers that produce less than 1,000 vehicles per model year, allowing either alphabetic or numeric characters in positions 12–14 as part of the six-character manufacturer identifier significantly expands the number of unique manufacturer identifiers available to them. The resultant number of additional manufacturer identifiers is at least 12,167 (23 new characters (excluding I, O, and Q) available in each of positions 12–14; $23 \times 23 \times 23 = 12,167$). According to SAE, currently about 300 new manufacturer identifiers are issued each year for these manufacturers. At this rate, the proposed changes would add at least forty years' worth of manufacturer identifiers for small manufacturers.

- Table VI of § 565.6(d)(1) sets forth codes that are used in position 10 of the VIN to indicate the vehicle model year. Currently, the table goes up to year 2013. The petitioner suggested changing the table to include codes up to and including the year 2039, since the petitioner believes that with “the adoption of the petition content listed above, the current VIN structure will have long-term viability.” NHTSA is

manufactured within a 30-year period must not be identical (§ 565.4(d)). The petitioner believes there is a likelihood, though small, of repeating VINs at a 31-year interval, and suggested that § 565.4 be amended to specify a 60-year period. We tentatively conclude that the requested change has merit, and are proposing to amend § 565.4(d) to ensure non-repeatability of VINs.

proposing this change to Table VI for the reasons provided by the petitioner.

b. Petitioner's Suggested Changes for Low-Speed Vehicles

Federal Motor Vehicle Safety Standard (FMVSS) No. 500, "Low-speed vehicles," requires low-speed vehicles (LSVs)⁵ to have a VIN that conforms to the requirements of part 565 (FMVSS No. 500, S5(b)(9)). However, the application section of Part 565 does not include LSVs, and there are no substantive requirements in Part 565 for these vehicles.

- The petition asked NHTSA to amend the application section of the VIN regulation (§ 565.2) to include LSVs, and to amend § 565.4(f) to specify where the VIN must be located in LSVs. In addition, the petitioner suggested that Table 1 of § 565.6(b) include "specific requirements for positions four through eight (4–8) of VINs assigned to LSVs to clearly identify this class of vehicle." The petition did not suggest which elements should be included in Table 1 to achieve this result.

NHTSA's response: We are granting this request. Amending the application section of Part 565 would make the regulation clearer and more consistent with FMVSS No. 500. Specifying where the VIN must be located in LSVs would ensure that the VIN is accessible and legible.

FMVSS No. 500 requires LSVs to be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, reflex reflectors of specified colors, exterior mirrors, a parking brake, a windshield, and a lap or lap and shoulder seat belt assembly at each designated seating position (S5, FMVSS No. 500). NHTSA tentatively concludes that some of these attributes should be decipherable from the VIN of an LSV, since information about these attributes could be useful in analyses of crashes, theft, or other matters. These attributes are: Vehicle make, engine type, brake system, all restraint devices and their location, body type, and gross vehicle weight rating. NHTSA requests comment on whether the attributes proposed are appropriate, and whether other attributes should be considered as well.

c. Other Aspects of the VIN Regulation

- Imports

⁵ The definition of an LSV is set forth in 49 CFR 571.3 as follows: Low-speed vehicle means a vehicle, that is 4-wheeled, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and whose GVWR is less than 1,361 kilograms (3,000 pounds).

Section 565.5 contains requirements for motor vehicles imported into the United States. Section 565.5(b) specifies requirements for passenger cars certified by a Registered Importer under 49 CFR Part 592,⁶ but not for any other types of vehicles. The petitioner requested amending this section to include MPVs and trucks with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA concurs that this proposed change has merit since the other vehicle types are imported by registered importers, and has also included low speed vehicles among the vehicles covered by § 565.5(b) for the same reason.

- Type Faces Permitted for a VIN

Section 565.4(i) specifies that the type face used for each VIN shall consist of capital, sanserif characters. The petitioner stated that some manufacturers have been using a "posident" font type face based on a 1978 NHTSA interpretation,⁷ and requests that the regulation "allow the use of a positive identification style font face as an alternate to the current sanserif font typeface."

NHTSA's response: We are not granting this request. The petition did not identify the similarity or distinction between "posident" font, which it asserts is allowed under a NHTSA interpretation, and "positive identification style" font, which it requests be allowed as an alternative. NHTSA has insufficient information on this matter to include it in this NPRM.

III. Summary of Key Proposed Changes

This NPRM proposes to amend Part 565 by revising certain sections in order to extend the existing VIN system for another thirty years, and to ensure a sufficient supply of unique available VINs and manufacturer identifiers for that time period. The following points highlight the key provisions of the proposed requirements:

- The proposed rule would move the location of the information conveying vehicle make from the manufacturer identifier to the second section of the VIN, which should increase the supply of unique available manufacturer identifiers for large manufacturers, because they will no longer need some of the identifiers they currently have, or need to request additional manufacturer identifiers for new vehicle makes that they produce.

⁶ 49 CFR Part 592, "Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards."

⁷ The petitioner did not identify the interpretation. The agency assumes it is a letter to Mr. R.W. Fink, available at <http://isearch.nhtsa.gov/aiaam/aiaam2912.html>.

- The proposed rule would increase the number of characters available for positions 4–8 of the VIN: Changing positions 4–6 and 8 to either alphabetic or numeric, and position 7 to alphabetic. This is anticipated to increase the number of unique available VINs.

- The proposed rule would allow either alphabetic or numeric characters in positions 12–14 as part of the six-character manufacturer identifier, which should increase the number of manufacturer identifiers available to low-volume manufacturers.

- The proposed rule would add definitions for "high-volume manufacturer," and "low-volume manufacturer." The threshold between a high- and low-volume manufacturer is a production output of 1000 vehicles of a given type each year.

- The proposed rule would add low-speed vehicles to the list of vehicles to which Part 565 applies, and adds attributes of LSVs that should be identified by an LSV's VIN.

IV. Effective Date

The petitioner suggested that the changes take effect beginning with the 2010 model year, when the supply of manufacturer identifiers for U.S. manufacturers could be exhausted and duplicate manufacturer identifiers and VINs could begin to appear.

NHTSA tentatively concludes that a final rule resulting from this NPRM should be effective on a date sufficiently early to prevent the expiration of available manufacturer identifiers and unique VINs, and far enough in the future to allow various parties that will be affected by a VIN system change to plan for and make whatever data system changes will be required. That date is tentatively determined to be January 1, 2009, which corresponds to the 2010 model year suggested by the petitioner. Model year 2010 vehicles manufactured on or after September 1, 2009, would be required to have a VIN meeting the new requirements. Model year 2009 vehicles manufactured on or after September 1, 2009 would be expected to comply with the current regulation. NHTSA requests comment on whether this date provides enough lead time for those who need to make changes to computer systems to accommodate the changes.

V. Public Participation

How Do I Prepare and Submit Comments?

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

number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information," or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

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

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will The Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will

consider that comment as an informal suggestion for future rulemaking action.

How Can I Read The Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
2. On that page, click on "search."
3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-2007-1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the document are word searchable.

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

Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act discussion at the end of the next section.

VI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document proposes changes to the VIN requirements that for the most part provide manufacturers greater flexibility in meeting VIN requirements:

- The proposed rule would increase the supply of unique available manufacturer identifiers for large manufacturers, because they will no longer need to request additional

manufacturer identifiers for new vehicle makes that they produce.

- The proposed rule would permit the use of either alphabetic or numeric characters in many positions of the VIN.
- The proposed rule would permit low-volume manufacturers to manufacture 999 vehicles (increased from 499) before a new manufacturer identifier is required.
- The proposed rule would reduce or eliminate the waiting period before the time an identifier or VIN can be used.
- The proposed rule would add low-speed vehicles to the list of vehicles to which Part 565 applies, and would add attributes of LSVs that should be identified by an LSV's VIN.

Vehicle manufacturers, including those of low-speed vehicles, are already required to label their vehicles with a VIN and report to NHTSA information relating to deciphering the characters in the VIN. This proposed rule would not substantially change those requirements. The minimal impacts of today's proposed amendments do not warrant preparation of a regulatory evaluation.

NHTSA anticipates no direct safety impacts from this proposed rule. However, NHTSA believes that this NPRM has a beneficial effect on safety in that it would ensure the continued integrity of the VIN system (ensuring that vehicles will continue to be uniquely identified).

There might be some cost impacts in changing data retrieval and recordkeeping systems to account for features of the VIN that might be different than those of current VINs (e.g., the use of alphabetic and numeric characters in certain VIN positions). However, NHTSA does not believe that the costs would be significant. The members of the committee representing operators of data systems that utilize the 17-character VIN system indicated that there would be some costs involved in making software and other modifications to data systems required by changes proposed in the petition, but that those costs would be extremely small compared to what would be required to deal with an expanded number of VIN characters. The petition noted that "any increase in the quantity of characters beyond the current seventeen would require massive software changes to all programs that use a motor vehicle VIN, and would affect not only automotive OEM's, but also state DMV's, local governments, insurance companies, law enforcement agencies, research companies, NHTSA's National Center for Statistics and Analysis, as well as others." Comments

are requested on the cost of the proposed changes to Part 565.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any small vehicle manufacturers that might be affected by this proposed rule are already required to provide a VIN and provide information to NHTSA that enables the VIN to be deciphered. Manufacturers of low-speed vehicles would have to make sure that the VIN reflects the six LSV features newly added to Table 1 of Part 565, but the burden associated with that responsibility should be negligible and would not incur a significant economic impact.

Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule 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." We note that the American Association of Motor Vehicle Administrators (AAMVA) was a member of the SAE committee that submitted the petition prompting this rulemaking.

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1).

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's proposed rule. NHTSA may opine on such conflicts in the future, if warranted. See *id.* at 883–86.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and

applicable voluntary consensus standards.

This NPRM would make Part 565's requirements for manufacturer identifiers and for identifying attributes of the specific vehicle type more consistent with SAE and ISO standards for vehicle identification. The NPRM would permit the use of alphabetic and numeric characters in certain VIN positions, which would substantially increase harmonization of Part 565 with the ISO identification standard.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, *Executive Order 12988* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA has reviewed this proposed rule according to the general requirements and the specific requirements for regulations set forth in

Executive Order 12988. This proposed rule does not result in any preemptive effect and does not have a retroactive effect. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Consolidated VIN Requirements have an OMB control number of 2127-0510. As a result of this NPRM being made final, although the agency may require information to be provided in a slightly different way (e.g., vehicle make being transferred from the first to the second section of the VIN), the scope of the overall reporting requirements of Part 565 will not change. We emphasize that there will be no increase or decrease in the collection of information because of this rulemaking.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Please note 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> until October 1, 2007; after October 1, 2007, you may visit <http://DocketInfo.dot.gov>.

List of Subjects in 49 CFR Part 565

Motor vehicle safety, Reporting and recordkeeping requirements; incorporation by reference.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 565 as follows:

PART 565—VEHICLE IDENTIFICATION NUMBER REQUIREMENTS

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.50.

2. In § 565.2, the first sentence is revised to read as follows:

§ 565.2 Applicability.

This part applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (including trailer kits), incomplete vehicles, low speed vehicles, and motorcycles.

3. In § 565.3, paragraphs (i) through (o) are redesignated as paragraphs (l) through (r), and paragraphs (i), (j), and (k) are added as follows:

§ 565.3 Definitions.

(i) *Manufacturer identifier* shall refer to the first three digits of a VIN of a vehicle, in the case of a high-volume manufacturer, and the first three digits of a VIN and the twelfth through fourteenth digits of a VIN in the case of a low-volume manufacturer.

(j) *High-volume manufacturer*, for purposes of this part, means a manufacturer of 1,000 or more vehicles of a given type each year.

(k) *Low-volume manufacturer*, for purposes of this part, means a manufacturer of fewer than 1,000 vehicles of a given type each year.

4. In § 565.4, paragraphs (d) and (f) are revised to read as follows:

§ 565.4 General requirements.

(d) The VINs of any two vehicles subject to Federal motor vehicle safety standards and manufactured within a 60-year period beginning with the 1981 model year shall not be identical.

(f) The VIN for passenger cars, multipurpose passenger vehicles, low speed vehicles, and trucks of 4536 kg or less GVWR shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm.

5. In § 565.5, paragraph (b) is revised to read as follows:

§ 565.5 Motor vehicles imported into the United States.

(b) All passenger cars, multipurpose passenger vehicles, low speed vehicles, and trucks of 4536 kg or less GVWR certified by a Registered Importer under 49 CFR part 592 whose VINs do not comply with Part 565.4 and 565.5 shall have a plate or label that contains the following statement, in characters with a minimum height of 4 mm, with the identification number assigned by the original manufacturer provided in the blank: SUBSTITUTE FOR U.S. VIN:

SEE PART 565. The plate or label shall conform to § 565.4 (h) and (i). The plate or label shall be permanently affixed inside the passenger compartment. The plate or label shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. It shall be located in such a manner as not to cover, obscure, or overlay any part of any identification number affixed by the original manufacturer. Motor vehicles conforming to Canadian Motor Vehicle Safety Standard 115 are exempt from this paragraph.

6. In § 565.6:

a. paragraphs (a), (b), and (c)(4) are revised;

b. Tables V and VI are designated as Tables VI and VII;

c. new Table V is added at the end of paragraph (c)(4);

d. new Table VI is revised after paragraph (c)(5) and new Table VII is revised after paragraph (d)(1); and, e. paragraph (d)(3) is revised.

These amended and new paragraphs and tables would read as follows:

§ 565.6 Content requirements.

* * * * *

(a) The first section shall consist of three characters that occupy positions one through three (1–3) in the VIN. This section shall uniquely identify the manufacturer and type of the motor vehicle if the manufacturer is a high-volume manufacturer. If the manufacturer is a low-volume manufacturer, positions one through three (1–3) along with positions twelve through fourteen (12–14) in the VIN shall uniquely identify the manufacturer and type of the motor vehicle. These characters are assigned in accordance with § 565.7(a). A “9” shall be placed in the third position of the VIN if the manufacturer identifier is six characters. A “9” in the third position always indicates the presence of a six-character manufacturer identifier. The National Highway Traffic Safety Administration offers access to manufacturer identifier assignments via its search engine at the following Internet Web site: <http://www.nhtsa.dot.gov/cars/rules/manufacture>.

(b) The second section shall consist of five characters, which occupy positions four through eight (4–8) in the VIN. This section shall uniquely identify the attributes of the vehicle as specified in Table I. For passenger cars, and for multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 4536 kg (10,000 lb) or less, and low speed vehicles, the first, second, and third characters of this section shall be either alphabetic or numeric. The fourth character of this section shall be alphabetic. The fifth character may be either alphabetic or numeric. The characters utilized and their placement within the section may be determined by the manufacturer, but the specified attributes must be decipherable with information supplied by the manufacturer in accordance with § 565.7(c). In submitting the required information to NHTSA relating gross vehicle weight rating, the designations in Table II shall be used. The use of these designations within the VIN itself is not required. Tables I and II follow:

Table I—Type of Vehicle and Information Decipherable

Passenger car: Make, line, series, body type, engine type, and all restraint devices and their location.

Multipurpose passenger vehicle: Make, line, series, body type, engine type, gross vehicle weight rating.

Truck: Make, model or line, series, chassis, cab type, engine type, brake systems and gross vehicle weight rating.

Bus: Make, model or line, series, body type, engine type, and brake system.

Trailer, including trailer kits and incomplete trailer: Make, type of trailer, body type, length and axle configuration.

Motorcycle: Make, type of motorcycle, line, engine type, and net brake horsepower.

Incomplete vehicle other than a trailer: Make, model or line, series, cab type, engine type, and brake system.

Low speed vehicle: Make, engine type, brake system, all restraint devices and their location, body type, and gross vehicle weight rating.

* * * * *

(c) * * *

(4) The check digit is based on either the Fractional Remainder or the Decimal Equivalent Remainder as reflected in Table V. All Decimal Equivalent Remainders in Table V are rounded to the nearest thousandth.

TABLE V.—NINTH POSITION CHECK DIGIT VALUES
[Rounded to the nearest thousandth]

Fractional remainder	0	1/11	2/11	3/11	4/11	5/11	6/11	7/11	8/11	9/11	10/11
Decimal equivalent remainder	0	0.091	0.182	0.273	0.364	0.455	0.545	0.634	0.727	0.818	0.909
Check digit	0	1	2	3	4	5	6	7	8	9	X

The check digit, zero through nine (0–9) or the letter “X” shall appear in VIN position nine (9).

(5) A sample check digit calculation is shown in Table VI as follows:

TABLE VI.—CALCULATION OF A CHECK DIGIT

VIN position	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Sample VIN	1	G	4	A	H	5	9	H	.....	5	G	1	1	8	3	4	1
Assigned value	1	7	4	1	8	5	9	8	.....	5	7	1	1	8	3	4	1
Weight factor	8	7	6	5	4	3	2	10	0	9	8	7	6	5	4	3	2
Multiply assigned value times weight factor	8	49	24	5	32	15	18	80	0	45	56	7	6	40	12	12	2

Add products: 8+49+24+5+32+15+18+80+0+45+56+7+6+40+12+12+2 = 411.

Divide by 11: 411/11 = 37 4/11 or 37.3636.

If the fourth digit is 5 or greater, round up. If the fourth digit is 4 or smaller, round down. In the example above, the remainder is 4/11 or 0.364 when rounded up.

Looking up the remainder in Table V—Ninth Position Check Digit Values indicates that ‘4’ is the check digit to be inserted in position nine (9) of the VIN for this sample digit calculation.

(d) * * *

(1) The first character of the fourth section shall represent the vehicle

model year. The year shall be

designated as indicated in Table VII as follows:

TABLE VII.—YEAR CODES FOR VIN

Year	Code
2005	5
2006	6
2007	7
2008	8
2009	9
2010	A
2011	B
2012	C
2013	D
2014	E
2015	F
2016	G
2017	H
2018	J
2019	K
2020	L
2021	M
2022	N
2023	P
2024	R
2025	S
2026	T
2027	V
2028	W
2029	X
2030	Y
2031	1
2032	2
2033	3
2034	4
2035	5
2036	6
2037	7
2038	8
2039	9

(2) * * *

(3) The third through the eighth characters of the fourth section shall represent the number sequentially assigned by the manufacturer in the production process if the manufacturer is a high-volume manufacturer. If a manufacturer is a low-volume manufacturer, the third, fourth, and fifth characters of the fourth section, combined with the three characters of the first section, shall uniquely identify the manufacturer and type of the motor vehicle and the sixth, seventh, and eighth characters of the fourth section shall represent the number sequentially assigned by the manufacturer in the production process.

7. In § 565.7, paragraphs (a) and (d) are revised to read as follows:

§ 565.7 Reporting requirements.

* * * * *

(a) The National Highway Traffic Safety Administration (NHTSA) has contracted with the Society of Automotive Engineers (SAE) to coordinate the assignment of manufacturer identifiers. Manufacturer identifiers will be supplied by SAE at

no charge. All requests for assignments of manufacturer identifiers should be forwarded directly to: Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania, 15096, Attention: WMI Coordinator (telephone: 724-776-4841). Any requests for identifiers submitted to NHTSA will be forwarded to SAE. Manufacturers may request a specific identifier or may request only assignment of an identifier(s). SAE will review requests for specific identifiers to determine that they do not conflict with an identifier already assigned or block of identifiers already reserved. SAE will confirm the assignments in writing to the requester. Once confirmed by SAE, the identifier need not be resubmitted to NHTSA.

(b) * * *

(c) * * *

(d) The information required under paragraph (c) of this section shall be submitted at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information, or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. The information shall be addressed to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, Attention: VIN Coordinator.

Issued: September 19, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7-18925 Filed 10-1-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 070612190-7326-01]

RIN 0648-AV58

Atlantic Highly Migratory Species; 2008 Atlantic Bluefin Tuna Quota Specifications and Effort Controls

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes initial 2008 fishing year specifications for the

Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set effort controls for the General category and Angling category. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS solicits written comments and will hold public hearings in October 2007 to receive oral comments on these proposed actions.

DATES: Written comments must be received on or before November 1, 2007.

The public hearing dates are:

1. October 3, 2007, 7 p.m. to 9 p.m., Silver Spring, MD.

2. October 23, 2007, 3 p.m. to 5 p.m., Gloucester, MA.

ADDRESSES: You may submit comments, identified by “0648-AV58”, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

• Fax: 978-281-9340, Attn: Sarah McLaughlin

• Mail: Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930

Instructions: All comments received are a part of the public record and will generally be posted to Portal <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The hearing locations are:

1. Silver Spring — NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

2. Gloucester — NMFS, One Blackburn Drive, Gloucester, MA 01930.

Supporting documents including the 2007 Environmental Assessment, Initial Regulatory Flexibility Analysis, and Regulatory Impact Review are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin, 978–281–9260.

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

Background

On May 28, 1998, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidates the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

The 2008 annual specifications are necessary to implement the 2006 ICCAT quota recommendation, as required by the ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. The proposed rule would: (1) establish initial quota specifications consistent with the BFT rebuilding program by adjusting the 2006 ICCAT-recommended quota as necessary for the 2008 fishing year (January 1, 2008 - December 31, 2008); (2) establish General category effort controls, including restricted fishing days (RFDs) and initial retention limits; and (3) establish Angling category retention limits for the 2008 fishing season. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents prepared for the Consolidated HMS FMP and for the 2007 BFT specifications and effort controls. Copies of these documents are available from NMFS (see **ADDRESSES**).

2006 ICCAT Recommendation, BFT Underharvests, and Transfers to Other ICCAT Contracting Parties

At its 2006 meeting, ICCAT recommended a western Atlantic BFT Total Allowable Catch (TAC) of 2,100 mt to allow for continued rebuilding of

BFT through 2018. The TAC includes dead discards and will be effective through 2008, and thereafter until changed. The following are deducted from the TAC prior to determining the U.S. share percentage: 4 mt for the United Kingdom (in respect of Bermuda), 4 mt for France (in respect of St. Pierre and Miquelon), 25 mt for Mexico (to allow incidental catch in the longline fishery in the Gulf of Mexico), and 15 mt for Canada and 25 mt for the United States (for bycatch related to directed longline fisheries “in the vicinity of the management boundary area,” i.e., the Northeast Distant gear restricted area (NED), which was defined in the 2003 BFT annual specification rulemaking process as the Northeast Distant statistical area (68 FR 56783, October 2, 2003)). The U.S. share of the adjusted TAC is 57.48 percent, or 1,165.12 mt. Accounting for the 25 mt NED set-aside, the total U.S. allocation is 1,190.12 mt.

The 2006 ICCAT recommendation also includes provisions to: (1) limit carryover of underharvest to no more than 50 percent of a contracting party's initial TAC; (2) limit mortality of school BFT to an average of 10 percent of the initial TAC, calculated on a four-year basis; and (3) allow a contracting party with a TAC allocation to make a one-time transfer within a fishing year of up to 15 percent of its TAC allocation to other contracting parties with TAC allocations, consistent with domestic obligations and conservation considerations. Regarding the third provision, the ICCAT recommendation stipulates that the quota transfer may not be used to cover overharvests, and that a contracting party that receives a one-time quota transfer may not retransfer that quota. For the United States, the 15-percent limit on quota transfer equates to 178.5 mt. Consistent with § 635.27(a)(8), NMFS would consider several factors in deciding whether or not the United States would enter into an arrangement with another ICCAT contracting party, including, but not limited to, the amount of quota to be transferred, the projected ability of U.S. vessels to harvest the U.S. TAC before the end of the fishing year, the potential benefits of the transfer to U.S. fishing participants, potential ecological impacts, and the contracting party's ICCAT compliance status. Should NMFS consider a transfer of U.S. quota to another ICCAT contracting party, NMFS would publish a separate action in the **Federal Register**, which would provide detail of the transaction considered, including information regarding the factors above.

Domestic Allocations and Quotas

The 1999 FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years. The baseline percentage quota shares established in the 1999 FMP and contained in the Consolidated HMS FMP for fishing years beginning June 1, 1999, and continuing to the present are as follows: General category — 47.1 percent; Harpoon category — 3.9 percent; Purse Seine category — 18.6 percent; Angling category — 19.7 percent; Longline category — 8.1 percent; Trap category — 0.1 percent; and Reserve category — 2.5 percent.

In the final 2007 fishing year BFT specifications (72 FR 33401, June 18, 2007), NMFS modified the baseline landings quota to 1,165.12 mt to implement the 2006 ICCAT recommendation and set the category subquotas per the allocations established in the Consolidated HMS FMP. The baseline quotas are as follows: General category — 548.8 mt; Harpoon category — 45.4 mt; Purse Seine category — 216.7 mt; Angling category — 229.5 mt; Longline category — 94.4 mt; and Trap category — 1.2 mt. An additional 29.1 mt is allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

The baseline Angling category quota of 229.5 mt is further subdivided as follows: School BFT — 119 mt, with 45.8 mt to the northern area (north of 39°18' N. latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), plus 22 mt held in reserve; large school/small medium BFT — 105.2 mt, with 49.6 mt to the northern area and 55.6 mt to the southern area; and large medium/giant BFT — 5.3 mt, with 1.8 mt to the northern area and 3.5 mt to the southern area. The 25-mt NED set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). Thus, the baseline Longline category quota of 94.4 mt is subdivided as follows: 37.8 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 56.6 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED. NMFS accounts for landings under this additional quota separately

from other landings under the Longline north subcategory.

The baseline landings quota and category subquotas are effective until changed, for instance, as a result of a potential new ICCAT BFT TAC recommendation made at its upcoming 2008 Annual Meeting. Consistent with the Consolidated HMS FMP, NMFS will make underharvest and overharvest adjustments as necessary for the 2008 fishing year.

2008 Quota Specifications

NMFS anticipates that the 2007 fishing year underharvest will be substantial, based on current landings information and communication with BFT fishermen, and given the relatively low BFT harvest rates in recent years. However, the current ICCAT recommendation limits the amount of underharvest the United States may carry over for 2008 to 595.1 mt. In this action, NMFS proposes to carryover 595.1 mt of BFT underharvest from the 2007 fishing year to the 2008 fishing year quota, and distribute that underharvest in such a manner to: (1) Allow for potential transfer of a portion (up to 15 percent) of the 2008 U.S. quota to other ICCAT Contracting Parties and other domestic management objectives, if warranted; (2) ensure that the Longline category has sufficient quota to operate during the 2008 fishing year after the required accounting for BFT dead discards; and (3) provide the non-Longline quota categories a share of the remainder of the underharvest consistent with the allocation scheme established in the Consolidated HMS FMP.

The United States must report dead discard estimates to ICCAT annually and account for this mortality as part of the specification calculation process. Accordingly, NMFS must account for BFT dead discards in setting the 2008 fishing year quota. NMFS proposes to assign a sufficient amount of any quota carryover (53.6 mt) to the Longline category so that after accounting for dead discards, sufficient quota is available to cover anticipated pelagic longline fishery landings during the 2008 fishing year. Providing sufficient landings quota would allow not only a full year fishery but avoid discards that could result if the fishery were closed due to the quota being met while longline vessels are fishing for other species.

The best available preliminary estimate of dead discards for 2006 is 91.3 mt. This estimate is generated via extrapolation of pelagic longline logbook tallies by pooled observer data. Estimates of dead discards from other

gear types and fishing sectors that do not use the pelagic longline vessel logbook are unavailable at this time and thus are not included in this calculation. Per the ICCAT recommendation, which specifies a U.S. quota that is inclusive of dead discards, and consistent with the regulations regarding annual quota adjustments at § 635.27(a)(10)(iv), NMFS would deduct the 91.3 mt of estimated dead discards from the amount of quota available for the Longline category for the 2008 fishing year. The best available information indicates that pelagic longline landings and dead discards for 2006 totaled 148 mt. The baseline longline category quota is 94.4 mt. Therefore, NMFS proposes to use 56.7 mt of BFT underharvest to cover the anticipated pelagic longline fishery landings during the 2008 fishing year.

Additionally, NMFS would place 178.5 mt (i.e., 15 percent of 1,190.12 mt) of 2007 fishing year underharvest in the Reserve for potential ICCAT transfer purposes and other domestic management objectives. NMFS proposes to distribute the remainder of the quota carryover (363 mt) to the Angling, General, Harpoon, Purse Seine, and Trap categories consistent with their FMP allocations.

In accordance with the 2006 ICCAT quota recommendation, the Consolidated HMS FMP percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes initial quota specifications for the 2008 fishing year as follows: General category — 740.0 mt; Harpoon category — 61.2 mt; Purse Seine category — 292.2 mt; Angling category — 309.5 mt; Longline category — 56.7 mt; and Trap category — 1.6 mt. Additionally, 207.6 mt would be allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers.

The proposed General category quota of 740.0 mt would be divided per the time period allocations established in the Consolidated FMP, i.e., 39.2 mt (5.3 percent) for the period beginning January 1, 2008, and ending January 31, 2008, 370.0 mt (50 percent) would be available in the period beginning June 1, 2008, and ending August 31, 2008; 196.1 mt (26.5 percent) would be available in the period beginning September 1, 2008, and ending September 30, 2008; 96.2 mt (13 percent) would be available in the period beginning October 1, 2008, and ending November 30, 2008; and 38.5 mt

(5.2 percent) would be available in the period beginning December 1, 2008, and ending December 31, 2008.

As discussed in the Consolidated HMS FMP, NMFS has received public comment expressing concern relating to the rollover of underharvest or overharvest from one subperiod to the next between fishing years. In the Consolidated FMP, NMFS considered three scenarios that could occur regarding disposition of any carryover that accrues during the December subperiod: (1) rollover of any underharvest or overharvest in full to the January subquota; (2) rollover of 5.3 percent of the underharvest or overharvest to the January subquota; and (3) no rollover of any underharvest or overharvest to the January subquota. However, the 2006 ICCAT recommendation to cap the carryover of underharvest from one year to the next and to account for dead discards annually has led to the underharvest allocation approach used in the 2007 fishing year and described above. NMFS intends to publish final specifications in advance of the 2008 fishing year, which would allow General category participants to plan fishing activities based on the adjusted January 2008 subquota.

Based on the above proposed initial specifications and considerations regarding the school BFT fishery, the Angling category quota of 309.5 mt would be further subdivided as follows: School BFT — 119 mt, with 45.8 mt to the northern area (north of 39°18' N. latitude), 51.2 mt to the southern area (south of 39°18' N. latitude), plus 22 mt held in reserve; large school/small medium BFT — 183.4 mt, with 86.6 mt to the northern area and 96.8 mt to the southern area; and large medium/giant BFT — 7.1 mt, with 2.4 mt to the northern area and 4.7 mt to the southern area.

The 25-mt NED set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance with the North/South allocation percentages (i.e., no more than 60 percent to the south of 31° N. latitude). Thus, the proposed Longline category quota of 56.7 mt would be subdivided as follows: 22.7 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 34.0 mt to pelagic longline vessels landing BFT south of 31° N. latitude, with 25 mt set-aside for bycatch of BFT related to directed pelagic longline fisheries in the NED. NMFS would account for landings under this additional quota separately from other landings under the Longline north subcategory.

Adjustments to the 2008 quotas and subquotas will be updated in the final rule. If complete information is not available when the final rule is published, NMFS may need to publish a quota adjustment in 2008.

General Category Effort Controls

In addition to time-period subquotas, NMFS also implements General category RFDs to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional fine scale inseason flexibility. For the 2008 fishing year, NMFS proposes a series of solid blocks of RFDs to extend the General category for as long as possible through the end of the 2008 fishing year. Therefore, NMFS proposes that persons aboard vessels permitted in the General category would be prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes on the following days: all Saturdays and Sundays from November 15, 2008, through December 31, 2008, plus November 27 and December 25, 2008, while the fishery is open.

Finally, NMFS proposes to increase the General category retention limit to three BFT (73 inches (185.4 cm) or greater per vessel per day/trip) for the January and June-August subperiods. This action is intended to allow increased opportunities to harvest the General category quota during the period when catch rates have historically been slow, and to avoid accumulation of unused quota. This retention limit would be effective from January 1, 2008, through January 31, 2008 and from June 1, 2008, through August 31, 2008, unless adjusted with an inseason action, if necessary. NMFS may consider further retention limit adjustments after August 31, 2008, depending on several factors, including but not limited to catch rates and availability of quota.

Angling Category Effort Controls

NMFS proposes to increase the Angling category retention limit to one school BFT (27 inches (68.6 cm) to less than 47 inches (119.4 cm)), and two large school/small medium BFT (i.e., two BFT measuring 47 inches (119.4 cm) to less than 73 inches (185.4 cm)) per vessel per day/trip. This limit was set for the 2007 fishing year to be consistent with the 2006 ICCAT recommendation that limits tolerance for school BFT landings to 10 percent of the U.S. TAC, calculated on a four-year average, and to maximize use of the Angling category quota while avoiding overharvest of each of the Angling

category subquotas. The action also would provide the same retention limit for both private and charter/headboat vessels. NMFS has received public comment on the 2007 quota and effort control specifications and during the 2007 fishing season that application of the same measures for both sectors works well. NMFS does not have information, from recreational BFT landings estimates or from public comment, that would support a change in the Angling category retention limit for 2008 from the one implemented for the 2007 fishing year.

Classification

NMFS has preliminarily determined that the proposed rule is consistent with the Magnuson-Stevens Act and the Atlantic Tunas Convention Act as well as with the Consolidated HMS FMP and recommendations of the International Commission for the Conservation of Atlantic Tunas.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The 2008 annual specifications are necessary to implement the 2006 International Commission for the Conservation of Atlantic Tunas (ICCAT) quota recommendation, as required by the Atlantic Tunas Convention Act, and to achieve domestic management objectives under the Magnuson-Stevens Act. The proposed rule would: (1) Establish initial quota specifications consistent with the BFT rebuilding program by adjusting the 2006 ICCAT-recommended quota as necessary for the 2008 fishing year; (2) establish General category effort controls, including restricted fishing days (RFDs) and initial retention limits; and (3) establish Angling category retention limits for the 2008 fishing season. This action was developed in accordance with the framework procedures set forth in the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), and is supported by the analytical documents prepared for the Consolidated HMS FMP and for the 2007 BFT specifications and effort controls.

On June 18, 2007, the National Marine Fisheries Service (NMFS) published a final rule (72 FR 33401) that modified the baseline BFT landings quota to 1,165.12 mt to implement the 2006 ICCAT recommendation, set the category subquotas per the allocations established in the Consolidated HMS FMP, and set effort controls for the General and Angling categories for the 2007 fishing year (June 1 through December 31, 2007, pursuant to the change in fishing year to a calendar

year as of January 2008 per the Consolidated HMS FMP). The final regulatory flexibility analysis (FRFA) prepared for the 2007 BFT specifications and effort controls indicated that there were 9,001 commercial Atlantic tunas or Atlantic HMS permit holders. This constitutes the best available information regarding the universe of permit holders as permits are still being renewed for the 2007 and 2008 fishing years. Because NMFS considers all the commercial Atlantic tunas and HMS permit holders to be small business entities, disproportionality of economic impacts between small and large business entities is not an issue.

This proposed rule would *not* change the BFT baseline quota and category subquotas, or implement any new management measures not previously considered, and thus NMFS has determined that the impact on small entities affected by the proposed rule will not be significant. The 2006 ICCAT recommendation is in effect until changed, for instance, as a result of a new ICCAT BFT quota recommendation made at its November 2008 Annual Meeting. The domestic BFT baseline quotas and subquotas are codified in the regulations. Each proposed action in this rule is addressed separately below.

Carryover of underharvest: The 2006 ICCAT recommendation limits carryover of BFT underharvest from the 2007 fishing year to the 2008 fishing year quota to 595.1 mt. NMFS proposes to carry over and to distribute 595.1 mt of BFT underharvest via the same method as used for the 2007 fishing year, and consistently with the ICCAT recommendation and with the Consolidated HMS FMP. The adjusted quota for the 2008 fishing year would be 2 percent higher than that for the 2007 fishing year based on the preliminary estimate of the amount of underharvest that NMFS would use to cover anticipated Longline category landings in 2008. Given that the U.S. quota has been underharvested by a substantial amount in the last few years, and is expected to be underharvested this year, this increase is not expected to have a significant impact on individual small entities. The annual specification process that this proposed rule follows, including application of underharvests and overharvests, is described in detail in Chapters 3 and 4 of the Consolidated HMS FMP.

Effort controls: The proposed rule would increase the General category retention limit from the default level of 1 BFT to 3 BFT (73 inches or greater), the maximum allowed under the FMP. This action is the same as implemented for the 2007 fishing year and is intended to allow for maximum utilization of the BFT quota. An examination of landings data indicates that, while the retention limit increase would allow fishermen the flexibility to retain a second or third BFT if encountered, it is likely to have only slightly positive economic impacts on General category participants because success rates of catching a second or third BFT have been very low in recent years.

NMFS currently does not have information that would support a change in the Angling category retention limit for 2008 from the one implemented for the 2007 fishing year. The proposed increase of the Angling category

retention limit from the default of 1 fish (school, large school, or small medium BFT) to 3 fish (1 school BFT plus 2 large school or small medium BFT) is expected to provide increased opportunities to for recreational anglers without risking overharvest of the Angling category quota. To the extent that these increased opportunities may result in increased charter/headboat bookings, there may be slightly positive impacts on Charter/Headboat permit holders.

The proposed RFDs are also the same as those implemented for the 2007 fishing year (with adjustments as needed for the 2008 calendar) and are designed to pace the entry of product to the market when landings rates are high. To the extent that RFDs have the potential to improve market prices, particularly for exported BFT, the

implementation of RFDs may have slightly positive impacts, if needed, i.e., if not waived upon determination that they will not be needed, for instance if late season fishing rates are low. Regardless, the schedule of proposed RFDs is not expected to have a significant impact on small entities and is not expected to have any relative impact when compared with the 2007 fishing season.

Because the economic impact of the carryover of underharvest and effort controls, to the extent that there are any, is expected to be generally positive, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Public Hearings

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281-9279, at least 7 days prior to the meeting.

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

Dated: September 26, 2007.

William T. Hogarth

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E7-19421 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 72, No. 190

Tuesday, October 2, 2007

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Being Reviewed by the U.S. Agency for International Development; Comments Requested; Republication

SUMMARY: This **Federal Register** notice was originally published on July 23, 2007 (72 FR 40110) and is being republished and amended. U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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: Submit comments on or before December 3, 2007.

ADDRESSES: Send comment via e-mail at jdenale@usaid.gov or mail comments to: Jeff Denale, Coordinator for Counterterrorism, Office of Security, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712-1264.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712-1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:
OMB No:

Form No.: N/A.

Title: Partner Information Form.

Type of Review: New Information Collection.

Purpose: The United States Agency for International Development (USAID), Office of Security, intends to collect information from approximately 2000 individuals and/or officers of non-governmental organizations (NGOs) who apply for USAID contracts, grants, cooperative agreements, other funding from USAID, or who apply for registration with USAID as Private and Voluntary Organizations (PVO). Collection of personally identifiable information from these individuals is specifically used to conduct screening to ensure that neither USAID funds nor USAID-funded activities inadvertently provide support to entities or individuals associated with terrorism.

Annual Reporting Burden:

Respondents: 2000.

Total annual responses: 2000.

Total annual hours requested: 500 hours.

Dated: September 24, 2007.

Joanne Paskar,

*Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.*

BILLING CODE 6116-01-M



USAID
FROM THE AMERICAN PEOPLE

OMB 0412-NEW
EXPIRATION DATE: XX/XX

PARTNER INFORMATION FORM
(See Burden and Privacy Act Statements on Page 3)

Part I: Information About Proposed Activities		
1. Name of the prime contractor, grantee or recipient proposing the award or other assistance		
2. Type of proposed award or other assistance (check one): ☐ Contract or Subcontract ☐ Grant or Subgrant ☐ Training ☐ Equipment ☐ Other		
3. US\$ amount and estimated start/end date of proposed award or assistance: Dollar amount: \$ Start: End:		
4. Purpose of proposed award or assistance:		
5. Organization proposed to receive award or other assistance:		
a. Name:		
b. Address:		
c. Telephone:	d. Fax:	e. Email:
6. Information on key individuals associated with the organization named in 5 above, or, if no organization is listed, information on each individual to receive cash or in-kind assistance (including technical assistance). Use continuation sheets as necessary.		
** = mandatory information.		
A. Name (As in passport or other government-issued photo ID):**		Government-issued photo ID number, type of ID and country of issuance:**
Place of birth:**	Date of birth:** (mm/dd/yyyy)	Rank or title in organization listed in #5 (if "key individual").**
Other names used (may include nicknames, pseudonyms not listed under "Name"): **		Gender:
Current employer and job title:		Occupation:
Address of residence:		Citizenship(s):
Email:	Is the individual a U.S. citizen or legal permanent resident? ** Yes ☐ No ☐	
Part II: Contractor/Grantee/Recipient Certification:		
Contractor/Grantee/Recipient certifies in submitting this form that it has taken reasonable steps (in accordance with sound business practices) to verify the information contained in this form. Contractor/Grantee/Recipient understands that the U.S. Government may rely on the accuracy of such information in processing this vetting request.		
Name:		Signature:
Title/Organization:		Date:
Part III: Submission details (to be completed by USG vetting official)		
Vetting request number		
Staff member who initiated request		
Project name		
Date submitted for screening		

Partner Information Form Continuation Sheet for Part I, Section 6: List of Individuals
(Use additional continuation sheets as necessary):

B. Name (As in passport or other government-issued photo ID):**		Government-issued photo ID number, type of ID and country of issuance:**
Place of birth:**	Date of birth:** (mm/dd/yyyy)	Rank or title in organization listed in #5 (if "key individual"):**
Other names used (may include nicknames, pseudonyms not listed under "Name"):**		Gender:
Current employer and job title:		Occupation:
Address of residence:		Citizenship(s):
Email:	Is the individual a U.S. citizen or legal permanent resident?** Yes ☐ No ☐	
C. Name (As in passport or other government-issued photo ID):**		Government-issued photo ID number, type of ID and country of issuance:**
Place of birth:**	Date of birth:** (mm/dd/yyyy)	Rank or title in organization listed in #5 (if "key individual"):**
Other names used (may include nicknames, pseudonyms not listed under "Name"):**		Gender:
Current employer and job title:		Occupation:
Address of residence:		Citizenship(s):
Email:	Is the individual a U.S. citizen or legal permanent resident?** Yes ☐ No ☐	
D. Name (As in passport or other government-issued photo ID):**		Government-issued photo ID number, type of ID and country of issuance:**
Place of birth:**	Date of birth:** (mm/dd/yyyy)	Rank or title in organization listed in #5 (if "key individual"):**
Other names used (may include nicknames, pseudonyms not listed under "Name"):**		Gender:
Current employer and job title:		Occupation:
Address of residence:		Citizenship(s):
Email:	Is the individual a U.S. citizen or legal permanent resident?** Yes ☐ No ☐	
E. Name (As in passport or other government-issued photo ID):**		Government-issued photo ID number, type of ID and country of issuance:**
Place of birth:**	Date of birth:** (mm/dd/yyyy)	Rank or title in organization listed in #5 (if "key individual"):**
Other names used (may include nicknames, pseudonyms not listed under "Name"):**		Gender:
Current employer and job title:		Occupation:
Address of residence:		Citizenship(s):
Email:	Is the individual a U.S. citizen or legal permanent resident?** Yes ☐ No ☐	

** Indicates mandatory information

AID 500-XX (xx/xx)

PARTNER INFORMATION FORM INSTRUCTIONS**Part I**

Question 1 – Self-explanatory

Question 2- Indicate the proposed type of mechanism to be utilized by placing a check mark on the line in front of the appropriate term

Question 3 – Enter the amount of award or assistance in U.S. dollars and indicate the start and end date of the program using a mm/dd/yyyy format

Question 4 – Indicate the purpose of the award or assistance. Use additional sheets and attach to page one of the vetting form if necessary

Question 5 a-e – Self-explanatory

Question 6 - "Key individual" means (i) principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees); (ii) the principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president); (iii) the program manager or chief of party for the USG-financed program; and (iv) any other person with significant responsibilities for administration of the USG-financed activities or resources. Note that this definition differs from the definition of "key personnel" under contracts and cooperative agreements. Complete for each of these four categories or indicate "N/A" if a category does not apply.

Part II

Individual filling out form must read the Certification and print their name where indicated, sign where indicated, print their title and the name of their organization where indicated, and print the date where indicated.

Part III

This section is not for individual's information and will be completed by the USG vetting official.

PUBLIC BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 15 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. The 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Agency for International Development, Office of Security (SEC), Washington, D.C. 20523-2600.

PRIVACY ACT STATEMENT

The following statement is required by the Privacy Act of 1974 (5 U.S.C. 522). Information in this form is used to conduct screening of individuals and entities as required by applicable U.S. laws and implementing procedures to ensure that USAID funds do not inadvertently provide support to entities or individuals associated with terrorism. Public Law 109-446 §3(b)(2), 18 U.S.C. 2339A, 2339B, 2339C, Executive Orders 13224 and 12947, applicable Homeland Security Presidential Directives and other legislative or executive branch prohibitions on providing support or resources to, or engaging in transactions with, individuals or entities associated with terrorism constitute the authority for collecting this information. In addition, the Foreign Assistance Act of 1961 as amended (22 U.S.C. 2151 et seq.) provides USAID with broad discretion in granting foreign assistance and permits USAID to consider a range of foreign policy and national security interests in determining how to provide foreign assistance.

Disclosure of the information provided on this form will be done in accordance with USAID's System of Records Notice concerning the Partner Vetting System (72FR136) which establishes the routine uses and Privacy Act exceptions which apply to this system.

AID 500-XX (xx/xx)

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Fifty-Second Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and fifty-second meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9 a.m. to 5:30 p.m. on October 17, 2007 at the Des Moines Marriott Downtown located at 700 Grand Avenue, Des Moines, Iowa. The meeting venue is in the Marriott Hotel's Iowa Ballroom, Salons A, B, and C located on the second floor.

Dr. Robert Easter, Interim Chairman of BIFAD will open the meeting. Dr. Easter is the Dean, College of Agriculture, Consumer and Environment Sciences at the University of Illinois. Dean Easter was elected by the Board to serve in this capacity upon the April 3, 2007 resignation of Mr. Peter McPherson, former USAID Administrator. The business meeting will begin with a presentation of USAID's FY 2006 Title XII Report to Congress. It is expected that the Board will be looking at ways to enhance Title XII input and collaboration on the preparation of the FY 2007 report. Following the Title XII Report, the Board will discuss operational and management issues concerning the Strategic Partnership for Agricultural Research and Education (SPARE), establishment of a new BIFAD sub-committee, USAID's revisions to the ADS 216 (policy guidance) relative to Title XII implementation, SPARE committee issues, and other actions.

Late in the morning the Board will shift its attention to "Big Picture" thinking when it discusses ideas and plans for defining BIFAD's Strategic Direction in 2008. Critical to this will be the role of BIFAD in supporting USAID in collaboration with the U.S. university network to address priority agricultural issues in the context of transformational development. The Board will be re-visiting its earlier resolution with regard to implementing recommendations advanced in the special study conducted by former USAID Assistant Administrator Richard E. Bissell entitled: "Implementation of Title XII: Report to the BIFAD (June 2006)". It is expected that the Board will re-affirm its commitment to advancing the recommendations made in the Bissell Report.

Following the executive luncheon, which is closed to the public, the Board

will continue its discussion on defining the Board's action agenda for 2008. The Board will be entertaining comments from the audience on identification of critical priorities for international agriculture. It is the Board's intention to formulate several key recommendations which can be presented to the USAID Administrator. Incorporated into the afternoon deliberations will be discussion on several special initiatives including: facilitation of a Conference of Deans of Agriculture; conducting a study on "Defining a Title XII Activity"; and ideas related to formulating a new Center of Excellence for Technology Adaptation in Africa with possible links to the new U.S. military command AFRICOM.

After a mid-afternoon break the Board meeting shifts to several policy oriented presentations. First, Catherine Bertini, Professor of Public Administration, Maxwell School, Syracuse University will present a report on: "U.S. Funding for Higher Education in sub-Saharan Africa: A Case Study." Then in keeping with the theme of the World Food Prize symposium, there will be two papers presented on implications of Biofuels to development in Africa. These presentations, with open public discussion, will be given by Dr. Kenneth Cassman, Professor, Agronomy & Horticulture, University of Nebraska and Dr. Youba Sokona, executive secretary, Sahara & Sahel Observatory, Tunis, Tunisia.

The Board meeting is free and open to the public. Discussion and comments from the audience are especially welcome. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture, Bureau for Economic Growth, Agriculture and Trade, 1300 Pennsylvania Avenue, NW., Room 2.11-085, Washington, DC 20523-2110 or telephone him at (202) 712-0218 or fax (202) 216-3010.

Ronald S. Senykoff,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade, U.S. Agency for International Development.

[FR Doc. E7-19396 Filed 10-1-07; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 27, 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) 720-8681.

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 Marketing Service

Title: USDA Food and Commodity Connection Web site.

OMB Control Number: 0581-0224.

Summary of Collection: The USDA Food and Commodity Connection Web site operates pursuant to the authority of Section 32 of Public Law 320, Section 8 of the Child Nutrition Act of 1966 (42 U.S.C. 1777) and the National School Lunch Program, 7 CFR Part 210. It was developed to assist the institutional food service community across the

United States. The Web site focuses on providing information to institutional food service professions, as well as providing a platform for processors, distributors, and brokers to post information about their processed USDA supplied commodities and other commercial food products available for institutional food service purchase. The USDA Food and Commodity Connection Website provides food related associations a location to provide information on services and materials available from the organization. The Web site is a public Web site and the information provided is considered as public information.

Need and Use of the Information: The USDA Food and Commodity Connection Web site will collect all information electronically at one time upon registration. Each new user must create their individual login and password. There are five types of users; institutional food service professionals, processors, distributors, brokers and food related associations. The Food and Commodity Connection Web site is designed as a central location in which institutional food service professionals, who provide meals in institutional settings, can locate processors who manufacture foods utilizing USDA provided commodities, distributors who distribute the manufactured food, brokers who represent the processors, and food related associations. No information is collected from a user when they access the Web site as a guest.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 850.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 280.

Agricultural Marketing Service

Title: Domestic Origin Verification System Questionnaire.

OMB Control Number: 0581-0234.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)) requires and directs the Department to promulgate rules and regulations to carry out voluntary inspection and grading services on a fee for service basis. The collection of information regarding the requirement for companies to ensure domestic origin of the products they deliver to the USDA Purchase Program is provided for in the "General Terms and Conditions for Procurement of Agricultural Commodities of Services," (USDA-1). The Domestic Origin Verification System Program (DOVS) is a voluntary audit and verification user-fee service available to suppliers, processors, and

any financially interested party. It is designed to provide validation of the applicant's domestic origin verification system prior to bidding on contracts to supply food products to the Department's Feeding programs, and/or may be conducted after a contract is awarded. Participation in DOVS does not relieve a company of its contractual requirements to provide only domestic origin product to the USDA.

Need and Use of the Information: An interested company requests a DOVS questionnaire, and once completed it contains the applicants procedures to ensure fruit, nut or vegetable components or products can be traced back to their domestic origin; use of a segregation plan to keep all non-domestic components or products separate from domestic products; for taking corrective action on nonconformities and deficiencies; for checking the adequacy of their internal system of ensuring domestic origin; instructing employees in the domestic origin requirement and for maintaining records relating to the applicant's domestic origin verification system. These elements should be in place whether or not the applicant is on the DOVS program or providing a trace-back on every contract. DOVS assists companies to meet the domestic origin requirement for the USDA Purchase Program efficiently and eliminates the redundancy of the trace paperwork that is required for every USDA contract.

Description of Respondents: Business or other for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 100.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-19437 Filed 10-1-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 27, 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.

Food and Nutrition Service

Title: Direct Verification Evaluation Study.

OMB Control Number: 0584-NEW.

Summary of Collection: The Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265) expanded authorization for local education agencies to directly verify eligibility for the National School Lunch Program (NSLP) without contacting households, using data from other means-tested programs such as the Food Stamp Program, Temporary Assistance to Needy Families, Food Distribution Program on Indian Reservations, Medicaid, and the State Children's Health Insurance Program. Direct verification is intended to reduce burden on households and Local education agencies (LEAs), improve program operations, and reduce the number of children losing NSLP benefits due to household nonresponse to verification requests.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to understand the methods of direct verification and their effectiveness, the Direct Verification Pilot Study will systematically collect

data from eight states. FNS proposes to conduct four data collection activities: Interviews with State CN and Medicaid agencies; survey of LEAs; administrative data collection from LEAs and State agencies; and telephone interviews with LEAs. Without the data FNS will not be able to assess the effectiveness of NSLP direct verification, and FNS will not be able to disseminate information about DV-M implementation to assist agencies that do not currently use DV-M.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 364.

Frequency of Responses:

Recordkeeping; Report: Annually.

Total Burden Hours: 379.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-19439 Filed 10-1-07; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS-FV-07-0120; FV-07-331]

Notice of Request for 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 intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

DATES: Comments may be submitted on or before December 3, 2007.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250-0247; fax (202) 690-1527; or e-mail "terry.bane@usda.gov".

SUPPLEMENTARY INFORMATION:

Title: "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR 52".

OMB Number: 0581-0123.

Expiration Date of Approval: February 29, 2008.

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

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621—*et seq.*) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. Section 203(h) of the AMA specifically directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service. The regulations for such services for processed fruits and vegetables and related products may be found at 7 CFR Part 52.

AMS also provides other types of voluntary services under the same regulations, e.g., contract and specification acceptance services, facility assessment services and certifications of quantity and quality. Grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee). The AMA and these regulations do not mandate the use of these services; they are provided only to those entities that request or apply for a specific service.

In order for the Agency to satisfy those requests for service, the Agency must request certain information from those who apply for service. The information collected is used only by Agency personnel and is used to administer services requested by the respondents. The information request requires personal data, such as, name of the product, name and address of the packer or plant, location of the product, type and size of containers, and designation of services requested. Affected public may include any partnership, association, business trust, corporation, organized group, and State, County or Municipal government, and any authorized agent that has a financial interest in the commodity involved and requests service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.05 hours per response (1124 total hours divided by 21,068 total annual responses).

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 1,437.

Estimated Number of Responses: 21,068.

Estimated Number of Responses per Respondent: 0.07.

Estimated Total Annual Burden on Respondents: 1,124.

Comments are invited on: (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. Comments may be sent to Mr. Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250-0247; fax (202) 690-1527; or e-mail "terry.bane@usda.gov".

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 27, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7-19418 Filed 10-1-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Northern Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notices for public comment and decisions subject to appeal and predecisional administrative review under 36 CFR 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 1, 2007. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Acting Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329-3381.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: Coeur d'Alene Press and Lewiston Tribune.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Bismarck Tribune.

Beaverhead/Deerlodge NF - Montana Standard.

Bitterroot NF - Ravalli Republic.

Clearwater NF - Lewiston Tribune.

Custer NF - Billings Gazette

(Montana).

Rapid City Journal (South Dakota).

Dakota Prairie Grasslands - Bismarck Tribune (North and South Dakota).

Flathead NF - Daily Inter Lake.

Gallatin NF - Bozeman Chronicle.

Helena NF - Independent Record.

Idaho Panhandle NFs - Coeur d'Alene Press.

Kootenai NF - Daily Inter Lake.

Lewis & Clark NF - Great Falls Tribune.

Lolo NF - Missoulian.

Nez Perce NF - Lewiston Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon

notices in newspapers of record listed above.

Dated: September 25, 2007.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 07-4847 Filed 10-1-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Kolon Industries, Inc. in the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 14, 1996, the Department of Commerce (the Department) revoked in part the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea) with respect to subject merchandise manufactured and exported by Kolon Industries, Inc. (Kolon). *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58734 (November 14, 1996) (*Revocation*). As the result of an adequate allegation from domestic interested parties in this proceeding, the Department, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), is now conducting a changed circumstances review to determine whether Kolon has resumed dumping PET film and whether the antidumping order should be reinstated for PET film manufactured and exported by Kolon. *See Initiation of Antidumping Duty Changed Circumstances Review: Polyethylene Terephthalate Film Sheet and Strip from Korea*, 72 FR 527 (January 5, 2007) (*CCR Initiation*). We preliminarily determine that Kolon has sold PET film at less than normal value (NV) and that the order on PET film from Korea should be reinstated with respect to PET film manufactured and exported by Kolon. We will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PET film manufactured and exported by Kolon and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: October 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or Robert James, 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) 482-4475 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department published in the **Federal Register** the antidumping duty order on PET film from Korea. *See Antidumping Duty Order: Polyethylene Terephthalate Film Sheet and Strip From Korea*, 56 FR 25660 (June 5, 1991). On November 14, 1996, the Department revoked the order with respect to Kolon after having determined that Kolon sold the merchandise at not less than normal value for a period of at least three consecutive years. *See Revocation*. The three administrative reviews forming the basis of the revocation are the June 1, 1992 through May 31, 1993, review; the June 1, 1993, through May 31, 1994, review; and the June 1, 1994, through May 31, 1995, review. The final results of the June 1992 through May 31, 1993, and the June 1993 through May 31, 1994, administrative reviews were published on July 5, 1996. *See Polyethylene Terephthalate Film Sheet and Strip from Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part* 61 FR 35177, (July 5, 1996) (*Second and Third Final Results*). The final results of the June 1994 through May 31, 1995, administrative review were published on November 14, 1996. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part* 61 FR 58374, (November 14, 1996) (*Fourth Final Results*). Pursuant to 19 CFR 353.25(b) of the regulations in effect at the time, and as part of its request for revocation, on June 28, 1996, Kolon agreed to immediate reinstatement in the Order should the Department conclude that subsequent to the revocation, Kolon sold the subject merchandise at less than normal value (NV). (19 CFR 353.25(b) has been superseded by 19 CFR 351.222(b)(2)(i)(B).) However, the language in 19 CFR 351.222(b)(2)(i)(B) is largely unchanged from 19 CFR 353.25. *See CCR Initiation* at 530.

Due to allegations of resumed dumping submitted by DuPont Teijin Films (DuPont), Mitsubishi Polyester

Film, Inc. (Mitsubishi), and Toray Plastics America Inc. (Toray) (collectively DuPont, Mitsubishi, and Toray are the Petitioners), we initiated a changed circumstance review on January 5, 2007,¹ to determine whether Kolon has resumed dumping and whether we should reinstate the antidumping duty order for subject merchandise manufactured and exported by Kolon. *See CCR Initiation* at 528–9.

On December 27, 2006, we documented our analysis regarding the reasonableness of the data presented by Petitioners in their allegations. See the December 27, 2006, “Initiation Checklist for the Changed Circumstances Review of Polyethylene Terephthalate Film Sheet and Strip from Korea.” On January 4, 2007, we issued a questionnaire to Kolon. Kolon submitted its response to Sections A, B, C, and D of our questionnaire on February 28, 2007. On April 3, 2007, we issued our first supplemental questionnaire to Kolon. Kolon submitted its response to our April 3, 2007, questionnaire on April 30, 2007. On June 8, 2007, we issued a second supplemental questionnaire to Kolon to which Kolon responded on June 29, 2007. Based on our analysis of Kolon’s home market and U.S. sales data, we preliminarily determine that Kolon sold PET film at issue at less than NV during the July 1, 2005 through June 30, 2006 period of review.

Verification

As provided in section 782(i)(3) of the Act and 19 CFR 351.307(b)(iv), the Department verified the cost of production (COP), constructed value (CV), home market sales, and U.S. sales questionnaire responses of Kolon. We conducted the COP/CV verification from August 6 to August 10, 2007. We conducted the home market and U.S. sales verification from August 11 to August 15. We used standard verification procedures, including on-site inspection of Kolon’s facilities, and examination of relevant sales and financial records. Our verification results are outlined in the COP/CV and home market and U.S. sales verification reports for Kolon. For a further discussion, see Memorandum to the file through Neal Halper, from Ernest Gziryan (“COP/CV verification report”), and Memorandum to the File through Robert James, from Michael Heaney and Maryanne Burke (“Home market and U.S. sales verification report”).

Scope of the Order

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

This changed circumstances review covers Kolon and the period July 1, 2005 through June 30, 2006

Basis for Reinstatement

In requesting revocation, Kolon certified, pursuant to the Department’s regulations, that it agreed to immediate reinstatement of the order, so long as any exporter or producer is subject to the order, if the Secretary concluded that subsequent to the revocation, Kolon sold PET film at less than NV. *See Revocation* at 58374. Under both 19 CFR 353.25(b) (the regulation in effect at the time the Department revoked the order with respect to Kolon) and 19 CFR 351.222(b)(2)(i)(B) (the current regulation governing revocation) as long as an antidumping duty order remains in force, an entity previously granted a revocation may be reinstated under that order if it is established that the entity has resumed the dumping of subject merchandise.

In this case, because other exporters in Korea remain subject to the antidumping duty order on Polyethylene Terephthalate Film, Sheet, and Strip from Korea, the order remains in effect, and Kolon may be reinstated in the order. The Department granted Kolon revocation based in part upon its agreement to immediate reinstatement in the antidumping duty order if the Department were to find that the company resumed dumping of PET film from Korea. *See Revocation* at 58374.

As described in the “U.S. Price” and “Normal Value” sections, below, we have examined Kolon’s response and have preliminarily found that Kolon’s dumping margin for the review period is greater than *de minimis*. Accordingly, we preliminarily intend to reinstate Kolon in the antidumping order.

Fair Value Comparisons

To determine whether sales of PET film from Korea to the United States were made at less than NV, we compared Kolon’s constructed export (CEP) and export price (EP) sales made in the United States to unaffiliated purchasers, to NV as described in the “United States Price” and “Normal Value” sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared individual CEP and EP sales to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act we considered all products produced by Kolon covered by the description in the “Scope of the Review” section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics: 1) specification; 2) thickness, 3) surface treatment, and 4) grade. Where we were unable to compare sales of the identical merchandise, we compared U.S. sales to comparison-market sales of the most similar merchandise based on the above characteristics. Where there were no sales of foreign like product to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value (CV).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the CEP or EP transaction. The NV LOT is defined as the starting-price sales in the home market or, when NV is based on constructed value (CV), as the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. The EP LOT is defined as the starting price in the United States to the unaffiliated U.S. customer. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* 773(a)(7)(A) of the Act.

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. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the

¹ The initiation notice was signed by the Acting Assistant Secretary for Import Administration on December 27, 2006.

difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005); unchanged in *Notice of Final Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the 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 Decisions Memorandum at Comment 6.

We obtained information from Kolon regarding the marketing stages involved in making its reported foreign market and U.S. sales to unaffiliated customers. Kolon provided a description of all selling activities performed, along with a flowchart and tables comparing the levels of trade among each channel of distribution and customer category for both markets. *See Kolon's February 28, 2007 questionnaire response at A-3.*

For the home market, Kolon identified two channels of distribution described as follows: 1) direct shipments (*i.e.*, products produced to order) and 2) warehouse shipments from inventory. Within each of these two channels of distribution, Kolon made sales to unaffiliated customers. *See Kolon's February 28, 2007, questionnaire*

response at A-5. We reviewed the level at which Kolon performed each of these selling functions with respect to each claimed channel of distribution and customer category. For all of the activities listed (which included sales forecasting, strategic and economic planning, sales promotion, order processing, and technical assistance), the level of performance for both direct shipments and warehouse shipments was identical across all types of customers. Based on our analysis of all of Kolon's home market selling functions, we find all home market sales were made at the same LOT, the NV LOT. We also found that Kolon provided a similar level of selling functions on all of its EP sales, and that the level of these EP selling functions was comparable to the level of selling functions that Kolon performed on its home market sales. *Id.* Based on the foregoing, we determine that there is one level of trade on Kolon's EP sales and that the EP LOT is comparable to the HM LOT.

Kolon also indicated it made CEP sales through its U.S. affiliate, Kolon USA. *Id.* We then compared the CEP LOT to the NV LOT. The CEP LOT is based on the selling activities associated with the transaction between Kolon and its affiliated importer, Kolon USA, whereas the NV LOT is based on the selling activities associated with the transactions between Kolon and unaffiliated customers in the home market. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Kolon USA. For example, in comparing Kolon's selling activities, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.*, sales promotion, inventory maintenance, sales and marketing support, customs clearance). For selling activities performed for both home market sales and CEP sales (*e.g.*, processing customer orders, freight and delivery arrangements), we find Kolon actually performed each activity at a higher level of intensity in the home market. We note that CEP sales from Kolon to Kolon USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions.

Id. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See 19 CFR 351.412(d)(1)(ii).* Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

United States Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States." Section 772(b) of the Act defines CEP as "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 the subject merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter." For purposes of this changed circumstances review, Kolon classified all of its U.S. sales shipped directly from Korea to the United States as EP sales. Kolon reported all sales that were invoiced through its U.S. subsidiary Kolon USA as CEP transactions. For these preliminary results, we have accepted these classifications. The merchandise shipped directly to unaffiliated customers in the U.S. market was not sold through an affiliated U.S. importer, and we find no other grounds for treating these transactions as CEP sales. We, therefore, preliminarily determine that these transactions were EP sales. We have classified as CEP transactions the merchandise that was invoiced through Kolon USA because these sales

were “sold in the United States” within the meaning of the Act.

Export Price

We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices to customers in the United States. We made adjustments for billing adjustments and early payment discounts. We also made adjustments for the following movement expenses: foreign inland freight, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. inland freight, and U.S. customs duties.

Constructed Export Price

In accordance with section 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States, we calculated CEP. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments and early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. inland freight, and U.S. customs duties. As further directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity in the United States including direct selling expenses (*i.e.*, commissions, warranties, warehousing, and U.S. credit expenses), inventory carrying costs, and other U.S. indirect selling expenses. Based upon our findings at verification, we used the verified amounts for brokerage and handling (*see* Home Market and U.S. sales verification report at page 2), international freight (*Id.* at page 23), inventory carrying costs (*Id.* at page 2), and U.S. indirect selling expenses (*Id.*). We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Finally, we made an addition to U.S. price for duty drawback in accordance with section 772(c)(1)(B) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Kolon's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in

accordance with section 773(a)(1)(B) of the Act. Because Kolon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See, e.g.*, Kolon's February 28, 2007 supplemental questionnaire response at Appendix A–1.

B. Cost of Production Analysis

Based upon a timely allegation from Petitioners that Kolon made sales below the cost of production during the POR, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. *See* letter from Ronald Meltzer to Department, dated July 19, 2006 at 15. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Kolon. *See CCR Initiation* at 529.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kolon's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), and interest expenses. We relied on the COP information provided by Kolon except in the following three instances:

First, during the POR, Kolon purchased PET chips used in the production of PET film. At verification, Kolon did not provide supporting documents showing how the cost of purchased chips was allocated to products, rendering the allocation of the purchased chips cost unverified. Therefore, in accordance with section 776(a)(2)(D) of the Act, as partial facts available, we increased the reported cost of manufacturing of all products by the percentage representing the total cost of purchased chips in the total reported cost of manufacturing. *See* Cost Verification Report section V.C. and the Cost of Production and Constructed Value Calculation Memorandum for the Preliminary Results. Second, we adjusted the reported G&A expense rate to disallow the offset for the gain on sale of certain assets. Third, we recalculated the interest expense ratio using a cost of sales denominator in which packing costs was removed. *See* Cost verification report at page 21.

To determine whether Kolon's home market sales had been made at prices below the COP, we computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required

under section 773(b) of the Act. On a product-specific basis, we compared the COP to the home market prices net of billing adjustments, discounts and rebates, any applicable movement charges, selling expenses and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in “substantial quantities.” Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Kolon revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Kolon's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the “Cost of Production Analysis”

section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

D. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers in Korea. We used Kolon's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. As noted above in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Price-to-CV Comparisons

If we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period July 1, 2005 through June 30, 2006:

Manufacturer / Exporter	Weighted Average Margin (percent-age)
Kolon	6.00%

The Department will disclose to parties the calculations performed in connection with these preliminary results within ten days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 39 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice.

Reinstatement and Suspension of Liquidation

Since we have preliminarily established that PET film from Korea manufactured and exported by Kolon is being sold at less than NV, Kolon is hereby preliminarily reinstated in the antidumping duty order. We will instruct CBP to suspend liquidation of all entries of subject merchandise manufactured and exported by Kolon entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Furthermore, a cash-deposit requirement of 6.00 percent will be in effect for all shipments of the subject merchandise manufactured and produced by Kolon entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice. This requirement shall remain in effect until publication of the final results of the next administrative review unless the Department finds that Kolon has not resumed dumping in the final results of this changed circumstance review.

The Department intends to complete this review within 120 days of the date on which it publishes the preliminary results of this changed circumstances review. In accordance with 19 CFR 351.221(c)(3)(i), the final results of the changed circumstance review will set forth the factual and legal conclusions upon which our results are based, a description of any action proposed based on those results, and our analysis of any comments received. This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: September 26, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-19423 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-851]

Dynamic Random Access Memory Semiconductors From the Republic of Korea: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Shane Subler at (202) 482-0189 or David Neubacher at (202) 482-5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On September 29, 2006, the Department of Commerce (the Department) published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors (DRAMS) from the Republic of Korea, covering the period January 1, 2005, through December 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). On December 11, 2006, the petitioner, Micron Technology, Inc., alleged that the respondent, Hynix Semiconductor, Inc. (Hynix), received new subsidies. The Department published the preliminary results of this administrative review on September 10, 2007. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 72 FR 51609 (September 10, 2007).

Statutory Time Limits

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 order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. 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.

Extension of Time Limit for Final Results

We find that it is not practicable to complete the final results of this review within the original time limits. First, the Department intends to verify the responses of Hynix and the Government of Korea (GOK) in November 2007. Second, the petitioner has raised several complex issues during this administrative review. For example, based on new factual information, the petitioner asked the Department to reconsider the timing of the benefit of a previously countervailed debt-to-equity swap. The petitioner also alleged in this review that Hynix received countervailable benefits from a duty reduction program on imports of equipment for factory automation. Because of the verification and the complexity of these issues, it is not practicable to complete this review by the original deadline of January 8, 2008. Therefore, the Department is extending the time limit for completion of the final results to not later than March 10, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.¹

Dated: September 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-19433 Filed 10-1-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB73

Taking of Marine Mammals Incidental to Specified Activities; Open Water Seismic Operations in Cook Inlet, Alaska

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

ACTION: Notice of issuance of two incidental harassment authorizations.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act

(MMPA) as amended, notification is hereby given that Incidental Harassment Authorizations (IHAs) to take marine mammals, by harassment, incidental to conducting seismic operations in the northwest portion of Cook Inlet, Alaska, have been issued to Union Oil Company of California (UOCC) and Marathon Oil Company (MOC) for a period between September and November, 2007.

DATES: The authorization for UOCC is effective from September 26 until November 15, 2007; and the authorization for MOC is effective from October 1 until November 30, 2007.

ADDRESSES: A copy of the application, IHA, Environmental Assessment (EA), supplemental Environmental Assessment (SEA), and a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271-3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Requests

On March 30, 2007, NMFS issued an IHA to UOCC under the authority of Section 101(a)(5)(D) of the MMPA, to take by harassment small numbers of Cook Inlet beluga whales (*Delphinapterus leucas*), Steller sea lions (*Eumetopias jubatus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) incidental to conducting open water seismic operations in northwestern Cook Inlet, Alaska, between May 1 and June 15, 2007 (72 FR 17118, April 6, 2007). However, as a result of ice conditions in Cook Inlet during spring 2007, UOCC was unable to begin seismic operations planned for May. As a result, on May 17, 2007, UOCC requested that NMFS change the effective date of its IHA to the time period September 4 through November 15, 2007.

On May 15, 2007, MMFS received an application from MOC requesting an IHA for the harassment of small numbers of Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales incidental to conducting open water seismic operations in portions of Cook Inlet, Alaska for the period from October 1 to November 30, 2007.

Both proposed operations use an ocean-bottom cable (OBC) system to conduct seismic surveys. OBC seismic surveys are used in waters that are too

¹ We note that Saturday, March 8, 2008, is 180 days after September 10, 2007, the publication date for the preliminary results. When a deadline falls on a weekend, the Department's practice is to use the next business day as the appropriate deadline. See Notice of Clarification: Application of ≥Next Business Day≥ Rule for Administrative Determination Deadlines Pursuant to the Act, 70 FR 24533 (May 10, 2005).

shallow for the data to be acquired using a marine-streamer vessel or too deep to have static ice in the winter. This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, shooting, and possibly one or two vessels smaller than those used in streamer operations. The utility boats can be very small, in the range of 10 – 15 m (33 – 49 ft). A detailed description of the open water seismic surveys using OBC system was published in the **Federal Register** on January 5, 2007 (72 FR 536), and is not repeated here.

The proposed operations would be active 24 hours per day, but the airguns would only be active for 1 – 2 hours during each of the 3 – 4 daily slack tide periods. The source for the proposed OBC seismic surveys would be a 900-in³ BOLT airgun array situated on the source vessel, the *Peregrine Falcon*. The array would be made up of 2 sub-arrays, each with 2, 3-airgun clusters separated by 1.5 m (4.9 ft) off the stern of the vessel. One cluster will consist of 3, 225-in³ airguns and the second cluster will have 3, 75-in³ airguns. During seismic operations, the sub-arrays will fire at a rate of every 10 – 25 seconds and focus energy in the downward direction as the vessel travels at 4 – 5 knots (4.6 – 5.8 mph). Source level of the airgun array is 249 dB re 1 microPa at 1 m (0 – peak), and the dominant frequency range is 8 – 40 Hz.

The geographic region for the seismic operation proposed by UOCC remains the same as published in the previous **Federal Register** notice (72 FR 536), which is in the northwestern Cook Inlet, paralleling the shoreline offshore of Granite Point, and extending from shore into the inlet to an average of about 1.6 km (1 mi).

The geographic region for the activity proposed by MOC encompasses a 68.51 km² (26.45 square miles) area in lower Cook Inlet on the eastern shore, paralleling the shoreline for about 15.2 km (9.5 mi) and extending from shore into the inlet an average of about 6.1 km (3.8 mi). The approximate boundaries of the region of the proposed project area are 61°09'N, 151°30'W; 61°12'N, 151°34'W; 61°17'N, 151°25'W; and 60°16'N, 151°21'W. There are no major rivers flowing into the open water seismic project area. Water depths range from 0 to 15 m (48 ft), with most of the area less than 7.3 m (24 ft) deep. The proposed seismic operations would begin as early as October 1 and end by November 30, 2007.

Comments and Responses

A notice of receipt and request for public comment on the applications and

proposed authorizations was published on August 10, 2007 (72 FR 45014). During the 30-day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission), the Humane Society of the United States (HSUS), ConocoPhillips Alaska Inc. (CPAI), and one private citizen.

Comment 1: The Commission recommends that NMFS issue the IHA to MOC subject to various monitoring and mitigation stipulations. The Commission states that the seismic survey area proposed by MOC appears to be well to the south of the area that is used by Cook Inlet beluga whales during the period in question. And because a considerable portion of the survey is on land and the marine area to be surveyed is close to shore in shallow water, the Commission believes that the survey activities are not likely to lead to significant disturbance of beluga whales or other marine mammals.

Response: NMFS agrees with the Commission's comments and recommendation that the IHA be issued to MOC subject to various monitoring and mitigation measures.

Comment 2: The Commission recommends that NMFS defer changing the timing of the authorization for the UOCC survey until NMFS can demonstrate a clear temporal separation in the distribution of beluga whales and the seismic operations to ensure that beluga whales are not being taken in unanticipated ways or numbers and that any effects will, indeed, be negligible. The Commission expresses its concern that the requested delay in the UOCC project appears to increase the possibility that beluga whales will be in the survey area during the period in question.

Response: NMFS has conducted extensive research and analyses before making its determination that the proposed seismic surveys by UOCC will have no more than a negligible impact on marine mammal species and stocks in the area. As stated in the **Federal Register** notice for the proposed issuance of the IHAs (72 FR 45014, August 10, 2007), NMFS is aware of the relative more frequent use by beluga whales in Granite Point during the proposed UOCC seismic surveys. Therefore, as an additional measure of marine mammal monitoring, NMFS requires that UOCC conduct aerial monitoring of Cook Inlet beluga whales in the vicinity of the project area during seismic surveys between September and November to ensure that beluga whales are not being taken in unanticipated ways or numbers and that any effects

will be negligible (see Monitoring Section later in this document).

Comment 3: CPAI urges NMFS to issue the IHAs to UOCC and MOC. CPAI states that seismic and other projects conducted over the 40 year span of oil and gas exploration and development in Cook Inlet demonstrate the industry's ability to operate, with minimal impacts, in a challenging environment. CPAI states that continued Cook Inlet exploration and development is needed to provide jobs and energy for South-Central Alaska's economy.

Response: Comments noted. As stated in this document, IHAs shall be granted to UOCC and MOC if NMFS finds that incidental taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

Comment 4: The HSUS urges NMFS to deny the IHAs per its comments provided in February 2007 on NMFS' proposed IHA issuance to CPAI and UOCC's seismic surveys in Cook Inlet. The HSUS states that impacts from this sort of noise is dangerous for the fragile stocks of marine mammals in Cook Inlet.

Response: NMFS disagrees. NMFS has addressed HSUS's previous comments in its **Federal Register** notice for the issuance of two IHAs to CPAI and UOCC (72 FR 17118, April 6, 2007). The HSUS did not provide any scientific data or references to support its claim as the airgun noises in the proposed seismic surveys are "dangerous" to the marine mammal stocks in Cook Inlet. Detailed analyses of underwater noise, especially those from airguns, and impacts to marine mammals are provided in various documents related to the proposed projects. These include (1) **Federal Register** notice for the issuance of IHAs to CPAI and UOCC (72 FR 17118, April 6, 2007), (2) **Federal Register** notice for the proposed issuance of IHAs to UOCC and MOC (72 FR 45014, August 10, 2007), (3) an EA for the CPAI and UOCC seismic surveys, and (4) the draft SEA for the UOCC and MOC seismic surveys. All these analyses, which are supported by extensive scientific research and data, point out that the proposed seismic surveys in Cook Inlet will have negligible impacts on marine mammal species and stocks in Cook Inlet.

Comment 5: A private citizen expresses her concerns that there is a threat of serious injury and mortality to

marine mammals from the proposed seismic surveys.

Response: As described in detail in a **Federal Register** notice (72 FR 45014) published on August 10, 2007, and in the draft SEA for the proposed action, NMFS has performed a thorough analysis on the levels of potential impacts to Cook Inlet beluga whales and four other species of marine mammals as a result of seismic operations in the upper Cook Inlet. Based on this analysis, which is supported by the best available scientific information, NMFS has come to the conclusion that only a few beluga whales, Pacific harbor seals, harbor porpoises, and killer whales may be taken incidental to seismic surveys, by no more than Level B harassment, and that such taking will have a negligible impact on such species or stocks.

No take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of strict monitoring and mitigation requirements in the IHA. Please refer to the **Federal Register** notice (72 FR 45014, August 10, 2007) and the SEA for a detailed description of the analysis.

Description of the Marine Mammals Potentially Affected by the Activity

Marine mammal species potentially occurring within the proposed action area include Cook Inlet beluga whales, Steller sea lions, Pacific harbor seals, harbor porpoises, and killer whales. Among these species, only the Steller sea lion is listed as endangered under the ESA, and it is also designated as depleted under the MMPA. The Cook Inlet beluga whale is designated as depleted under the MMPA. General information for these species can be found in Angliss and Outlaw (2007), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007.pdf>. A more detailed description of these species and stocks within Cook Inlet is provided in the January 5, 2007, **Federal Register** (72 FR 536) and is not repeated here.

Potential Effects on Marine Mammals and Their Habitat

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). The sound source levels (zero to peak) associated with the OBC seismic survey can be as high as 233 – 240 dB re 1 microPa at 1 m. However, most energy is in the low-frequency spectra below 250 Hz and is directed downward (Richardson *et al.*, 1995), and the short

duration of each pulse limits the total energy. Received levels within several kilometers typically exceed 160 dB re 1 microPa (Richardson *et al.*, 1995), depending on water depth, bottom type, ice cover, etc. Although relatively high levels of airgun pulses and frequencies above 500 Hz were detected at certain depths of water much further away during the Sperm Whale Seismic Study's controlled exposure experiments conducted in the Gulf of Mexico (DeRuiter *et al.*, 2006; Madsen *et al.*, 2006), this was probably due to the existence of convergence zones where long-range refraction occurred in a much deeper ocean with a critical depth and sufficient depth excess (Urick, 1983; Etter, 2003). Within the proposed project areas in Cook Inlet, where average water depth is less than 15 m (50 ft), no convergence zone can exist.

Intense acoustic signals from seismic surveys have been known to cause behavioral alteration such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changes in blow rates (Richardson *et al.*, 1995) in several marine mammal species.

The proposed surveys would use a 900-in³ BOLT airgun array consisting of 3, 225-in³ airguns and 3, 75-in³ airguns. Acoustic measurements of the airgun array were obtained using calibrated, high-resolution Ocean Bottom Hydrophone recorders in April 2007 in Cook Inlet by JASCO Research Ltd (JASCO). The results show that the nominal ranges to the decibel thresholds 190, 180, and 160 dB re 1 microPa rms, computed using the 90 percent fit equation, are 140, 454, and 3,027 m (or 459, 1,490, and 9,931 ft), respectively (Collins *et al.*, 2007).

The seismic surveys would introduce acoustic energy into the water column and no objects would be released into the environment. The survey vessels would travel at a speed of 4 – 5 knots and the two projects would be conducted in a small area of Cook Inlet for a short period.

There is relatively limited knowledge about the potential impacts of seismic energy on marine fish and invertebrates that are marine mammal prey. Available data suggest that there may be physical impacts on eggs and on larval, juvenile, and adult stages of fish at very close ranges (within meters) to a seismic energy source. Considering typical source levels associated with seismic arrays, close proximity to the source would result in exposure to very high energy levels. Although eggs and larval stages are not able to escape such exposures, juvenile and adult fish most

likely would avoid them. In the cases of eggs and larvae, it is likely that the numbers adversely affected by such exposure would be very small in relation to natural mortality. Studies on fish confined in cages that were exposed under intense sound for extended period showed physical or physiological impacts (Scholik and Yan, 2001; 2002; McCauley *et al.*, 2003; Smith *et al.*, 2004). While limited data on seismic surveys regarding physiological effects on fish indicate that impacts are short-term and are most apparent after exposure at very close range (McCauley *et al.*, 2000a; 2000b; Dalen *et al.*, 1996), other studies have demonstrated that seismic guns had little effect on the day-to-day behavior of marine fish and invertebrates (Knudsen *et al.*, 1992; Wardle *et al.*, 2001). It is more likely that fish will swim away upon hearing the approaching seismic impulses (Engås *et al.*, 1996). Based on the foregoing, NMFS finds preliminarily that the proposed seismic surveys would not cause any permanent impact on the physical habitats and marine mammal prey species in the proposed project area.

Number of Marine Mammals Expected to Be Taken

NMFS estimates that approximately 11 beluga whales and 3 harbor porpoises could be taken by behavioral harassment by the proposed UOCC seismic surveys, and approximately 26 whales and 6 porpoises by the proposed MOC seismic surveys. Thus a total of 37 Cook Inlet beluga whales out of a population of 302 whales could be harassed incidentally by the two proposed seismic operations from September to November, 2007, if no mitigation and monitoring measures are implemented. This represents 12.1 percent of the population. This number is based on the animal density, length of track planned, and the assumption that all animals will be harassed at distances where noise at received level is at and above 160 dB re 1 microPa rms. Beluga whale density (0.03 whale/km²) was calculated by dividing the population (302) by 50 percent of the surface area of Cook Inlet (19,863 km², or 7,672 mi²), assuming their distribution is limited to the upper portion of the Inlet (Hobbs *et al.*, 2005). The number of beluga whales that could be taken by both proposed seismic projects is calculated by multiplying the whale density by the total length of the track lines (57 km or 35.4 mi for UOCC and 146 km or 90.7 mi for MOC) and by twice the 160 dB isopleths range (3.0 km). This estimate is conservative as it assumes that all animals exposed to

seismic impulses over 160 dB re 1 microPa would be harassed and disturbed. As the majority of acoustic energy of low frequency airgun impulses falls outside the beluga whale's most sensitive hearing range (Richardson *et al.*, 1995), it is most likely that only a portion of whales within the 160 dB re 1 microPa isopleth would be disturbed. In addition, it is also possible that many of the animals would be habituated to this level of acoustic disturbances. Furthermore, mitigation measures, including the ramp-up requirement during the initiation of the seismic operations (see below) should eliminate most, if not all, startle behavior from animals near the proposed project area. Therefore, NMFS believes that the actual number of Level B harassment takes of Cook Inlet beluga whale would be much lower than the estimated 37 whales.

There are no similar population surveys for harbor seals, harbor porpoises, Steller sea lions, and killer whales conducted within the proposed project area. However, based on an abundance survey of harbor porpoises within the entire Cook Inlet (Dahlheim *et al.*, 2000), it is estimated that the population density of harbor porpoise in the entire Inlet is 0.0072 animal per km². Based on this density data, NMFS estimates that about 9 harbor porpoises out of a population of 30,506 porpoises could be harassed incidentally by the two proposed seismic operations from September to November, 2007. This number of take represents less than 0.03 percent of harbor porpoises that could be taken by Level B harassment.

Average counts were used to estimate take instead of density for harbor seals, since count data were available (Boveng *et al.*, 2005a; 2005b) but density data were not. Although no seals were counted in the vicinity of the proposed project areas, it is likely a small number of seals transit through the project areas in the fall. In order to account for seal occurrence in the proposed project areas, the count (1 – 10) at the location (Anchor Point) nearest to the MOC project area was used as the basis for calculating take. This count was quadrupled to account for seals in the water for both proposed project areas, since it is the conservative estimate of take, it is more likely to be high than low. Therefore, the estimated take of the Gulf of Alaska stock of harbor seals is 40 seals, which represent approximately 0.14 percent of the total population (29,175, Angliss and Outlaw, 2007).

There are no density estimates available for Steller sea lions, harbor porpoises, and killer whales with in Cook Inlet. However, their appearance

in Upper Cook Inlet is rare and none of these species were sighted in the upper Inlet during the 2004 survey (Rugh *et al.*, 2005). Therefore, NMFS concludes that the estimated takes of harbor seals and killer whales within the proposed project areas are significantly lower than those of beluga whales and harbor seals, and that it is unlikely there will be any incidental take of Steller sea lions as a result of the proposed seismic projects.

Effects on Subsistence Needs

Tyonek, which is predominately a Dena'ina Athabaskan community, is approximately 6.4 km (4 mi) east of the eastern boundary of the proposed UOCC project area, and is about 100 km (62 mi) north of the proposed MOC project area. While it is the only village that hunts beluga whales, Alaska natives unaffiliated with a Cook Inlet community who have moved to the region and visited the region also have historically harvested beluga whales in the Inlet (Mahoney and Shelden, 2000). The role of marine mammals in the subsistence economy of Tyonek and other Alaska natives has been diminished by the almost complete elimination of the harvest of Cook Inlet beluga whales because of their greatly reduced stock size. In recent years, Tyonek natives harvested one beluga whale per year and occasionally harbor seals (Huntington, 2000), but their primary source of red meat is moose (Foster, 1982). Salmon and other fish also contribute substantially to their subsistence diet (Foster, 1982). The Tyonek village announced (April 16, 2007) that they would not harvest any belugas in 2007 due to the status of the population.

In addition, the project areas are not important subsistence areas for other subsistence species of marine mammals (harbor seals). Tyonek native subsistence activities have become focused closer to the village as more non-natives utilize and occupy traditional subsistence areas, combined with harvest regulation restrictions of beluga whales, changes in the abundance and distribution of subsistence resources, and other factors.

Therefore, the proposed projects will have no significant effects on subsistence use of marine mammals in the proposed project areas.

Mitigation

The following mitigation measures are required under the IHAs that were issued to UOCC and MOC for conducting seismic operations in Cook Inlet. NMFS believes that the implementation of these mitigation measures will: (1) result in the least

practicable impact on marine mammal species or stocks and their habitat; and (2) ensure that no unmitigable adverse impacts on the availability of marine mammals species or stocks for subsistence harvest would result.

Time and Frequency

Seismic operations will be limited from September to late November in small portions of Cook Inlet. During the seismic operations, airguns would only be active for 1 – 2 hours during each of the 3 – 4 slack tide periods, with the vessel moving at a speed of 4 – 5 knots (4.6 – 5.8 mph).

Establishment of Safety Zones

The IHA holders will establish a 454-m (1,490-ft) radius safety zone for cetaceans and a 140-m (459-ft) radius safety zone for pinnipeds for the seismic operations. These safety zone radii are based on empirical measurements conducted by JASCO on the same airgun array operated in Cook Inlet, where the received sound pressure levels (SPL) attenuated to 180 dB and 190 dB re 1 microPa rms, respectively.

Safety zones will be surveyed and monitored prior to, during, and after the airgun seismic operations. A detailed description of marine mammal monitoring is described in the Monitoring and Reporting section below.

Speed and Course Alteration

If a marine mammal is detected outside the safety radius and based on its position and the relative course of travel is likely to enter the safety zone, the vessel's speed and/or direct course may, when practicable and safe, be changed to avoid the impacts to the animal. The marine mammal's activities and movements relative to the seismic and support vessels must be closely monitored to ensure that the animal does not (1) approach the safety radius, or (2) enter the safety zone. If either of these scenarios occurs, further mitigation measures must be taken (i.e., either further course alterations or power down or shut down of the airgun(s)).

Power-down Procedures

A power down involves decreasing the number of airguns in use so that the radius of the 180- or 190-dB zone is decreased to the extent that marine mammals are not in the safety zone. During a power-down, one airgun is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic guns in the area.

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns must be powered down before the animal is within the safety zone.

Shut-down Procedures

A shut-down occurs when all airgun activity is suspended. The operating airgun(s) must be shut down if a marine mammal approaches the applicable safety zone and a power down still would not likely to keep the animal outside the newly adjusted smaller safety zone. The operating airgun(s) must also be shut down completely if a marine mammal is found within the safety zone during the seismic operations. The shut-down procedure should be accomplished within several seconds (of a "one shot" period) of the determination that a marine mammal is within or about to enter the safety zone.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal is considered to have cleared the safety zone if it is visually observed to have left the safety zone, or if it has not been seen within the safety zone for 30 minutes.

Ramp-up Procedures

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at SPL levels of 180 and 190 dB re 1 microPa rms for cetaceans and pinnipeds, respectively, monitoring and mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, UOCC and MOC will implement "ramp-up" when starting up airgun arrays. Ramp-up will begin with the smallest airgun in the array that is being used for all subsets of the 6-gun array. Airguns will be added in a sequence such that the source level in the array would increase at a rate no greater than 6 dB per 5 minutes. During the ramp-up, the safety zone for the full 6-airgun system would be maintained.

Night-time Operations

During night-time operations when the safety zone cannot be visually inspected, a single airgun will operate by firing every one minute whenever regular acquisition airgun operations are

not occurring to keep marine mammals at a safe distance. If, during these non-recording times, this airgun is inactive for more than 30 minutes, operations will cease and all airguns will be shut down until the safety zone can be visually inspected and monitored for the absence of marine mammals.

Monitoring

Vessel-based Monitoring

Vessel based monitoring will be conducted by at least two qualified NMFS-approved MMOs. Reticle binoculars (e.g., 7 x 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) would be standard equipment for the monitors.

Vessel-based MMOs will begin marine mammal monitoring at least 30 minutes prior to the planned start of airgun operations and during all periods of airgun operations. MMOs will survey the safety zone to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic operations will be suspended until the marine mammal leaves the area. If a marine mammal is seen above the water and then dives below, the operator would wait 30 minutes, and if no marine mammals are seen by the MMOs in that time it will be assumed that the animal has moved beyond the safety zone. Observations will also be conducted during all ramp-up procedures to ensure the effectiveness of ramp-up as a mitigation measure. When feasible, observations will also be made during transits, moving cable, and other operations when airguns are inactive.

Data for each distinct marine mammal species observed in the proposed project area during the period of the seismic operations will be collected. Numbers of marine mammals observed, species identification if possible, frequency of observation, the time corresponding to the daily tidal cycle, their location relative to the airgun sound field's safety zone, and any behavioral changes due to the airgun operations will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry would be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide: (1) basis for real-time mitigation (airgun shut-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Aerial Monitoring

In addition to vessel monitoring, seismic surveys that will be conducted off Granite Point between September and November by UOCC are also required to conduct aerial monitoring, due to the relative more frequent use by beluga whales in the area (Hobbs *et al.*, 2005). The aerial surveys will: (1) collect and report data on the distribution, numbers, movement and behavior of marine mammals near the seismic operations on the westside of Cook Inlet between Tyonek and Trading Bay, with special emphasis on beluga whales; (2) advise operating vessels as to the presence of marine mammals in the general area of operation; and (3) support regulatory reporting related to the estimation of impacts of seismic operations on marine mammals.

The aerial monitoring area will be centered on the UOCC project area plus a buffer for detecting belugas before or after they pass through the project area. The boundary for the aerial survey extends approximately 4 mi (6.4 km) east and west of the project area, between Tyonek and Trading Bay (directly east of the Trading Bay State Game Refuge boundary), and 0.25 mi (0.4 mi) from the water's edge, which will vary depending on tide levels. The size of the survey area provides a design for observing whales before and during exposure to seismic sounds.

Aerial monitoring will be conducted from a single engine helicopter, which will fly a single transect line paralleling the shoreline along the coast in the project area. The aerial survey will begin from the northeast end and finish at the southwest end of the transect. This pattern will be flown unless observation conditions (glare, etc) require flying from southwest to northeast. The helicopter operations will be based out of Beluga or Shirleyville. The helicopter will fly at 1,500 ft (457 m), due to glide path

needs, and at a ground speed of 60 knot (111 km/h). This altitude should prevent disturbance of marine mammals and birds by the helicopter noise.

Helicopter monitoring will be conducted at a frequency that reflects the monthly occurrence of belugas in the project area (LGL, 2006). The helicopter will be flown once per week from the time the seismic operations begin until the project is completed. However, if beluga whales are observed by helicopter or boat in or near the project area, survey flights will be conducted daily until whales are not observed for two consecutive days. Once belugas are no longer observed for two consecutive days, surveys will again be flown once per week until the project ends.

Aerial monitoring will fly 1 – 2 transects shortly before and one half of the survey transect will be flown once during seismic operations, whenever possible, in a given day. Half transects are limited in duration to prevent noise interference with seismic data acquisition. Half transect flight directions will be determined by the relative position of activities to the helicopter landing location.

To the extent consistent with applicable aviation regulation, aerial surveys will be conducted under the following conditions: (1) when the pilot considers it safe to do so; (2) during daylight hours; (3) during good viewing conditions (ceiling height above 1,500 ft (457 M) and Beaufort Sea States below 4; and (4) during periods allowed by regulatory agencies. Flights will also be oriented to minimize sun glare on the observer.

One NMFS-approved MMO will be on the helicopter observing and recording marine mammals, covering the 180° view in front of the helicopter. Space will be made available on the helicopter for NMFS staff to participate in surveys when possible.

Data from aerial monitoring will be recorded on the species, number, group size, location (latitude/longitude), time, date, direction and angle from helicopter as determined by using a clinometer. Data will also be collected on tide, real time positions (latitude/longitude) of seismic survey vessel, shooting, and vessel activities. Observation conditions will be recorded at the start and finish of each survey or whenever conditions change. Data will be recorded on ceiling height, Beaufort Force, glare, and weather (snow, fog, etc.). All information collected during the marine mammal survey and/or reported to the vessel will be recorded on a field form. The information will be included with real time data on seismic

activity (boat location, shooting, activities).

Reporting

Reports from aerial and land-based monitoring will be faxed or e-mailed to NMFS Anchorage Field Office on a daily basis.

Reports from UOCC and MOC will be submitted to NMFS within 90 days after the end of the respective projects. The reports will describe the operations that were conducted, the marine mammals that were detected near the operations, and provide full documentation of methods, results, and interpretation pertaining to all monitoring. The reports will also include estimates of the amount and nature of potential “take” of marine mammals by harassment or in other ways.

National Environmental Policy Act (NEPA)

In March 2007, NMFS prepared a final EA on the issuance of IHAs to ConocoPhillips Alaska, Inc and UOCC to take marine mammals by harassment incidental to conducting seismic operations in upper Cook Inlet, Alaska. A Finding of No Significant Impact statement was issued on March 30, 2007. The proposed seismic operations in this document are similar to those covered in the March 2007 Final EA, with the only exception of project time frames, location, and the levels of estimated marine mammal takes. Therefore, NMFS has prepared a draft SEA which incorporates by reference the March 2007 Final EA, providing an analysis of project time frames, location, and potential environmental impacts, for public comments. During the 30-day public comment period NMFS did not receive any comments on the draft SEA. Subsequently, NMFS finalized the draft SEA and on September 24, 2007, issued a Finding of No Significant Impact on the proposed project.

Endangered Species Act (ESA)

Consultation under section 7 of the ESA was conducted for the proposed issuance of UOCC and MOC’s IHAs. As a result of that consultation, NMFS Anchorage Field Office concurred that the proposed seismic activities are not likely to adversely affect listed species or critical habitat.

Determinations

NMFS has determined that small numbers of beluga whales and harbor porpoises may be taken incidental to seismic surveys, by no more than Level B harassment. In addition, NMFS has determined that small numbers of Pacific harbor seals and killer whales, if

present within the vicinity of the proposed activities, could be taken incidentally, by no more than Level B harassment and that such taking would result in no more than a negligible impact on such species or stocks. Although there are no estimated take numbers for Steller sea lions, harbor seals, or killer whales available due to their rare occurrence within the project areas, given the infrequent occurrence of these species (if at all), NMFS believes that any take of harbor seals and killer whales would be significantly lower than those of beluga whales and harbor porpoises. NMFS also believes it is unlikely that there would be any take of Steller sea lions due to their rare occurrence within the proposed project areas.

While behavioral modifications, including temporarily vacating the area during the project period, may be made by these species to avoid the resultant visual and acoustic disturbance, NMFS nonetheless finds that this action would result in no more than a negligible impact on these marine mammal species and/or stocks. NMFS also finds that the proposed action will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses.

In addition, no take by Level A harassment (injury) or death is anticipated or authorized, and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Authorization

NMFS has issued IHAs to UOCC and MOC for the potential harassment of small numbers of Cook Inlet beluga whales, harbor porpoises, harbor seals, and killer whales incidental to conducting seismic operations in the northwestern Cook Inlet in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2007.

Helen Golde

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. E7-19438 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN: 0648-XC93

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP).

DATES: The meeting will be held on Tuesday, October 16, 2007, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Grand Hotel Marriott, 1 Grand Blvd., Point Clear, AL 36564; telephone: (251) 928-9201.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The Council will convene the LEAP to review a generic amendment that would potentially allow offshore aquaculture in the Gulf of Mexico. The LEAP will also review Amendment 30A to the Reef Fish Fishery Management Plan (FMP) that would establish restrictions on the harvest of gray triggerfish and a rebuilding plan for this overfished stock, as well as additional restrictions on greater amberjack to maintain its rebuilding target. Furthermore, the LEAP will review an Options Paper that will likely result in the development of Amendment 30B to the Reef Fish FMP to further restrict the harvest of gag and possibly relax some of the current restrictions on the harvest of red grouper. Finally, the LEAP will consider an options paper that could potentially result in the implementation of a limited access privilege program (LAPP) for groupers and possibly other reef fish.

The LEAP consists of principal law enforcement officers in each of the Gulf States, as well as the NMFS, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and NOAA General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348-1630.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the LEAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: September 26, 2007.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-19372 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN: 0648-XC96

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Joint Dogfish Committee, Research Set-Aside Committee (RSA), Law Enforcement Committee, and Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, October 16, 2007 through Thursday, October 18, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the New Bern Convention Center, 203 South Front St, New Bern, NC 28563; telephone: (252) 637-1551.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT:

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, October 16, the Joint Dogfish Committee will meet from 10 a.m. until noon. The RSA Committee will meet from 1 p.m. until 4 p.m. The Law Enforcement Committee will meet from 4 p.m. until 4:30 p.m. The Council will convene at 8:30 a.m. on Wednesday, October 17 and remain in session until 4:15 p.m. at which time the Executive Committee will meet until 5:30 p.m. On Thursday October 18, the Council will convene at 9 a.m. and remain in session until approximately 1 p.m.

Agenda items by day for the Council's committees and the Council itself are:

TUESDAY, OCTOBER 16 - the Joint Dogfish Committee will review and develop the Dogfish Monitoring Committee's recommendations regarding the 2008/09 fishing year quota and related management measures for Council consideration and action. The Research Set-Aside Committee (RSA) will review the New England Council's policy for incorporation of research results into fishery management programs. The Law Enforcement Committee will review Fisheries Achievement Award (FAA) nominations, recommend recipient(s) for that award recognition, and review the Council's Award Recognition Program Survey results.

WEDNESDAY, OCTOBER 17 - the Council will swear in new and reappointed Council members and elect Council officers. The Council will receive a report by Dr. Jim Weinberg on the recent Monkfish Stock Assessment. The Council will consider adjustments to the current Monkfish Management Program and discuss the need for a new framework for the 2008 fishing year and if necessary initiate such a framework. The Council will review and discuss the Dogfish Committee's recommendations for the dogfish quota and related management measures for the 2008/09 fishing year and adopt the quota and related management measures for the 2008/09 fishing year and beyond. The Council will then receive a presentation by Dr. Mike Fogarty on the Northeast Fisheries Science Center's current ecosystem activities. The Council will conduct its business session, receive organizational reports, receive the New England Council liaison report, the Executive Director's report, status of the Mid-Atlantic Fishery Management Council's Fishery Management Plans (FMP), and Committee reports. The

Council will receive a presentation by Preston Pate on the NMFS' Marine Recreational Information Program (MRIP). The Executive Committee will then review the highlights of the Magnuson-Stevens Reauthorization Act Workshop, review the highlights of the Northeast Regional Coordinating Council (NRCC) meeting, and review the Council's proposed 2008 Annual Work Plan (AWP).

THURSDAY, OCTOBER 18 - the Council will convene at 9 a.m. to review and approve the Draft Supplemental Environmental Impact Statement (DSEIS) and public hearing document (PHD) for Amendment 10 to the Squid, Mackerel, and Butterfish FMP which is intended to rebuild the butterfish fishery. The Council will then consider any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan, (302) 674-2331 ext. 18, at least 5 days prior to the meeting date.

Dated: September 26, 2007.

Tracey L. Thompson,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-19371 Filed 10-1-07; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XC94

New England 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 New England Fishery Management Council's (Council)

Multispecies (Groundfish) Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, October 16, 2007, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535-4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Multispecies (Groundfish) Oversight Committee will meet to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Committee will review suggestions for changes to the effort control systems for common pool vessels. They will identify which suggestions will impact fishing mortality and may develop recommendations on those measures that should be pursued in Amendment 16. This discussion may include, but is not limited to, changes to the days-at-sea system, access to closed areas, trip limits, annual catch limits, etc. The Committee may continue its discussion of sector management issues. The Committee may also discuss other Amendment 16 issues. Committee recommendations will be forwarded to the Council for action at a future date.

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 sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 26, 2007.

Tracey L. Thompson,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E7-19369 Filed 10-1-07; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XC95

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA.

DATES: The meeting will be held October 16-18, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 2076, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The SSLMC will initiate proposal analysis which will include the following steps: (a) review 2001/02 Reasonable and Prudent Alternatives process and criteria; (b) review applicable federal laws and orders (Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, National Environmental Policy Act); (c) review jeopardy and adverse modification standards/criteria; (d) review status quo critical habitat harvest data; (e) adopt SSLMC goals and objectives; (f) initiate proposal analysis using Outside The Model Considerations; (g) review preliminary data sets; (h) identify information needs and develop data requests.

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 sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271-2809, at least 5 working days prior to the meeting date.

Dated: September 26, 2007.

Tracey L. Thompson,

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

[FR Doc. E7-19370 Filed 10-1-07; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:45 p.m., Friday, October 26, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418-5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07-4883 Filed 9-28-07; 11:21 am]

BILLING CODE 6351-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection request (ICR) entitled Spirit of Service Awards Nomination Guidelines and Application—Senior Corps, AmeriCorps and Learn and Serve America to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. David Premo at (202) 606-6717. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 606-3472 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 1, 2007.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395-4718, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 30, 2007. This comment period ended July 30, 2007. No public comments were received from this notice.

Description: The Spirit of Service Awards enable the Corporation to recognize exceptional organizations and program participants from each of the Corporation's three programs, Senior Corps, AmeriCorps, and Learn and Serve America. The Corporation plans

to continue to utilize specific nomination guidelines for each of the programs and follow a formal nomination process, which involves voluntary information collections from non-government individuals.

Since 2004 the Corporation has honored distinguished individuals and organizations with the Spirit of Service Awards. Prior to 2003, AmeriCorps recognized its outstanding members annually through the All-AmeriCorps Awards, which were initiated in 1999 and presented by President Clinton as part of the 5th anniversary celebration of the program. Senior Corps had recognized its outstanding projects and volunteers at its own national conference, and Learn and Serve America through its Leader School selection and the President's Student Service Awards.

Part I

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—Senior Corps.

OMB Number: 3045-0091.

Agency Number: None.

Affected Public: Nonprofit organizations

Total Respondents: 200.

Frequency: Annually.

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—AmeriCorps.

OMB Number: 3045-0092.

Agency Number: None.

Affected Public: Nonprofit organizations.

Total Respondents: 200.

Frequency: Annually.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part III

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Spirit of Service Awards Nomination Guidelines and Application—Learn and Serve America.

OMB Number: 3045–0093.

Agency Number: None.

Affected Public: Nonprofit organizations.

Total Respondents: 200.

Frequency: Annually.

Average Time Per Response: 3 hours.

Estimated Total Burden Hours: 600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 26, 2007.

Jonathan Williams,

Director, Office of Corporate Relations.

[FR Doc. E7–19424 Filed 10–1–07; 8:45 am]

BILLING CODE 6050--\$S-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection request (ICR) entitled AmeriCorps Alumni Profile Card to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). A copy of the IRC, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. David Premo at (202) 606–6717. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 1, 2007.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–4718, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on May 30, 2007. This comment period ended July 30, 2007. No public comments were received from this notice.

Description: The Corporation sends the AmeriCorps Alumni Profile Card to former AmeriCorps and AmeriCorps*VISTA members' home addresses requesting that they complete the card and return it to the AmeriCorps Recruitment Office. The card is only used by Corporation personnel and other organizations (only with the explicit written permission of the respondent). The purpose of the card is to enhance communications between the Corporation and former AmeriCorps members, to provide them with information on Corporation activities, and to seek their assistance in volunteer recruitment activities.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Alumni Profile Card.

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: Individuals.

Total Respondents: 20,000.

Frequency: One time.

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 1,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 26, 2007.

Jonathan Williams,

Director, Office of Corporate Relations.

[FR Doc. E7–19425 Filed 10–1–07; 8:45 am]

BILLING CODE 6050--\$S-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on October 16–18, 2007 is to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of \$1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: October 16, 2007 from 8:30 a.m. to 5 p.m., October 17, 2007 from 9 a.m. to 5 p.m., and October 18 from 9 a.m. to 11:30 a.m.

ADDRESSES: SERDP Program Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Sharee Malcolm, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: September 26, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison

Officer, Department of Defense.

[FR Doc. 07–4850 Filed 10–1–07; 8:45 am]

BILLING CODE 5001–06-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0009]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend two systems of records.

SUMMARY: The Office of the Secretary of Defense is amending two systems of records notices in its existing inventory

of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 1, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Finnegan at (703) 696-3081.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

September 26, 2007.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS) (May 25, 2007, 72 FR 29308).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "DMDC 07".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters

Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

* * * * *

DMDC 07

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a

commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization, but which results in referral to trial by court-martial, imposition of non-judicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide. Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (**Note:** Includes both current and former members who recently have been convicted by a courts-martial, given non-judicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (**Note:** Includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (e.g., Pentagon Force Protective Agency, military and civilian police, military criminal investigation

services or commands); DOD organizations and military commands; Legal and judicial authority (e.g., Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (e.g., the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (e.g., Social Security Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10607, Victims Rights and Restitution Act of 1990; 18 U.S.C. 922, The Lautenberg Amendment to the Gun Control Act; 42 U.S.C. 14071, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107-188; DOD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DOD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DOJ) under the Uniform Federal Crime Reporting Act;

to provide personal information required by the DOJ under the Brady Handgun Violence Prevention Act and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; statistical information required by DOD under the Victim's Rights and Restitution Act; information required for the DOD database on domestic violence incidents; and to enhance DOD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies; (2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm; and (3) To compile information on those individuals for whom access to a biological agent or toxin would violate the law so that such information can be included in a database which may be used to determine whether individuals are disqualified from accessing such agents or toxins.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number (SSN), incident number, or any other data element contained in the system.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

The master file is retained permanently. Input and source records are destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Output products (electronic or paper) are destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DOD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.35 DMDC**SYSTEM NAME:**

Survey and Census Data Base (June 5, 2006, 71 FR 32331).

CHANGES:

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SYSTEM IDENTIFIER:

Delete entry and replace with "DMDC 08".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may

be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

* * * * *

DMDC 08**SYSTEM NAME:**

Survey and Census Data Base.

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who completed census or survey forms, including military members, civilians, persons eligible for DoD benefits, men and women of military age, and applicants to the military services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey responses and census information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7101 Note, Employee Surveys (Pub. L. 108-136, Sec. 1128); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 481, Racial and Ethnic Issues; Gender Issues: Surveys; 10 U.S.C. 1782, Surveys of Military Families; 10 U.S.C. 2358, Research and Development Projects; DoD Directive 5124.2, Under Secretary of Defense for Personnel and Readiness (USD (P&R)); and E.O. 9397 (SSN).

PURPOSE(S):

The purposes of the system are to count DoD personnel and beneficiaries for evacuation planning, apportionment when directed by oversight authority and for other policy planning purposes, and to obtain characteristic information on DoD personnel and households to support manpower and benefits research; to sample attitudes and/or discern perceptions of social problems observed by DoD personnel and to support other manpower research activities; to sample attitudes toward enlistment in and determine reasons for enlistment decisions. This information is used to support manpower research sponsored by the Department of Defense and the military services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be used to support manpower research sponsored by other Federal agencies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Electronic storage media.

RETRIEVABILITY:

Records can be retrieved by Social Security Number; by institutional affiliation such as service membership; and by individual characteristics such as educational level.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Master file, system documentation, codebooks, record layouts, and other system documentation are permanent. Survey questionnaires and census forms (inputs/source records) are destroyed after computer records have been created and validated. Summary reports (electronic or paper) are deleted and/or destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

The survey and census information is provided by the individual; additional data obtained from Federal records are linked to individual cases in some data sets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7-19427 Filed 10-1-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD-2007-OS-0101]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend two systems of records.

SUMMARY: The Office of the Secretary of Defense is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 1, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Finnegan at (703) 696-3081.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of

records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 26, 2007.

L.M. Bynum,
*Alternative OSD Federal Register Liaison
Officer, Department of Defense.*

S322.01 DMDC

SYSTEM NAME: DEFENSE OUTREACH REFERRAL SYSTEM (DORS) (JUNE 5, 2006, 712 FR 32327).

CHANGES:

SYSTEM IDENTIFIER: DELETE ENTRY AND REPLACE WITH "DMDC 03".

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete entry and replace with "The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155."

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DMDC 03

SYSTEM NAME:

Defense Outreach Referral System (DORS).

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense military and civilian personnel and their spouses; U.S. Coast Guard personnel and their spouses; and participating Federal departments' and/or agencies' civilian employees and their spouses who have applied to take part in this job placement program.

Individuals covered under Public Laws 102-484 and 103-337, who have applied for public employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, Social Security Number, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1143 and 1144; 10 U.S.C. 2358; 31 U.S.C. 1535; Public Law 101-510, 102-484 and 103-337; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to facilitate the transition of current and former Defense military and their spouses; U.S. Coast Guard personnel

and their spouses; and participating Federal department's and/or agencies' civilian employees and their spouses to private industry and public employment in the event of a downsizing of the Department of Defense and the Federal Government.

For former military members covered under Public Law 102-484 and Public Law 103-337, the information will be used to track the participant's public employment and to verify the participant's public employment history for DoD and DoT retirement and pay eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by Social Security Number (SSN) or occupational or geographic preference of the individual.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Delete when 5 years old or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters

Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, the U.S. Coast Guard, participating Federal departments and/or agencies, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.05 DMDC

SYSTEM NAME:

Noncombatant Evacuation & Repatriation Data Base (NEO) (June 5, 2006, 71 FR 32328).

CHANGES:

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SYSTEM IDENTIFIER:

Delete entry and replace with "DMDC 04".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace "The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine

whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

* * * * *

DMDC 04

SYSTEM NAME:

Noncombatant Evacuation and Repatriation Data Base (NEO).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771. Information may be accessed by remote terminals at the repatriation centers. The location of the repatriation centers can be obtained from the System manager listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All noncombatant evacuees including service members, their dependents, DoD and non-DoD employees and dependents, U.S. residents abroad, foreign nationals and corporate employees and dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Number, name, date of birth, passport number, country of citizenship, marital status, gender, employer, destination address and type of assistance needed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12656, Assignment of Emergency Preparedness Responsibilities, November 18, 1988; DoD Directive 3025.14, Protection and Evacuation of U.S. Citizens and Designated Aliens in Danger Areas Abroad; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained for the purposes of tracking and accounting for individuals evacuated from emergency situations in foreign countries, securing relocation and assistance services, and assessing and recovering relocation costs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To individuals who have been evacuated but who have been separated from their family and/or spouse. Information will be released to the individual indicating where the family member was evacuated from and final destination.

To Department of State to plan and monitor evacuation effectiveness and need for services and to verify the number of people by category who have been evacuated.

To the American Red Cross so that upon receipt of information from a repatriation center that a DoD family has arrived safely in the U.S., the Red Cross may notify the service member (sponsor) still in the foreign country that his/her family has safely arrived in the United States.

To the Immigration and Naturalization Service to track and make contact with all foreign nationals who have been evacuated to the U.S.

To the Department of Health and Human Services for purposes of giving financial assistance and recoupment of same. To identify individuals who might arrive with an illness which would require quarantine.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper files in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number (SSN), or location of evacuation point or repatriation center.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. At Defense Manpower Data Center (DMDC), entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Master file, system documentation, codebooks, record layouts, and other system documentation are permanent. Inputs/Source Records are deleted and/or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Summary reports (electronic or paper) are deleted and/or destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are

published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, and from individuals via application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7-19428 Filed 10-1-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[DoD-2007-OS-0110]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend two systems of records.

SUMMARY: The Office of the Secretary of Defense is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 1, 2007 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Finnegan at (703) 696-3081.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 26, 2007.

L.M. Bynum,

*Alternative OSD Federal Register Liaison
Officer, Department of Defense.*

S322.09 DMDC

SYSTEM NAME:

Joint Duty Assignment Management Information System (JDAMIS) (January 8, 2007, 72 FR 737).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "DMDC 05".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters

Services, 1155 Defense Pentagon, Washington, DC 20301-1155."

* * * * *

DMDC 05

SYSTEM NAME:

Joint Duty Assignment Management Information System (JDAMIS).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty officers who are serving or have served in billets designated as joint duty assignment positions; are attending or have completed joint professional military education schools; are joint specialty officers or nominees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information on billets includes service, unit identification code, tour length, rank, job title, skill and critical billet. Information on individuals includes social security number, joint duty qualification, departure reason, joint professional military education status, service, occupation, gender, date of rank and duty station.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 667, Annual Report to Congress; and E.O. 9397 (SSN).

PURPOSE(S):

To allow the Department of Defense to monitor Joint Duty Assignment positions and personnel and to report to the Congress as required by Title IV, Chapter 38, Section 667 (Annual Report to Congress) of the DoD Reorganization Act of 1986; Public Law 99-433.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by individual identifier such as Social Security Number (SSN) or by demographic characteristic.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Delete when 5 years old or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

The military services and Office of the Joint Chiefs of Staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.11 DMDC**SYSTEM NAME:**

Federal Creditor Agency Debt Collection Data Base (May 4, 2007, 72 FR 25269).

CHANGES:**SYSTEM IDENTIFIER:**

Delete entry and replace with "DMDC 06".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "Individual's name, Social Security Number (SSN), Federal agency or military service, category of employees, Federal salary or benefit payments, record of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose of contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155."

* * * * *

DMDC 06**SYSTEM NAME:**

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees and postal workers covered by the civil service retirement system. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134); 5 U.S.C. 5514, Installment Deduction of Indebtedness; 31 U.S.C. 3711, Collection and

Compromise; 31 U.S.C. 3716, Administrative Offset; 10 U.S.C. 136; 4 CFR 101.1-105.5, Federal Claims Collection Standards; 5 CFR 550.1101-1108, Collection by Offset from Indebted Government Employees; Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982, March 30, 1983 (48 FR 15556, April, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987); and Office of Management and Budget Guidelines (54 FR 52818, June 19, 1989) interpreting the provisions of the Privacy Act (5 U.S.C. 552a) pertaining to computer matching; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a computer data base permitting computer matching in compliance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended; to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982; to identify and locate individual debtors; to increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government; to provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an Interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget; and to identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual's name, Social Security Number (SSN), Federal agency or military service, category of employees, Federal salary or benefit payments, record of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose of contacting the

debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by the individual's name and Social Security Number (SSN) from a computerized index.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

Written requests should contain the individual's full name, Social Security Number (SSN), date of birth, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel, and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7-19430 Filed 10-1-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 1, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oira_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting

comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of Evidence-based Practices in Online Learning.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 380.

Burden Hours: 360.

Abstract: The purpose of this study is to document characteristics associated with prevalent types of online learning and evidence-based practices that strengthen implementation of online learning. The data collection activities to be conducted by this study will provide three types of products for the education community: (1) Reader-friendly research synthesis and evaluation reports, (2) recommendations for future research, and (3) tools and instruments for use by schools, districts and states in evaluating online courses.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3410. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E7-19435 Filed 10-1-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 25, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07-83-000.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator of Smoky Hills Wind Farm, LLC.

Filed Date: 09/19/2007.

Accession Number: 20070919-5098.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Docket Numbers: EG07-84-000.

Applicants: Cloud County Wind Farm, LLC.

Description: Cloud County Wind Farm LLC Notice of Self-Certification of Exempt Wholesale Generator (EWG) Status.

Filed Date: 09/21/2007.

Accession Number: 20070921-5075.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: EG07-85-000.

Applicants: Pioneer Prairie Wind Farm I, LLC.

Description: Pioneer Prairie Wind Farm I, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 09/21/2007.

Accession Number: 20070921-5087.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: EG07-86-000.

Applicants: Sagebrush Power Partners, LLC.

Description: Sagebrush Power Partners, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 09/21/2007.

Accession Number: 20070921-5094.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00-1737-009; ER96-2869-011; ER97-30-004; ER99-1695-008; ER00-3621-007; ER01-468-006; ER05-34-003; ER05-35-003; ER05-36-003; ER05-37-003; ER04-318-002; ER04-249-003; ER02-23-009.

Applicants: Virginia Electric and Power Company; State Line Energy, L.L.C.; Kincaid Generation, L.L.C.; Elwood Energy, LLC; Dominion Nuclear Connecticut, Inc.; Dominion Energy Marketing, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem Harbor, LLC; Dominion Energy Brayton Point, LLC; Dominion Energy Manchester Street, Inc.; Dominion Energy Kewaunee, Inc.; Dominion Retail, Inc.; Fairless Energy, LLC.

Description: Notice of Non-Material Change in Status under Order No. 652 of Virginia Electric and Power Company and Dominion Entities.

Filed Date: 09/21/2007.

Accession Number: 20070921-5065.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07-539-002; ER07-540-002.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits a second amendment to its 2/14/07 filings.

Filed Date: 09/19/2007.

Accession Number: 20070920-0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Docket Numbers: ER07-1306-001.

Applicants: NedPower Mount Storm, LLC.

Description: NedPower Mount Storm, LLC submits an amendment to its application for order accepting Original Sheet 1 et al to FERC Electric Tariff, Original Volume 1.

Filed Date: 09/19/2007.

Accession Number: 20070921-0016.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Docket Numbers: ER07-1330-001.

Applicants: Twin Cities Hydro LLC.

Description: Twin Cities Hydro, LLC submits revisions to its proposed market-based rate tariff, Original Sheet 1 and 2 to FERC Electric Tariff Original Volume 1.

Filed Date: 09/19/2007.

Accession Number: 20070921-0015.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 2, 2007.

Docket Numbers: ER07-1389-000.

Applicants: Pypha Energy LLC.

Description: Pypha Energy, LLC submits Original Sheet 1 et al to FERC Electric Tariff, Original Volume 1.

Filed Date: 09/21/2007.

Accession Number: 20070921-0014.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07-1390-000.

Applicants: E.ON U.S., LLC.

Description: Louisville Gas and Electric Co and Kentucky Utilities Company submits a revised unexecuted Service Agreement for Network Integration Transmission Service with East Kentucky Power Coop.

Filed Date: 09/20/2007.

Accession Number: 20070921-0001.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07-54-002.

Applicants: Electric Transmission Texas, LLC.

Description: Electric Transmission Texas, LLC submits a complete copy of the financial information under ES07-54.

Filed Date: 09/19/2007.

Accession Number: 20070921-0028.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07-63-000.

Applicants: ITC Midwest LLC.

Description: Form 523—Request for Permission To Issue Securities of ITC Midwest LLC.

Filed Date: 09/18/2007.

Accession Number: 20070918-5058.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07-54-000;

FC07-55-000; FC07-56-000; FC07-57-000; FC07-58-000; FC07-59-000.

Applicants: Enbridge Gas New Brunswick Inc.; Enbridge Wind Power Inc.; Gazifere Inc.; Inuvik Gas Ltd.;

NRGreen Power Limited Partnership;
Wirebury Connections Inc.

Description: Notice of Self-Certification of Foreign Utility Company Status of Enbridge Gas New Brunswick Inc., *et al.*

Filed Date: 09/19/2007.

Accession Number: 20070919–5103.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–116–000.

Applicants: American Transmission Systems, Inc.

Description: FPA Section 206 Filing With Non-Rate Terms and Conditions for American Transmission System, Inc. OATT.

Filed Date: 09/20/2007.

Accession Number: 20070920–5017.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–28–000.

Applicants: Airtricity Holdings Ltd.

Description: FERC Form 65 A—Exemption Notification of Airtricity Holdings Ltd. on Behalf of Itself and Its Holding Company Subsidiaries.

Filed Date: 09/20/2007.

Accession Number: 20070920–5020.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–19387 Filed 10–1–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8476–4]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in his capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, P.L. 103–182, and as directed by Executive Order 12915, entitled “Federal Implementation of the North American Agreement on Environmental Cooperation.” The NAC is composed of

12 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 12 members representing state, local, and tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC. The purpose of the meeting is to review the CEC's Draft Operational Plan and Budget. A copy of the agenda for the meeting will be posted at <http://www.epa.gov/ocem/nacgac-page.htm>.

DATES: The National and Governmental Advisory Committees will hold a two-day open meeting on Wednesday, October 17, from 8:30 a.m. to 5 p.m. and Thursday, October 18, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the U.S. EPA SAB Conference Center, located in the Woodies Building, 1025 F Street, NW., Suite 3700, Washington, DC 20004. The meeting is open to the public, with limited seating on a first-come, first-served basis. If you plan to attend, please register with Lois Williams by no later than October 9th by calling 202–564–2294 or via e-mail at williams.lois@epa.gov. Please provide Ms. Williams with your name, the name of your organization and your address.

FOR FURTHER INFORMATION CONTACT:

Oscar Carrillo, Designated Federal Officer, carrillo.oscar@epa.gov, 202–564–0347, U.S. EPA, Office of Cooperative Environmental Management (1601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Committees should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or carrillo.oscar@epa.gov. To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 19, 2007.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E7–19416 Filed 10–1–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, October 4, 2007 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Medium-Term Delegated Authority Program (MTDAP).

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone 202-565-3957).

Howard A. Schweitzer

General Counsel

[FR Doc. 07-4892 Filed 9-28-07; 1:17 pm]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2833]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

September 27, 2007.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY-B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions to these petitions must be filed by October 17, 2007. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket No. 06-150).

Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102).

Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01-309).

Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27 and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WT Docket No. 03-264).

Former Nextel Communications, Inc., Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules (WT Docket No. 06-169).

Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06-229).

Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements through the Year 2010 (WT Docket No. 96-86).

Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule (WT Docket No. 07-166).

Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05-211).

Number of Petitions Filed: 10.

William F. Caton,

Deputy Secretary.

[FR Doc. E7-19444 Filed 10-1-07; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Resources and Technology; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended as Chapter AM, Office of Resources and Technology, as last amended 68 FR 11555-62, dated March 11, 2003; and most recently at 72 FR 2282-83, dated January 18, 2007. The reorganization will even out the management responsibilities within the office. The changes are as follows:

I. Under Chapter AM, Section AML.20 Functions, Paragraph 1, "Division of Discretionary Programs (AML1)" delete in its entirety and replace with the following:

1. *Division of Discretionary Programs (AML1):* The Division of Discretionary Programs:

a. Provides analytical services and assistance to the Secretary, the Assistant

Secretary for Resources and Technology (ASRT), and HHS Operating Division (OPDIV) Heads in their budgetary management of the Department's principal discretionary programs, including science and health services programs administered by the Public Health Service components; and social service programs of the Administration for Children and Families and the Administration on Aging.

b. Reviews budgets and related requests for resources, and analyzes plans and proposals for new or alternative legislation.

c. Analyzes proposed regulations, reorganizations, or program initiatives to determine their policy, resource and management implications.

d. Proposes recommendations on draft regulations, proposed legislation and reorganization proposals.

e. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

f. Assists in the development of strategies for the presentation of the budget to the Office of Management and Budget (OMB) and the Congress, and develops materials for key Departmental officials who testify at hearings before these bodies.

g. Provides guidance to OPDIVs in the formulation of their budgets.

h. Conducts special reviews and analyses to examine assigned OPDIV program operations and management effectiveness.

i. Assists in the development of performance plans, reports, and program assessments under the Government Performance and Results Act.

j. Assists in the presentation of the Department's budget to the public by developing material for use of Departmental officials, and reviews press statements and other public documents for consistency with approved budgets and plans.

k. Assists in the presentation of the Department's budget to the public by developing materials for use by Departmental officials, and reviews press statements and other public documents for consistency with approved budgets and plans.

l. reviews and analyzes the budgets of the Staff Divisions (STAFFDIVS) funded by the General Departmental Management (GDM), Office of Inspector General (OIG) and Office for Civil Rights (OCR) appropriations. Prepares special analyses of these budgets for use in decision-making, particularly for evaluating capacity and determining if alternative approaches are feasible. Monitors Congressional appropriations

hearings in which the GDM STAFFDIVS, OIG and OCR are participants.

m. Works closely with OASAM in planning and formulating the GDM budget justification for presentation to the Secretary, OMB and the Congress.

n. Provides staff assistance to the Secretary, the ASRT, the Service and Supply Funds (SSF) Board of Directors, OPDIV Budget Officers and STAFFDIV Heads in the budgetary and financial management of the SSF.

o. Provides for budget policy management and financial integrity of the SSF in the provision of Departmental common sue administrative services.

p. Assists in the planning and preparation of the SSF budget for presentation to the SSF Board, the OMB, and Congress.

q. Prepares apportionment requests for the SSF.

II. Under Chapter AM, Section AML.20 Functions, Paragraph 3, "Division of Budget Policy, Execution and Review (AML4)," delete in its entirety and replace with the following:

3. *Division of Budget Policy, Execution and Review (AML4).* The Division of Budget Policy, Execution and Review (DBPER):

a. Directs the formulation and presentation of the HHS budget by developing and promulgating to the OPDIVs and others the policies, procedures, guidance, and schedules for preparing budget submissions.

b. Coordinates the presentation of the Department's budget and performance plan to Congress, including preparation and submission of justifications, reports, significant items, and crosscutting materials; preparation of the Secretary's testimony before the Appropriations Committees; and coordination of transcripts, questions for the record, and other hearing materials.

c. Provides advice and analysis to support Department-wide budget decision-making.

d. Maintains active communication with Department budget officers with regard to budget events and activities with OMB, GAO, Congress and other parties.

e. Manages a computerized budget information system reflecting data on a HHS-wide basis and coordinates OPDIV input into the system.

f. Provides direct staff support to the Secretary in preparation for appropriation hearings and other budget-related presentations and briefings.

g. Actively communicates with the Budget and Appropriations Committees in the Congress and provides

intelligence and analyses of budget decisions to senior HHS staff and the OPDIVs.

h. Coordinates preparation of guidelines governing reprogrammings, transfers between accounts, and other crosscutting funding methods; provides recommendations and staff support in managing and processing crosscutting funding proposals.

i. Analyzes and prepares reports on HHS performance in managing Full Time Equivalent (FTE) levels and in implementing FTE policy, and provides expert advice on Department-wide staffing.

j. Provides leadership and direction in the Department-wide review, analysis and appraisal of financial elements of program execution and the development and execution of policies related to efficient allocation, expenditure and control of funds.

k. Coordinates and tracks outlay projections: (1) To assist OMB in the continuing effort to monitor spending and to thereby improve the management of the Government's overall cash and debt operations; and (2) in support of formulation of the budget, including the maintenance of HHS ceiling controls and the development of outlay estimates shown in the President's Budget for controllable program.

l. Promulgates Departmental spending policies, especially in the events of Continuing Resolutions and possible suspension of operations due to the failure of the Congress to enact appropriations on time, and works with agency budget officers and the OMB in formulating agency funding plans.

m. Maintains a system of Department-wide budget execution, including the management and control of the apportionment of funds in accordance with the requirements of the Anti-Deficiency Act and OMB regulations; and requests and monitors the receipt of Treasury warrants.

n. Serves as principal staff advisor to the ASRT on all matters involving budget execution.

o. Acts as liaison on behalf of HHS with OMB, the Treasury Department, the Congressional Budget Office, and other agencies on matters involving budget execution.

p. Responsible for the development and maintenance of a system of financial information which involves the collection, organization, and maintenance of financial data in electronic form as well as the development of reporting mechanisms for making the financial information useful and available for decisionmaking.

q. Represents the Department in government-wide activities to

implement the development and implementation of performance measures and budget-related performance planning policies, requirements and processes. Manages program performance assessment activities.

r. Provides special management review services for selected activities.

Dated: September 18, 2007.

Joe W. Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. 07-4859 Filed 10-1-07; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Portfolio Review for Child Development Studies Team

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned SEP:

Time and Date: 8:30 a.m.—4 p.m., November 2, 2007 (Closed).

Place: 12 Executive Park Drive, Conference Room 5071, Atlanta, GA 30329, telephone 404-498-3091.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of "Portfolio Review for Child Development Studies Team."

Contact Person for More Information: Scott Campbell, BSN, MSPH, Designated Federal Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop E87, Atlanta, GA 30333, Telephone 404-498-4026.

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.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7-19392 Filed 10-1-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8 a.m.–6 p.m., October 24, 2007; 8 a.m.–5 p.m., October 25, 2007

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent “Oz” Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on Influenza Vaccines; Meningococcal Conjugate Vaccine; Childhood and Adolescent Immunization Schedule—2007; Immunization Schedule for HIV-Infected Adults; Pediatric Use of Pneumococcal Vaccines; Updates on Combination Vaccines, Vaccine Supply and Hepatitis B Vaccine; Immunization Safety Office; HPV Vaccines; Rotavirus Vaccine; and departmental updates. There may be possible VFC voting on the Influenza and Meningococcal Vaccines.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Tonica Gleaton, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, Telephone (404) 639–8836, Fax (404) 639–8905.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–19393 Filed 10–1–07; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Infectious Diseases (CCID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee.

Times and Dates: 9 a.m.–5 p.m., October 31, 2007; 8:30 a.m.–3:30 p.m., November 1, 2007

Place: CDC, Building 19, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, Coordinating Center for Infectious Diseases (CCID), provides advice and guidance to the Director, CDC, and Director, CCID, in the following areas: program goals and objectives, strategies, program organization and resources for infectious disease prevention and control, and program priorities.

Matters To Be Discussed: Agenda items will include:

1. Breakout Group Discussions:
 - A. Laboratory Preparedness and Sustainability, National Center for Prevention, Detection, and Control of Infectious Diseases.
 - B. Influenza Diagnostics Program, National Center for Immunization, and Respiratory Diseases (NCIRD).
 - C. Immunization Assessment and Coverage, NCIRD.
 - D. Strategic Surveillance, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention.
 - E. Infectious Disease Ecology, National Center for Zoonotic, Vector-Borne, and Enteric Diseases.
2. Surveillance Systems.
3. CCID Updates.
4. Budget Updates.

Other agenda items include announcements and introductions, follow-up on actions recommended by the Board from March 2007, consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Harriette Lynch, Office of the Director, NCID, CDC, Mailstop A–45, 1600 Clifton Road, NE., Atlanta, Georgia 30333, e-mail: HLynch@cdc.gov, telephone 404/639–4035.

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 the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–19403 Filed 10–1–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0014]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Electronic Submission Using Food and Drug Administration Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled “Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Electronic Submission Using Food and Drug Administration Forms 3503 and 3504” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 2007 (72 FR 20553), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0016. The approval expires on August 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: September 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-19350 Filed 10-1-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0359]

Agency Emergency Processing Under OMB Review; Medical Device User Fee Amendments of 2007; Foreign Small Business Qualification Certification Form FDA 3602A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a new FDA foreign small business qualification certification form that will allow a foreign business to qualify as a "small business" and pay certain medical device user fees at reduced rates.

DATES: Fax written comments on the collection of information by October 5, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mail to baguilar@omb.eop.gov. All comments should be identified with the OMB Control Number 0910-NEW and the title "Medical Device User Fee Amendments of 2007; Foreign Small Business Qualification Certification, Form FDA 3602A; (21 U.S.C. 379j); Emergency Request." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this

proposed collection of information under section 3507(j) of the PRA, (44 U.S.C. 3507 (j) and 5 CFR 1320.13). The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107-250), which expires September 30, 2007, amended section 738 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379j) to provide FDA with new responsibilities and resources to keep up with the rapidly growing device industry and changing medical device technology. Congress recently passed an omnibus FDA bill that includes the "Medical Device User Fee Amendments of 2007," (the 2007 Amendments), which will reauthorize medical device user fees for fiscal years 2008 through 2012 and will make significant changes to the medical device user fee provisions of the act. The 2007 Amendments will provide a new way for a foreign business to qualify as a "small business" eligible to pay a significantly-lower fee when a medical device user fee must be paid. The user fee provisions of the 2007 Amendments provide for an October 1, 2007, effective date, and FDA expects foreign businesses will want to request small business status immediately upon enactment.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device User Fee Amendments of 2007; Foreign Small Business Qualification Certification, Form FDA 3602A; (21 U.S.C.379j); Emergency Request

Congress recently passed an omnibus FDA bill that includes the 2007 Amendments, which will reauthorize medical device user fees for fiscal years 2008 through 2012 and will make significant changes to the medical

device user fee provisions of the act. The 2007 Amendments will provide a new way for a foreign business to qualify as a "small business" eligible to pay a significantly-lower fee when a medical device user fee must be paid.

Under existing law, the only way a business could qualify as a "small business" was to submit a Federal (U.S.) income tax return showing its gross receipts or sales that did not exceed a statutory threshold, currently, \$100 million. If a business could not provide a Federal income tax return, it did not qualify as a small business and had to pay the standard (full) fee. Since many foreign businesses have not, and cannot, filed a Federal (U.S.) income tax return, this requirement has effectively prevented those businesses from qualifying for the small business fee rates. Thus, foreign governments, including the European Union, have objected.

In lieu of a Federal income tax return, the 2007 Amendments will allow a foreign business to qualify as a "small business" by submitting a certification form, from its "national taxing authority," the foreign equivalent of our Internal Revenue Service. This certification, referred to as a "National Taxing Authority Certification" must:

- Be in English;
- Be from the national taxing authority of the country in which the business is headquartered;
- Provide the business's gross receipts or sales for the most recent year, in both the local currency and in United States dollars, and the exchange rate used in converting local currency to U.S. dollars;
- Provide the dates during which the reported receipts or sales were collected; and
- Bear the official seal of the national taxing authority.

The new FDA Form 3602A, "FY 2008 MDUFMA Foreign Small Business Qualification Certification," will collect the information required by the statute and will allow a foreign business to qualify for the same small business benefits as a domestic U.S. small business. The user fee provisions of 2007 Amendments provide for an October 1, 2007, effective date, and FDA expects foreign businesses will want to request small business status immediately upon enactment.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

FDA Form 3602A	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Sections I and II (completed by the business seeking "small business" status)	229	1	229	1	229
Section III (completed by the foreign national taxing authority)	33	7	229	1	229
Total Burden					458

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

This burden estimate is based on an examination of 510(k) premarket notifications received during FY 2006 and FDA's estimation of the time required to collect the required information to complete the form. The evidence supporting each 3602A must be reviewed by a foreign national taxing authority to complete Section III, the National Taxing Authority Certification, of each 3602A. Because this is a new activity, and neither FDA nor any foreign national taxing authority has any data that would provide an objective measure of the effort required to complete Section III, FDA is estimating that the burden will be the same as FDA experiences in reviewing the Form FDA 3602, approved under OMB control number 0910-0508.

FDA believes most entities that submit a Form FDA 3602A will not have any affiliates, and very few will have more than three or four affiliates. Based on our experience with Form FDA 3602, FDA believes each business will require 1 hour to complete Sections I and II. Because this is a new requirement, FDA does not have any data on the time that will be required to complete Section III, the National Taxing Authority Certification.

Dated: September 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-19411 Filed 10-1-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Board shall provide advice primarily to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the Board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, on formulating an appropriate research agenda, and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on October 30, 2007, from 8 a.m. to 5:30 p.m.

Location: Washington DC North/Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877, Salons A, B, and C.

Contact Person: Carlos Peña, Office of the Commissioner, Food and Drug Administration (HF-33), 5600 Fishers Lane, Rockville, MD 20857, 301-827-6687, carlos.peña@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512603. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will hear about and discuss the agency's critical path program. The Science Board will hear about and discuss updates on the

National Antimicrobial Resistance Monitoring System (NARMS) Program and activities related to melamine from the March 31, 2006, and June 14, 2007, Science Board meetings. The Science Board will then hear about and discuss the subcommittee review of the agency's science programs. The Science Board will also hear about and discuss the agency's updates on drug safety. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 15, 2007. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 5, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 8, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/oc/advisory/default.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 23, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7-19349 Filed 10-1-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D-0138]

Guidance for Industry: Recommended Study Design and Evaluation of Effectiveness Studies for Swine Respiratory Disease Claims; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#178) entitled "Recommended Study Design and Evaluation of Effectiveness Studies for Swine Respiratory Disease Claims." This guidance provides recommendations to industry relating to study design and describes the criteria that the Center for Veterinary Medicine (CVM) intends to use to evaluate effectiveness studies for swine respiratory disease (SRD) claims. **DATES:** Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-

addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Michelle L. Stull, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-5058, e-mail: michelle.stull@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 14, 2006 (71 FR 19526), FDA published a notice of availability of a draft guidance entitled "Recommended Study Design and Evaluation of Effectiveness Studies for Swine Respiratory Disease Claims." The notice gave interested persons until June 28, 2006, to comment on the draft guidance. FDA received a few comments on the draft guidance. We considered those comments as we finalized the guidance. The guidance, announced in this document, finalizes the draft guidance that we announced on April 14, 2006.

The purpose of the guidance is to provide the Center for Veterinary Medicine's (CVM's) current thinking regarding the recommended design and evaluation of effectiveness studies for swine respiratory disease (SRD) claims. This guidance identifies specific, detailed recommendations for sponsors of new animal drug applications to consider when they design and write protocols for SRD effectiveness studies.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR 514.1 have been approved under OMB Control Number 0910-0032.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any

person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance from either the CVM home page (<http://www.fda.gov/cvm>) or the Division of Dockets Management Web site (<http://www.fda.gov/ohrms/dockets/default.htm>).

Dated: September 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-19412 Filed 10-1-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before November 1, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W-2606, Sacramento, California, 95825 (telephone: (916) 414-6464; fax: (916) 414-6486). Please refer to the respective

permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT:

Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (telephone: (760) 431-9440; fax: (760) 431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. 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.

Permit No. TE-163017

Applicant: California Department of Fish and Game, Sacramento, California

The applicant requests a permit to take (survey, capture, handle, mark, collect biological samples, radio collar, translocate, and release) the Peninsular bighorn sheep (*Ovis canadensis nelsonii*) in conjunction with ecological research, population monitoring, and life history studies throughout the range of the species in San Diego, Imperial, and Riverside Counties, California for the purpose of enhancing its survival.

Permit No. TE-163012

Applicant: Aindrea Jensen, Petaluma, California

The applicant requests a permit to take (survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys for the purpose of enhancing their survival throughout the range of the species in California.

Permit No. TE-163662

Applicant: Coachella Valley Mosquito and Vector Control District, Indio, California

The applicant requests a permit to take (survey, collect, captive rear,

captive propagate, and release to the wild) the desert pupfish (*Cyprinodon macularius*) in conjunction with ecological and disease control research in Riverside County, California, for the purpose of enhancing its survival.

Permit No. TE-163610

Applicant: The Nature Conservancy, Ventura, California

The applicant requests a permit to take (survey, capture, collect, PIT tag, biological sample, radio collar, captive breed, perform veterinary examinations, and release) the Santa Cruz Island Fox (*Urocyon littoralis santacruzae*) in conjunction with ecological, genetic, and reproductive research on Santa Cruz Island, Santa Barbara County, California, for the purpose of enhancing its survival.

Permit No. TE-815537

Applicant: Swaim Biological, Livermore, California

The applicant request an amendment to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys for the purpose of enhancing their survival throughout the range of the species in California.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: September 26, 2007.

Michael Fris,

Acting Manager, California/Nevada Operations Office, Sacramento, California.
[FR Doc. E7-19401 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before November 1, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, California/Nevada Operations Office (CNO), 2800 Cottage Way, Room W-2606, Sacramento, California, 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT:

Daniel Marquez, Fish and Wildlife Biologist, at the above CNO address, (telephone: 760-431-9440; fax: 760-431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. 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.

Permit No. TE-161486

Applicant: Autumn Sartain, Carlsbad, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-115370

Applicant: Gage Dayton, Moss Landing, California

The applicant requests an amendment to take (survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys for the purpose of enhancing their survival throughout the range of the species in Monterey, and Santa Cruz Counties, California.

Permit No. TE-161225

Applicant: Mojave Natural Preserve, Barstow, California

The applicant requests a permit to take (survey, collect, captive rear, captive propagate, and release to the wild) the Mohave tui chub (*Siphateles bicolor mohavensis*) in conjunction with ecological research in San Bernardino County, California, for the purpose of enhancing its survival.

Permit No. TE-161620

Applicant: Karl Osmundson, Carlsbad, California

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-161496

Applicant: California State Parks, Felton, California

The applicant requests a permit to take (harass by survey, capture, and mark) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with surveys and monitoring activities throughout the range of the species in Santa Cruz and San Mateo Counties, California, for the purpose of enhancing its survival.

Permit No. TE-809232

Applicant: Paul Holden, Logan, Utah

The applicant requests an amendment to take (harass by survey, capture by mist net, take feathers for DNA analysis, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and research at the Ash Meadows National Wildlife Refuge in Nye County, California, for the purpose of enhancing its survival.

Permit No. TE-161512

Applicant: Darrin Doyle, Redding, California

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE-161510

Applicant: Michael Crane, Carmichael, California

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys in Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, Tulare, and Yolo Counties, California, for the purpose of enhancing its survival.

Permit No. TE-161717

Applicant: U.S. Forest Service, Arcata, California

The applicant requests a permit to take (harass by survey, and monitor populations) the marbled murrelet (*Brachyramphus marmoratus*) in conjunction with surveys, population monitoring, and research at the United States Department of Agriculture's Redwood Experimental Forest in Del Norte County, California, for the purpose of enhancing its survival.

Permit No. TE-162042

Applicant: Francis Villablanca, San Luis Obispo, California

The applicant requests a permit to take (capture, mark, and release) the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction

with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE-042952

Applicant: Gregory R. Ballmer, Riverside, California

The applicant requests an amendment to take (harass by survey) the Delhi sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with surveys throughout the range of the species in California, for the purpose of enhancing its survival.

Permit No. TE-778195

Applicant: Helix Environmental Planning, La Mesa, California

The applicant requests an amendment to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE-162652

Applicant: Mary Shea, Brentwood, California

The permittee requests a permit to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in, California, for the purpose of enhancing its survival.

Permit No. TE-039716

Applicant: Arizona State University, Tempe, Arizona

The applicant requests an amendment to take (survey, electrofish, capture, collect biological samples, PIT tag, collect, and release) the bonytail chub (*Gila elegans*) and razorback sucker (*Xyrauchen texanus*) in conjunction with surveys, population monitoring, and genetic study for the purpose of enhancing their survival throughout the range of the species in Clark County, Nevada, and San Bernardino, Riverside, and Imperial Counties, California.

Permit No. TE-161483

Applicant: Linette Lina, Orange, California

The applicant requests a permit to take (harass by survey, and nest monitor) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and monitoring throughout the range of the species in California, for the purpose of enhancing its survival.

Permit No. TE-098994

Applicant: Kelly Goocher, Big Bear Lake, California

The applicant requests an amendment to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: September 26, 2007.

Michael Fris,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E7-19400 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for Extension of an Incidental Take Permit for the Red-Cockaded Woodpecker by the Woodlands Group, LLC, in Livingston Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On July 21, 2003, the Fish and Wildlife Service (Service) issued an incidental take permit (ITP) associated with a habitat conservation plan (HCP)

under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1539), as amended, for the incidental take of the federally endangered red-cockaded woodpecker (*Picoides borealis*) (RCW) to the Woodlands Group, LLC (Permittee). The permit (TE037661-0) was for a period of four years and expired on July 31, 2007. The requested permit extension by the Permittee will extend the permit expiration date nine years.

DATES: Written comments should be sent to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**) and should be received on or before November 1, 2007.

ADDRESSES: Persons interested in reviewing the permit extension application or other related documents may obtain a copy by submitting a written request to James Boggs, Acting Field Office Supervisor, Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506. Documents will be available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Aaron Valenta).

FOR FURTHER INFORMATION CONTACT: Aaron Valenta, Regional HCP Coordinator (see **ADDRESSES**), telephone: 404/679-4144, or James Boggs (see **ADDRESSES**), telephone 337/291-3115.

SUPPLEMENTARY INFORMATION: We specifically request information, views, and opinions from the public via this notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Environmental Assessment (EA). Further, we specifically solicit information regarding the adequacy of the HCP as measured against our ITP issuance criteria found in 50 CFR parts 13 and 17.

The permit authorizes take of RCWs on approximately 99 of 971 acres owned by the Permittee in Livingston Parish, Louisiana. The proposed take would be incidental to otherwise lawful activities, including timber harvest and typical forest management activities on the Permittee's property. The extension request covers the same activities covered by the HCP and existing permit. There will be no increase in take beyond that anticipated in the original permit.

The previously prepared HCP specifies the impacts that are likely to result from the taking and the measures the Permittee has taken to minimize and mitigate such impacts. The ITP authorized take of three RCW groups on

the Permittee's property incidental to timber management activities. The mitigation and minimization measures in the HCP include: No take of RCWs during the breeding season; establishment of three replacement groups on Big Branch Marsh National Wildlife Refuge by provisioning recruitment territories; translocating juveniles fledged on the Permittee's property; monitoring the formation of breeding pairs; funding an endowment for habitat management (prescribed burning); and, translocating adult RCWs from the Permittee's property to Fort Polk Military Reservation in Louisiana prior to harvesting timber. The Permittee successfully completed the required minimization and mitigation measures outlined in the HCP by July 2004.

RCW nesting and foraging habitat were removed in one cluster incidental to the timber harvest that was completed in that cluster. Due to poor market conditions, the Permittee had not harvested timber in the remaining two RCW clusters by the time the ITP expired and thus requests extension of the ITP. If renewed, annual reporting will no longer be required because the Permittee has completed the specified minimization and mitigation requirements. However, all other permit terms and conditions will remain the same, and no additional take will be authorized. The existing HCP satisfies all statutory issuance criteria and is therefore applicable to the extension of this ITP.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE037661-0, The Woodlands Group, LLC, in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to aaron_valenta@fws.gov. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed previously (see **FOR FURTHER INFORMATION CONTACT**).

Finally, you may hand-deliver comments to either Fish and Wildlife Service office listed (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would

withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We will evaluate whether the extension of the section 10(a)(1)(B) ITP complies with section 7 of the Act by reviewing our previously prepared intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an extension of this ITP.

Dated: August 30, 2007.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E7-19402 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-040-5101-ER-EO42]

Notice of Intent To Prepare an Environmental Impact Statement for the GCC Dacotah Cement Dewey Conveyor Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) and Initiate Public Scoping for the GCC Dacotah Cement Dewey Conveyor Project.

SUMMARY: Pursuant to 42 U.S.C. 4332, the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) will direct the preparation of an EIS on a project proposed by GCC Dacotah, Inc., and conduct public scoping meetings to analyze (1) The application for right-of-way (ROW) on lands administered in part by the South Dakota Field Office of the BLM, and (2) an application for a special use permit within the Black Hills National Forest of the U.S. Forest Service. The proposed action is to construct, operate, maintain, and terminate approximately 7 miles of an enclosed above-ground conveyor belt to transfer crushed limestone from a quarry site to a rail loading facility near the town of Dewey in Custer County,

South Dakota. The proposed conveyor belt would cross about 1.5 miles of National Forest and about 1 mile of BLM-administered public lands. The BLM is the lead agency for this project, and the Forest Service is a cooperating agency with jurisdiction by law.

DATES: This notice initiates the public scoping process for the EIS. The public is invited to submit comments, resource information, and identify issues and concerns to be considered in the NEPA process. The BLM will accept written comments on the scope of the EIS within 60 days of the publication of this notice. Public scoping meetings to obtain comments on issues related to the EIS and the proposed action will be held in Custer and Edgemont, South Dakota, and Newcastle, Wyoming. Times and locations of the scoping meetings will be announced a minimum of 15 days prior to the meetings in the local news media.

ADDRESSES: You may submit comments, identified as "GCC Dacotah Cement Dewey Conveyor Project" by any of the following methods:

- *E-mail:* MT South Dakota FO@blm.gov—Include GCC Dacotah Cement Transportation Facility in the subject line of the message.
- *Fax:* 605-892-7015.
- *Mail:* South Dakota Field Office, 310 Roundup Street, Belle Fourche, SD 57717.
- *Hand Delivery/Courier:* South Dakota Field Office, 310 Roundup Street, Belle Fourche, SD 57717.

Documents pertinent to this proposal may be examined at the South Dakota Field Office in Belle Fourche during regular business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Respondents' comments, including their names and street addresses, will also be available for public review, and may be published as part of the EIS.

FOR FURTHER INFORMATION CONTACT: For further information, including information on how to comment, you may contact Marian Atkins, BLM, at 605-892-7001, or marian_atkins@blm.gov.

SUPPLEMENTARY INFORMATION: The EIS will assess the effects of the proposed action to permit a transportation facility on federal lands consisting of construction, operation, maintenance, and abandonment of a covered, above ground conveyor belt up to approximately 7 miles in length for the purpose of transporting crushed limestone from a quarry to a proposed rail load-out facility at Dewey, South Dakota. The analysis area includes BLM-administered public lands,

National Forest System lands administered by the Black Hills National Forest, and private lands along the proposed conveyor route in Custer County, South Dakota.

The EIS Process

NEPA requires the BLM to take into account the environmental impacts of its actions.

The EIS will be prepared in accordance with applicable Council on Environmental Quality regulations at 40 CFR parts 1500-1508, and applicable BLM and Forest Service regulations. The analysis will determine whether the proposed action is consistent with land use guidelines as set forth in the BLM RMP and the Forest Service's Revised Forest Plan for the Black Hills National Forest, as Amended, along with other state and federal laws and regulations.

The analysis in the EIS will serve the following two purposes: (1) Analyze the direct, indirect, and cumulative impacts of construction, operation, maintenance, and abandonment of the proposed covered conveyor belt transportation facility; and (2) Disclose the information used by the Responsible Officials in making their decisions on whether to approve or deny the application for a ROW grant.

Preliminary Issues and Alternatives

The following preliminary issues have been identified:

- Native American Concerns.
- Cultural Resources.
- Noise.
- Visual Quality.
- Public Safety.
- Land Use.
- Fish and Wildlife.
- Air Quality.
- Geology, Soils, and Minerals.
- Water Quality and Quantity.
- Vegetation.
- Social and Economic Values.

Alternatives will initially include the No Action Alternatives and the Proposed Action Alternative; however, other alternatives may be identified during the public scoping process.

Public Participation

Comments are being solicited so as to identify and define: (1) The scope of this analysis, (2) significant issues or concerns related to the proposed action, (3) reasonable alternatives to the proposed action, and (4) information having a bearing on the proposed action. Your response is important and will be considered in the EIS process.

The BLM and Forest Service will provide further information at the public scoping meetings regarding the locations of, and the areas that may be

affected by, the transportation facility application. The purpose of the public scoping process is to provide the public an opportunity to present comments or issues that should be addressed in the environmental analysis, the scope of the analysis and reasonable alternatives to the proposed action. You may submit comments in writing at any public scoping meeting, or you may submit them using one of the methods listed in the **ADDRESSES** section above.

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. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Responsible Officials: Marian Atkins, Field Manager, South Dakota Field Office, BLM, will be responsible for the analysis and documentation, and will decide whether to approve any actions on public lands administered by the BLM. Craig Bobzien, Forest Supervisor, Black Hills National Forest, representing the Forest Service as a cooperating agency, will decide whether to approve any actions on National Forest System lands in the project area.

Dated: September 24, 2007.

Gene R. Terland,

State Director, Montana State Office.

[FR Doc. E7-19406 Filed 10-1-07; 8:45 am]

BILLING CODE 1430--SS-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010-0067).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we are submitting to OMB an information collection request (ICR) to renew approval of the paperwork

requirements in the regulations under 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by November 1, 2007.

ADDRESSES: You may submit comments either by fax (202) 395-6566 or e-mail (OIRA_DOCKET@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0067). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. If you wish to e-mail your comments to MMS, the address is: rules.comments@mms.gov. Reference Information Collection 1010-0067 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1010-0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may

cause damage to the environment or to property, or endanger life or health."

This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This information collection request (ICR) addresses 30 CFR Part 250, Subpart E, Oil and Gas Well-Completion Operations and the associated supplementary Notices to Lessees and Operators (NTL) intended to provide clarification, description, or explanation of these regulations.

The MMS District Managers analyze and evaluate the information and data collected under Subpart E to ensure that planned well-completion operations will protect personnel and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

Previously, the Gulf of Mexico Region (GOMR) met with the Offshore Operators Committee (OOC) several times to discuss conditions that required a variance from the requirements of § 250.517. The OOC recommended that sustained casing pressure (SCP) be divided into two broad categories: Production casing SCP that can be eliminated relatively easily and SCP on outer casings where no consistently successful solution has been developed. They also recommended criteria for classifying SCP. Since the initial meeting, MMS continues to work with OOC and API regularly to formulate new practices. As a result of these meetings, MMS issued an NTL to clarify and update the current GOMR procedures and requirements necessary to monitor and report SCP conditions. This NTL also gives guidance on the process for obtaining a departure to produce wells with SCP. MMS district and regional offices will use the information to determine whether production from wells with SCP continues to afford the greatest

possible degree of safety under these conditions.

Responses are mandatory. No questions of a "sensitive" nature are asked. The MMS protects information considered proprietary according to 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection" and 30 CFR part

252, "OCS Oil and Gas Information Program".

Frequency: Varies by section, but is mostly "on occasion" or annual.

Estimated Number and Description of Respondents: Approximately 130 respondents consist of Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this

information collection is a total of 18,756 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart E & LTL/NTL	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours
Requests				
502	Request approval not to shut-in well during equipment movement.	1 hour	106 requests	106
512	Request field well-completion rules be established, amended or canceled (on occasion, however, there have been no requests in many years).	1 hour	2 requests	2
500–517	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	2 hours	500 requests	1,000
Subtotal .....	.....	.....	608 responses	1,108
Submittals				
505; 513; 515(a); NTL ...	Submit forms MMS–123, MMS–124, MMS–125 for various approvals, including remediation procedure for SCP.	Burden included in 1010–0141		0
514(c); 515(a)	Calculate well control fluid volume and post near operator's station; submit well-control procedure.	1 hour	338 procedures	338
517(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	9 hours	399 reports	3,591
Subtotal .....	.....	.....	737 responses	3,929
Document/Record/Retain				
506	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per completion = 4).	20 minutes	838 completions × 4 = 3,352.	¹ 1,117
511	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per completion = 2).	½ hour	938 completions × 2 = 1,876.	938
LTL*	Record diagnostic test results	½ hour	3,020 tests/recordings ..	1,510
516 tests; 516(i),(j)	Record BOP test results; retain records 2 years following completion of well (when installed; minimum every 7 days; as stated for component); request alternative methods.	½ hour	1,048 completions	524
516(d)(5) test; 516(i)	Function test annulars and rams; document results (every 7 days between BOP tests—bi-weekly; note: part of BOP test when conducted).	½ hour	1,048 completions	524
516(e)	Record reason for postponing BOP system tests (on occasion).	10 minutes	58 postponed tests	¹ 10

Citation 30 CFR 250 subpart E & LTL/NTL	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours
516(f)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per completion = 4).	½ hour	1,048 completions × 4 = 4,192.	2,096
LTL	Retain complete record of well's casing pressure for 2 years and retain diagnostic test records permanently.	1 hour	2,990 records	2,990
Subtotal .....	.....	.....	17,584 responses	9,709
Notify				
502	Notify MMS of well-completion rig movement on or off platform or from well to well on same platform (Form MMS-144) (cross ref. § 250.403).	Burden included in 1010-0150.		0
517(c); LTL/NTL	Notify MMS if sustained casing pressure is observed on a well.	1 hour	900 notices	900
LTL/NTL	Report failure of casing pressure to bleed to zero including plan to remediate.	6 hours	500 submissions	3,000
NTL	Notify MMS when remediation procedure is complete.	1 hour	110 notices	110
Subtotal .....	.....	.....	1,510 responses	4,010
Total Hour Burden.	.....	.....	20,439 responses	18,756

* LTL dated 13 January 1994.

¹ (rounded)

Estimated Reporting and Recordkeeping "Non-Hour Cost"

Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * " Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 29, 2007, we published a **Federal Register** notice (72 FR 4025) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 1, 2007.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: May 11, 2007.

E.P. Danenberger,
Chief, Office of Offshore Regulatory Programs.

Editorial Note: This document was received at the Office of the Federal Register on September 26, 2007.

[FR Doc. E7-19375 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010-0043).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will be submitting to OMB an information collection request (ICR) to

renew approval of the paperwork requirements in the regulations under 30 CFR 250, subpart F, Oil and Gas Well-Workover Operations, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by November 1, 2007.

ADDRESSES: You may submit comments either by fax (202) 395-6566 or e-mail (OIRA_DOCKET@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0043). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. If you wish to e-mail your comments to MMS, the address is: rules.comments@mms.gov. Reference Information Collection 1010-0043 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010-0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to

balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

This information collection request addresses the regulations at 30 CFR Part 250, subpart F, Oil and Gas Well-Workover Operations and the associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

MMS District Supervisors use the information collected to analyze and evaluate planned well-workover operations to ensure that operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. For example, MMS uses the information to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- Review well-workover procedures relating to hydrogen sulfide (H₂S) to ensure the safety of the crew in the event of encountering H₂S.
- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.

- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.

- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.

- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and to ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific testing information must be recorded to verify that the proper test procedures were followed.

- Assure that the well-workover operations are conducted on well casing that is structurally competent.

Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection", and 30 CFR part 252, "OCS Oil and Gas Information Program".

Frequency: The frequency varies by section, but is primarily monthly or on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and operators.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 40,899 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours
Requests				
602	Request exceptions prior to moving well-workover equipment.	1	400 requests	400
605; 613; 615(a), (e)(4); 616(d).	Request approval to begin subsea well-workover operations; submit Forms MMS-124 (include, if required, alternate procedures and equipment; stump test procedures plan) and MMS-125.	Burden included in 1010-0141		0

Citation 30 CFR 250	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours
612	Request establishment/amendment/cancellation of field well-workover rules.	6	4 requests	24
616(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	2	187 requests	374
600–618	General departure and alternative compliance requests not specifically covered elsewhere in subpart F regulations.	2	200 requests	4009
Subtotal .....	.....	.....	791	1,198
Posting				
614	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	0.25	1,210 postings	303
Subtotal .....	.....	.....	1,210	303
Submittals/Notifications				
602	Notify MMS of any rig movement within Gulf of Mexico (Form MMS–144).	Burden included in 1010–0150		0
617(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	6	182 reports	1,092
617(c)	Notify MMS if sustained casing pressure is observed on a well.	1	905 notifications	905
Subtotal .....	.....	.....	1,087	1,997
Record/Document				
606	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per workover = 4).	1	1,476 workovers × 4 = 5,904.	5,904
611	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per workover = 2).	1	1,226 workovers × 2 = 2,452.	2,452
616(a), (b), (f), (g)	Perform BOP pressure tests, actuations, inspections & certifications; record results; retain records 2 years following completion of workover activities (when installed; at a minimum every 7 days × 2 weeks per workover = 2).	7	1,226 workovers × 2 = 2,452.	17,164
616(b)(2)	Test blind or blind-shear rams; document results (every 30 days during operations). (Note: this is part of BOP test when BOP test is conducted.)	2	1,476 workovers	2,952
616(b)(2)	Record reason for postponing BOP system tests.	0.5	146 post-poned tests ...	73
616(c)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per workover = 4).	1.5	1,476 work-overs × 4 = 5,904.	8,856
Subtotal .....	.....	.....	18,334	37,401
Total Burden ...	.....	.....	21,422 Responses	40,899

Estimated Reporting and Recordkeeping “Non-Hour Cost”

Burden: We have identified no paperwork “non-hour cost” burdens

associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 23, 2007, we published a **Federal Register** notice (72 FR 2901) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR Part 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 1, 2007.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: June 1, 2007.

William S. Hauser,

Acting Chief, Office of Offshore Regulatory Programs.

Editorial Note: This document was received at the Office of the Federal Register on September 26, 2007.

[FR Doc. E7-19376 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010-0090).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the information collection requirements in the regulations at 30 CFR 216_{MRM}.57. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. We shortened the title of this ICR to accommodate OMB requirements. The previous title was “30 CFR 216, Subpart B—Oil and Gas, General, § 216.57 Stripper Royalty Rate Reduction Notification.” The new title is “30 CFR 216.57, Stripper Royalty Rate Reduction Notification.” Form MMS-4377, Stripper Royalty Rate Reduction Notification, is used to collect the information.

DATES: Submit written comments on or before November 1, 2007.

ADDRESSES: Submit written comments by either FAX (202) 395-6566 or e-mail (OIRA_Docket@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010-0090).

Please also send a copy of your comments to MMS via e-mail at mrm.comments@mms.gov. Include the title of the information collection and the OMB control number in the

“Attention” line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

You may also mail a copy of your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-deliver your comments, our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT:

Sharron L. Gebhardt, telephone (303) 231-3211, FAX (303) 231-3781, e-mail Sharron.Gebhardt@mms.gov. You may also contact Sharron Gebhardt to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 216.57, Stripper Royalty Rate Reduction Notification.

OMB Control Number: 1010-0090.

Bureau Form Number: Form MMS-4377.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The MMS performs the royalty management functions for the Secretary. Public laws pertaining to mineral royalties are located on our Web site at http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.

Under 43 CFR 3103.4-2, the Stripper Royalty Rate Reduction Program was established by the Bureau of Land Management (BLM), the surface management agency for Federal onshore leases. As a benefit under this program, BLM approved royalty rate reductions for operators of stripper oil properties for applicable sales periods from October 1, 1992, through January 31, 2006. Effective February 1, 2006, the benefits of reduced royalty rates under this program were terminated, although this change is not currently reflected in the CFR.

For production through January 31, 2006, reporters used Form MMS-4377, Stripper Royalty Rate Reduction Notification, to notify MMS of royalty rate changes. Although the benefits were terminated, MMS continues to verify previously submitted notifications and may require the operator to submit an amended Form MMS-4377.

The MMS requests OMB approval to continue to collect this information. Not

collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: As requested.

Estimated Number and Description of Respondents: 150 lessees/lessors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 180 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR 216 subpart B	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
216.57	Stripper royalty rate reduction notification In accordance with its regulations at 43 CFR 3103.4-1, titled "Waiver, suspension, or reduction of rental, royalty, or minimum royalty," the Bureau of Land Management (BLM) may grant reduced royalty rates to operators of low producing oil leases to encourage continued production. Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS-4377) to MMS for each 12-month qualifying period that a reduced royalty rate(s) is granted. [58 FR 64903, Dec. 10, 1993] Please note the BLM citation and title changed to 43 CFR 3103.4-2 Stripper well royalty reductions.	1.2	150	180
Total Burden .....	.....	.....	150	180

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-hour cost" burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on

November 6, 2006 (71 FR 64978), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 1, 2007.

Public Comment Policy: We will post all comments in response to this notice on our Web site at http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm. 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. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law.

There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: July 30, 2007.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. E7-19377 Filed 10-1-07; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information

collection (OMB Control Number 1010-0073).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The previous title of this ICR was "30 CFR Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL capital account, § 220.030 Maintenance of records, § 220.031 Reporting and payment requirements, § 220.032 Inventories, and § 220.033 Audits." The new title of this ICR is "30 CFR 220—OCS Net Profit Share Payment Reporting." There are no forms associated with this information collection.

DATES: Submit written comments on or before December 3, 2007.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at mrm.comments@mms.gov. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231-3211, FAX (303) 231-3781, or e-mail sharron.gebhardt@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 220—OCS Net Profit Share Payment Reporting.

OMB Control Number: 1010-0073.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The MMS performs the royalty management functions for the Secretary.

Applicable law citations pertaining to mineral leases include the Federal Oil

and Gas Royalty Management Act of 1982 (Pub. L. 97-451—Jan. 12, 1983); Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1353; Pub. L. 212—Aug. 7, 1953, as amended by Pub. L. 93-627—Jan. 3, 1975, Pub. L. 95-372—Sept. 18, 1978, and Pub. L. 98-498—Oct. 19, 1984); and the Mineral Leasing Act (30 U.S.C. 1923). These citations can be viewed on our Web site at http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure royalties or net profit share payments are properly valued and appropriately paid.

Net Profit Share Leases (NPSL) Bidding System

To encourage exploration and development of oil and gas leases on submerged Federal lands on the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260—Outer Continental Shelf Oil and Gas Leasing. Specific implementation regulations for the NPSL bidding system are promulgated at § 260.110(d). The MMS established the NPSL bidding system to balance a fair market return to the Federal Government for the lease of its public lands with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

NPSL Capital Account

The Federal Government does not receive a profit share payment from an

NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (30 to 50 percent), resulting in the amount of net profit share payment due the Federal Government.

The MMS requires lessees to maintain an NPSL capital account for each lease, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account.

NPSL Inventories

The NPSL lessees must notify MMS of their intent to perform an inventory and file a report after each inventory of controllable material.

NPSL Audits

When non-operators of an NPSL call for an audit, they must notify MMS. When MMS calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at § 220.033.

Summary

This collection of information is necessary in order to determine when net profit share payments are due and to ensure royalties or net profit share payments are properly valued and appropriately paid.

The MMS will request OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duty and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 6 lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,046 hours.

All six lessees report monthly because all current NPSLs are in producing status. Because the requirements for establishment of capital accounts at § 220.010(a) and capital account annual reporting at § 220.031(a) are necessary only during non-producing status of a lease, we included only one response annually for these requirements, in case a new NPSL is established. We have not included in our estimates certain requirements performed in the normal course of business, which are

considered usual and customary. The following chart shows the estimated

annual burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES				
§ 220.010 NPSL capital account				
220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations * * *.	1	1	1
§ 220.030 Maintenance of records				
220.030(a) and (b) ..	(a) Each lessee * * * shall establish and maintain such records as are necessary * * *.	1	6	6
§ 220.031 Reporting and payment requirements				
220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account * * *.	1	1	1
220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month * * *.	13	72	936
220.031(c)	(c) Each lessee subject to this Part 220 shall submit, together with the report required * * * any net profit share payment due * * *.	Burden hours covered under § 220.031(b).		
220.031(d)	(d) Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	6	48
220.031(e)	(e) Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *.	4	6	24
§ 220.032 Inventories				
220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory * * *.	1	6	6
§ 220.033 Audits				
220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *.	2	6	12
220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit * * *. The lessee shall send copies of the notice to the nonoperators on the lease * * *.	2	6	12
220.033(e)	(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI * * *.	The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.		
Total Burden ....	.....			
			110	1,046

Estimated Annual Reporting and Recordkeeping “Non-hour” Cost Burden: We have identified no “non-hour cost” burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.” Agencies must specifically solicit

comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d)

minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.

Public Comment Policy: We will post all comments in response to this notice on our Web site at http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: September 21, 2007.

Lucy Querques Denett,
Associate Director for Minerals Revenue Management.
[FR Doc. E7-19379 Filed 10-1-07; 8:45 am]
BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Final Environmental Impact Statement for the North Shore Road in Great Smoky Mountains National Park

SUMMARY: The National Park Service (NPS) in cooperation with the Federal Highway Administration (FHWA) announces the availability of the Final Environmental Impact Statement (FEIS) for the North Shore Road in the Great Smoky Mountains National Park, North Carolina. This document will be available for public review pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and NPS policy in Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision Making). The primary purpose of this FEIS is to finalize the documentation of the environmental analysis of the five alternatives studied in the document; to address substantive comments made on the Draft EIS; and to disclose the Agency's Preferred Alternative.

The purpose of the proposed action is to discharge and satisfy any obligations on the part of the United States that presently exist as the result of the July 30, 1943, Memorandum of Agreement (MOA) among the U.S. Department of the Interior (DOI), Tennessee Valley Authority (TVA), Swain County, North Carolina, and the State of North Carolina. The need for the project is to determine whether or not it is feasible to complete the road and to evaluate other alternatives that would satisfy the obligation.

The FEIS analyzed five alternatives for meeting the purpose and need of the project. The no-action alternative would continue current management practices and policies into the future. The monetary settlement (the preferred alternative) would provide Swain County, North Carolina, with a monetary settlement to satisfy and discharge the obligations of the MOA. Each of the other three action alternatives would allow various levels of development and/or road

construction within the project study area of the Great Smoky Mountains National Park. Under the Laurel Branch Picnic Area alternative, a day-use area on the north side of existing Lake View Road would be constructed. Outdoor facilities would include a multi-use picnic shelter, picnic tables, several loop trails, drinking fountains, and restrooms. Under the Partial-Build Alternative to Bushnell, up to 8 miles (12.9 km) of new roadway from the existing tunnel west to the vicinity of the former Bushnell settlement would be constructed. This alternative would provide a boat-launching ramp and restricted boat dock. Located near the terminus of the new roadway would be a multi-use picnic shelter and picnic tables, a backcountry permit station, an information kiosk, restrooms, and a parking area. Exhibit/museum space would be designed to highlight local heritage of the area and could include concession opportunities. Under the Northern Shore Corridor Alternative, 29 to 34.3 miles of new roadway to the vicinity of Fontana Dam would be constructed. It would connect Lake View Road to NC Hwy. 28. This alternative would include provisions for the development of an auto-tour guide describing the historic and natural points of interest along the route. Also, restrooms would be built at appropriate locations.

The NPS Preferred Alternative is the Monetary Settlement Alternative. The Monetary Settlement would ensure that resources of Great Smoky Mountains National Park and the Appalachian National Scenic Trail would be unimpaired for the enjoyment of future generations. It would fulfill project goals and objectives including the protection of natural, cultural, and recreational resources.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following the publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

ADDRESSES: The complete FEIS is available for review or download on the internet at <http://www.northshoreroad.info>.

Copies of the FEIS will also be available for review at the following locations:

Pack Memorial Library, 67 Haywood Street, Asheville, North Carolina 28801;

Marianna Black Library, 33 Fryemont Road, Bryson City, North Carolina 28713;

Charlotte and Mecklenburg County

Main Library, 310 North Tryon Street, Charlotte, North Carolina 28202;
 Qualla Boundary Public Library, 810 Acquoni Road, Cherokee, NC 28719;
 Anna Porter Public Library, 207 Cherokee Orchard Road, Gatlinburg, Tennessee 37738;
 GSMNP Headquarters, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738;
 Lawson-McGee Library, 500 West Church Avenue, Knoxville, Tennessee 37915;
 Cameron Village Regional Library, 410–200 Oberlin Road, Raleigh, North Carolina 27605;
 Graham County Public Library, 80 Knight Street, Robbinsville, North Carolina 28771.

FOR FURTHER INFORMATION CONTACT: North Shore Road EIS, Attention: Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738, Telephone: 865/436–1207 or Fax: 865/436–1220.

SUPPLEMENTARY INFORMATION: In July 1943, the DOI, TVA, Swain County, North Carolina, and the State of North Carolina entered into a MOA that dealt with the creation of Fontana Dam and Reservoir and the flooding of lands and roads within Swain County. As part of that agreement, 44,170 acres of land were ultimately transferred to the DOI and made part of the Great Smoky Mountains National Park. The MOA also contained a provision by which the DOI was to construct a road through the Park, along the north shore of the newly formed Fontana Reservoir, to replace the flooded NC Hwy. 288, contingent upon funds being appropriated by Congress.

The FEIS evaluates potential environmental consequences of implementing the action alternatives on the Great Smoky Mountains and the Appalachian National Scenic Trail. Impact topics include the human environment, physical environment, natural and cultural resources, aesthetics and visual resources, visitor use and experience, and Park operations. Direct, indirect, and cumulative impacts along with options to address potential impacts were evaluated and are described for each resource area.

The FEIS is being mailed to appropriate Federal, State and local agencies and organizations which have been involved with the project, have expressed, or are known to have an interest or legal role in this proposal.

After public review of the FEIS, a ROD will be prepared. The ROD is

scheduled for completion by the end of 2007.

The authority for publishing this notice is 42 U.S.C. 4332(2)(C).

The responsible official for this EIS is Art Frederick, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 19, 2007.

Art Frederick,

Acting Regional Director, Southeast Region.

[FR Doc. E7–19429 Filed 10–1–07; 8:45 am]

BILLING CODE 4310–8A–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

Dates and Location: The Council will conduct its annual meeting at the following time and location:

Tuesday, October 30, 2007—Santa Fe, New Mexico—The meeting will be held at the Hotel Santa Fe, 1501 Paseo de Peralta. The meeting will begin at 8 a.m., recess at approximately 1 p.m., and reconvene briefly the following day at 1 p.m.

ADDRESSES: The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: kjacobson@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting

will be provided to Council members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: kjacobson@uc.usbr.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

Public Disclosure

Before including your name, address, telephone 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.

Dated: August 22, 2007.

Shelly Wiser,

Acting Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. E7–18751 Filed 10–1–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0313]

Office of the Associate Attorney General; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Mandatory Case Reporting Form for the Internet Crimes Against Children Task Forces.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 collection of information 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 141, page 40325 on July 24, 2007–29, 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 November 1, 2007. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Currie Gunn, Office of the Associate Attorney General, Department of Justice, 950 Pennsylvania Ave, NW., Washington, DC 20530, or facsimile (202) 514–0238.

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:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Case Reporting Form For the Internet Crimes Against Children Task Forces.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office of the Associate Attorney General, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Internet Crimes Against Children Task Forces receiving over \$20,000 in federal grants. Other: none. The grants to ICACs were authorized to make funds available to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technology to sexually exploit children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 45 respondents will complete the application in approximately 180 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 135 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–19440 Filed 10–1–07; 8:45 am]

BILLING CODE 4410–21–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–NEW]

Criminal Division, Asset Forfeiture and Money Laundering Section; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Annual Certification Report and Equitable Sharing Agreement.

The Department of Justice (DOJ), Criminal Division, Asset Forfeiture and

Money Laundering Section (AFMLS) 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 141, pages 40323–40324 on July 24, 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 November 1, 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 her 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:* Authorization and combination of two currently unapproved collections.

(2) *Title of the Form/Collection:* Annual Certification Report and Equitable Sharing Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. Criminal Division, Asset Forfeiture and Money Laundering Section.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies that participate in the Federal Equitable Sharing Program. Other: None. The form is part of a voluntary program in which law enforcement agencies receive forfeited assets and proceeds to further law enforcement operations. The participating law enforcement agencies must account for their use of program funds on an annual basis and renew their contract of participation. DOJ uses this information to ensure that the funds are spent in accordance with the requirements of the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8,729 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

(7) There are an estimated 43,652 annual total 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: September 24, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19442 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-14-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0019]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Federal Firearms License (FFL) RENEWAL Application.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, pages 40327-40328 on July 24, 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 November 1, 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:* Federal Firearms License (FFL) RENEWAL Application.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form Number: ATF F 8 (5310.11). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households. Abstract: The form is filed by the licensee desiring to renew a Federal firearms license. It is used to identify the applicant, locate the business/collection premises, identify the type of business/collection activity, and determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 35,000 respondents, who will complete the form within approximately 25 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 14,700 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19431 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0018]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application for License Under 18 U.S.C. Chapter 44, Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 141, pages 40326–40327 on July 24, 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 November 1, 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)-395-7285.

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:* Application for License Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 7 (5310.12). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Business or other for-profit. *Other:* Individual or households. *Abstract:* Persons that intend to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application with the required fee with ATF in accordance with the instructions on the form. The information requested on the form establishes eligibility for the license. The duration of the license is for a 3-year period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 13,000 respondents, who will complete the form within approximately 1 hour and 15 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 16,250 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19452 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0015]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application for Tax Exempt Transfer and Registration of Firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, page 40326 on

July 24, 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 November 1, 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:* Application for Tax Exempt Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5 (5320.5). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households and State, Local, or Tribal Government.

Abstract: ATF F 5 (5320.5) is used to apply for permission to transfer a National Firearms Act (NFA) firearm exempt from transfer tax bases on statutory exemptions. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 7,888 respondents, who will complete the form within approximately 4 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 379,896 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19460 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application for Tax Paid Transfer and Registration of Firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, page 40325-40326 on July 24, 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 November 1, 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:* Application for Tax Paid Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4 (5320.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. *Other:* Individuals or households. Abstract: ATF F 4 (5320.4) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. The information on the form is used by NFA Branch personnel to

determine the legality of the application under Federal, State and local law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 11,065 respondents, who will complete the form within approximately 4 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 44,260 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19463 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0027]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: User—Limited Permit (Explosives)

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, page 40328 on July 24, 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 November 1, 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:* User—Limited Permit (Explosives).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. *Other:* none. *Abstract:* The User—Limited Permit is useful to the person making a one-time purchase from out-of-state. It is used one time only and is nonrenewable. The explosives distributor makes entries on the form and returns the form to the permittee to prevent reuse of the permit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,092 respondents, who will complete and retain the form within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 218 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19466 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0045]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Permanent Provisions of the Brady Handgun Violence Prevention Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, pages 40328-40329 on July 24, 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 November 1, 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 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 a currently approved collection.

(2) *Title of the Form/Collection:* Permanent Provisions of the Brady Handgun Violence Prevention Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. *Other:* Individuals or households. *Abstract:* The information collection is submitted to implement the permanent provisions of the Brady Law. These provisions provide for the establishment of a national instant criminal background check system (NICS) which requires that a firearms licensee must contact NICS before transferring any firearm to unlicensed individuals. Section 478.150 provides for an alternative to NICS in certain geographical locations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 106,000 respondents will comply with the provisions of the Brady Handgun Violence Prevention Act.

(6) *An estimate of the total burden (in hours) associated with the collection:* Since 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. Therefore, the total annual burden associated with this information collection is 1 hour.

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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19469 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0055]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Identification of Explosive Materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 71, Number 141, page 40329 on July 24, 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 November 1, 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) 395-7285.

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 a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. *Other:* none. Abstract: The regulations at 27 CFR 555.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,563 respondents who will respond to this information collection. Estimated time for a respondent to respond is none. Because the manufacturers are

required to place markings on explosives, the burden hours are considered usual and customary. 5 CFR 1320.3(b)(2) states, there is no burden when the collection of information is usual and customary.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated annual total burden hours associated with this collection is 1 hour.

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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19471 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0089]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Open Letter to States With Permits That Appear To Qualify as Alternatives to NICS Checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, page 40330 on July 24, 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 November 1, 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) 395-7285.

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:* Open Letter to States With Permits That Appear to Qualify as Alternatives to NICS Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: none. Abstract: The purpose of this information collection is to ensure that only State permits that meet the statutory requirements contained in the Gun Control Act qualify as alternatives to a National Instant Criminal Background Check System (NICS) check.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 21

respondents, who will take 1 hour to prepare a written response to ATF.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 21 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19473 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140-0091]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Customer Satisfaction Surveys.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 141, pages 40330-40331 on July 24, 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 November 1, 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:* Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The Arson and Explosives Programs Division (AEPD) of the Bureau of Alcohol, Tobacco, Firearms and Explosives had program-specific customer satisfaction surveys developed to more effectively capture customer perception/satisfaction of services. AEPD's strategy is based on a commitment to provide the kind of customer service that will better accomplish ATF's mission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 15-minute survey.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 125 total 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: September 26, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7-19475 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on August 27, 2007, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the Phenylacetone to manufacture Amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register

Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 1, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 24, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7-19360 Filed 10-1-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 26, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not a toll-free numbers), e-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this

publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and 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.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Applications to Employ Special Industrial Homeworkers and Workers with Disabilities.

OMB Control Number: 1215-0005.

Form Numbers: WH-2; WH-226; and WH-226A.

Estimated Number of Annual Respondents: 3,050.

Estimated Total Annual Burden Hours: 9,025.

Total Estimated Annual Cost Burden: \$1,342.

Affected Public: Private Sector: Business or other for-profits.

Description: This information is necessary to determine whether respondents will be authorized to pay subminimum wages to handicapped individuals and employ homeworkers in the restricted industries under the provisions of sections 11(d) and 14(c) of the Fair Labor Standards Act.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7-19344 Filed 10-1-07; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR**Office of the Secretary****Senior Executive Service; Appointment of Members to the Performance Review Board**

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board:

Cheryl Atkinson.
Michael Connors.
Patrick Pizzella.

For Further Information Contact: Ms. Andrea Burckman, Director, Office of Executive Resources and Personnel Security, Room C5508, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693-7628.

Signed at Washington, DC, this 21st day of September, 2007.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 07-4853 Filed 10-1-07; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF LABOR**Veterans' Employment Training Service****Proposed Collection; Comment Request; Federal Contractor Veterans' Employment Reports VETS-100 and VETS-100A**

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be 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 can be properly assessed. Currently, the Veterans' Employment and Training Service (VETS) is soliciting comments

concerning the proposed revision of the currently approved information collection request for the "Federal Contractor Veterans' Employment Report VETS-100" to include the "Federal Contractor Veterans' Employment Report VETS-100A." A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 3, 2007.

ADDRESSES: Comments are to be submitted to Robert Wilson, Chief, Division of Investigation and Compliance, VETS, U.S. Department of Labor, Room S-1316, 200 Constitution Avenue, NW., Washington, DC 20210. Electronic transmission is the preferred method for submitting comments. E-mail may be sent to *FCP-PRA-04-VETS@dol.gov*. Include "VETS-100A" in the subject line of the message. Written comments of 10 pages or fewer also may be transmitted by facsimile to (202) 693-4755 (this is not a toll free number). Receipt of submissions, whether by U.S. Mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693-4719 (VOICE) (this is not a toll-free number) or (202) 693-4753 (TTY/TDD).

SUPPLEMENTARY INFORMATION:**I. Background**

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), 38 U.S.C. 4212(d), requires Federal contractors and subcontractors subject to the Act's affirmative action provisions in 38 U.S.C. 4212(a) to track and report annually to the Secretary of Labor the number of employees in their workforces, by job category and hiring location, who belong to the specified categories of covered veterans. VETS has issued regulations set forth in 41 CFR part 61-250 that currently require contractors to use the Federal Contractor Veterans' Employment Report VETS-100 ("VETS-100 Report") form for reporting information on the number of covered veterans in their workforces. The VETS-100 Report is currently approved under OMB No. 1293-0005.

The Jobs for Veterans Act (JVA) (Pub. L. 107-288), which was enacted in 2002, amended VEVRAA by making two changes to the reporting requirements applicable to contracts entered into on or after December 1, 2003. The JVA amendments: (1) Increased from \$25,000

to \$100,000, the dollar amount of the contract that subjects a Federal contractor to the requirement to report on veterans' employment; and (2) changed the categories of covered veterans under VEVRAA, and thus the categories of veterans that contractors are required to track and report on annually.

The JVA amendments to the reporting requirements under VEVRAA apply only to contracts entered into on or after December 1, 2003. Some contractors have Government contracts that were entered into before December 1, 2003, and are still subject to the reporting requirements in 41 CFR part 61-250. Therefore, VETS has determined that it will be necessary to maintain two sets of regulations to implement the reporting requirements under VEVRAA, and use two different forms for providing the required information on the employment of covered veterans.

On August 8, 2006, VETS published a Notice of Proposed Rulemaking (NPRM), (71 FR 44945), to implement the changes made by JVA to the reporting requirements under VEVRAA. The NPRM proposed to adopt a new set of regulations that would be codified in a new 41 CFR part 61-300. The NPRM also proposed to adopt a new form for reporting the information on veterans' employment required by the JVA amendments to VEVRAA and name it the Federal Contractor Veterans' Employment Report VETS-100A. The existing regulations at 41 CFR part 60-250 and the VETS-100 reporting requirements will continue to apply to Government contracts entered into before December 1, 2003.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed revision of the currently approved information collection request to include the "Federal Contractor Veterans' Employment Report VETS-100A." The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and 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 submissions of responses.

III. Current Actions

The Department of Labor seeks approval of the revision of the currently approved information collection request to include the Federal Contractor

Veterans' Employment Report VETS-100A in order to carry out its responsibilities to administer and enforce compliance with the contractor reporting requirements under VEVRAA, as amended by the JVA.

Type of Review: Revision of currently approved collection.

Agency: Veterans' Employment and Training Service.

Title: Federal Contractor Veterans' Report VETS-100.

OMB Number: 1293-0005.

Affected Public: Government contractors and subcontractors with a contract of \$25,000 or more entered into

before December 1, 2003, that are required to comply with the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act.

Title: Federal Contractor Veterans' Report VETS-100A.

OMB Number: 1293-0005.

Affected Public: Government contractors and subcontractors with a contract of \$100,000 or more entered into or modified on or after December 1, 2003, that are required to comply with the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act.

FEDERAL CONTRACTOR VETERANS' VETS-100 AND VETS-100A OMB NUMBER: 1293-0005

Submission from Federal contractors	VETS-100 only	VETS-100A only	Both VETS-100 VETS-100A	Total reporting
Total Respondents	6,000	10,000	4,000	20,000
Total Annual Responses	66,000	110,000	88,000	264,000
Avg. Paper Response (35%)	1 hr	1 hr	45 min .....	.....
Avg. Electronic Response (65%)	30 min	30 min	15 min .....	.....
Burden Hours				
Paper	23,100	38,500	23,100*	84,700
Electronic	21,450	35,750	14,300**	71,500
Total Filing Burden Hours	44,550	74,250	37,400	156,200
One-Time Implementation Burden (VETS-100)		308,000		308,000
Total Filing Burden Cost	\$712,800	\$1,188,000	\$598,400	\$2,499,200
One Time Implementation Burden Cost (VETS-100A).	\$0	\$4,180,000	\$1,672,000	\$5,852,000

Paper both 88,000.35 x 0.75 = 23,100.

**Electronic both: 88,000 x 0.65 x 0.25 = 14,300.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 25, 2007.

John M. McWilliam,

Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. E7-19331 Filed 10-1-07; 8:45 am]

BILLING CODE 4510-79-P

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service; Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: October 2, 2007.

FOR FURTHER INFORMATION CONTACT:

Marion Hines, Human Resources Director, Office of Finance and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Deborah Miron will continue to serve as Chair of the PRB. B. Chad Bungard will serve as a new member. An-Ming "Tommy" Hwang and Gail T. Lovelace, General Services Administration, will continue to serve as members.

Dated: September 25, 2007.

Matthew D. Shannon,

Acting Clerk of the Board.

[FR Doc. E7-19347 Filed 10-1-07; 8:45 am]

BILLING CODE 7401-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 3, 2007.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, Fax

No. (703) 837-2861, E-mail:
mcnamara@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0101.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 723.5—Develop written loan policies—and 723.11—Provide waiver requests.

Description: The general purpose of the requirements imposed by the rule is to ensure that loans are made, documented, and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund. Respondents are federally insured credit unions who make business loans as defined in the regulation.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours per

Response: 4 hours.

Frequency of Response:

Recordkeeping.

Estimated Total Annual Burden

Hours: 6000 hours.

Estimated Total Annual Cost: \$0.

By the National Credit Union Administration Board on September 26, 2007.

Mary Rupp,

Secretary of the Board.

[FR Doc. E7-19388 Filed 10-1-07; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of an open meeting with a closed session.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Institute for Literacy Advisory Board. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: October 23–24, 2007.

Time: October 23 from 8:30 a.m.–5 p.m.; October 24 from 8:30 a.m.–2 p.m.; closed session October 24 from 8:30 a.m.–9:30 a.m.

ADDRESSES: On October 23: Potomac Center Plaza, 550 12th Street, SW., Room 11139 (Auditorium), Washington, DC 20024. The general public is advised to notify Steve Langley no later than October 18, 2007 to attend the first day of the meeting at the U.S. Department of Education. Mr. Langley can be reached at telephone number (202) 233-2043 or by e-mail at slangley@nifl.gov. All attendees must have valid photo identification.

ADDRESSES: On October 24: 1775 I St., NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Steve Langley, Staff Assistant, the National Institute for Literacy; 1775 I St., NW., Suite 730; phone: (202) 233-2043; fax: (202) 233-2050; e-mail: slangley@nifl.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The National Institute for Literacy Advisory Board is authorized by section 242 of the Workforce Investment Act of 1998, Public Law 105-220 (20 U.S.C. 9252). The Board consists of 10 individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group that administers the Institute. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services. The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions:

(a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The purpose of this meeting is to discuss the Institute's future and current program priorities; status of ongoing Institute work; other relevant literacy activities and issues; and other Board business as necessary.

On October 24, 2007 from 8:30 a.m. to 9:30 a.m., the Board meeting will meet in closed session to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute, including consideration of

the Director's term of appointment and performance. The discussion is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Steve Langley at (202) 233-2043 no later than October 12, 2007. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Request for Public Written Comment:

The public may send written comments to the Advisory Board no later than 5 p.m. on October 15, 2007, to Steve Langley at the National Institute for Literacy, 1775 I St., NW., Suite 730, Washington, DC 20006, e-mail: slangley@nifl.gov.

Records are kept of all Committee proceedings and are available for public inspection at the National Institute for Literacy, 1775 I St., NW., Suite 730, Washington, DC 20006, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document:

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/federegister>.

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: September 26, 2007.

Sandra Baxter,

Director, The National Institute for Literacy.

[FR Doc. E7-19380 Filed 10-1-07; 8:45 am]

BILLING CODE 6055-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: October 19, 2007, 7:30 a.m.–3:30 p.m.

Place: The National Science Foundation, 4201 Wilson Blvd., room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Maggie Whiteman, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292-8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To discuss strategic priorities in computing. To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of research, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: September 26, 2007

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7-19355 Filed 10-1-07; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 7, 2007; 8:30 a.m. to 5 p.m., November 8, 2007; 8:30 a.m. to 12 p.m.

Place: National Science Foundation Headquarters, Conference Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292-5331.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice with respect to the Foundation's education and human resources programming.

Agenda

Wednesday, November 7, 2007

Assistant Director's Remarks

Issue Discussion: Broadening Participation to Improve Workforce. Development

Issue Discussion: Enriching the Education of STEM Teachers

Issue Discussion: Furthering Public Understanding of Science and Advancing STEM Literacy

Thursday, November 8, 2007

Issue Discussion: Promoting Learning Through Research and Evaluation

Issue Discussion: Promoting Cyber-Enabled Learning Strategies to Enhance STEM Education

Review and Acceptance of Committee of Visitor Reports

Future Issues for Consideration

Dated: September 26, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7-19356 Filed 10-1-07; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science and Engineering

Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following Meeting:

Name: Advisory Committee for International Science and Engineering (25104).

Date and Time: October 29, 2007; 8 a.m. to 6 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, Virginia.

Type of Meeting: Open.

For Further Information Contact: Eduardo Feller, National Science Foundation, 4201 Wilson Boulevard, Room 935, Arlington, VA 22230, (703) 292-8710.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so that your name may be added to the building access list.

Purpose of Meeting: To provide advice on the programs and plans of the Office of International Science and Engineering (OISE).

Agenda: Update on OISE Activities, Reflections on the OISE Role in NSF, OISE

Collaboration with the NSF Education and Human Resources Directorate, Impact of Proposal and Award Management Mechanisms Report, NSF Broadening Participation Working Group, International Cooperation with Developing Countries, Partnerships for International Research and Education, Cooperation with the Department of State.

Dated: September 26, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7-19357 Filed 10-1-07; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of October 1, 8, 15, 22, 29, November 5, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of October 1, 2007

Wednesday, October 3, 2007

2 p.m.

Briefing on NRC's International Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301-415-0202).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Friday, October 5, 2007

10 a.m.

Affirmation Session (Public Meeting) (Tentative)

a. PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2) Extended Power Uprate—Eric Joseph Epstein's Appeal of LBP-07-10 (Tentative).

Week of October 8, 2007—Tentative

There are no meetings scheduled for the week of October 8, 2007.

Week of October 15, 2007—Tentative

There are no meetings scheduled for the week of October 15, 2007.

Week of October 22, 2007—Tentative

Wednesday, October 24, 2007

9:30 a.m.

Periodic Briefing on New Reactor Issues, Part 1 (Public Meeting) (Contact: Roger Rihm, 301-415-7807).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>. 1:30 p.m.

Periodic Briefing on New Reactor Issues, Part 2 (Public Meeting) (Contact: Roger Rihm, 301-415-7807).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of October 29, 2007—Tentative

There are no meetings scheduled for the week of October 29, 2007.

Week of November 5, 2007—Tentative

There are no meetings scheduled for the week of November 5, 2007.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

Additional Information

The “Periodic Briefing on Security Issues (Closed-Ex. 1 & 3)” previously scheduled on Monday, October 1, 2007 at 1:30 p.m. has been cancelled.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC’s Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at REB3@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: September 27, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07-4881 Filed 9-28-07; 11:01 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review—Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency’s burden estimate, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420-0011, under review is summarized below.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336-8563.

Summary Form Under Review

Type of Requests: Revised form.

Title: Application for Political Risk Insurance.

Form Number: OPIC-52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 9 hours per project.

Number of Responses: 100 per year.

Federal Cost: \$24,300.00

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor’s and the project’s eligibility for political risk insurance, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for insurance underwriting analysis.

Dated: September 23, 2007.

John Crowley III,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 07-4870 Filed 10-1-07; 8:45 am]

BILLING CODE 3920-11-M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213

Extension: Regulation C; OMB Control No. 3235-0074; SEC File No. 270-68.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Regulation C (17 CFR 230.400 through 230.498) provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*). The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: September 26, 2007.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-19408 Filed 10-1-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27982; 812-13396]

Claymore Exchange-Traded Fund Trust, et al.; Notice of Application

September 26, 2007.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Summary of Application: Applicants request an order to amend a prior order that permits: (a) Open-end management investment companies, whose series are based on certain equity securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; (c) dealers to sell shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares; (e) under certain circumstances, certain series to pay redemption proceeds more than seven days after the tender of shares; and (f) certain registered management investment companies and unit investment trusts outside of the

same group of investment companies as the series to acquire shares of the series (the "Prior Order").¹ Applicants seek to amend the Prior Order in order to offer additional series based on certain fixed income securities indices (the "New Funds"). In addition, the order would delete a condition related to future relief in the Prior Order.

Applicants: Claymore Advisors, LLC ("Adviser"), Claymore Securities, Inc. ("Distributor"), Claymore Exchange-Traded Fund Trust and Claymore Exchange-Traded Fund Trust 2 (each, a "Trust" and together, the "Trusts").

Filing Dates: The application was filed on May 30, 2007, and amended on August 9, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the 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 October 22, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, 2455 Corporate West Drive, Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Mary Kay Frech, Branch Chief, 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 Branch, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

Applicants' Representations

1. Each Trust is an open-end management investment company

registered under the Act and organized as a Delaware statutory trust. The Trusts are organized as series funds with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"), will serve as investment adviser to the New Funds. The Adviser may retain sub-advisers ("Sub-Advisers") to manage the assets of a New Fund. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter of the New Funds' shares.

2. Each Trust is currently permitted to offer series based on equity securities indices (the "Equity Funds," and together with the New Funds and the Future Funds (defined below), the "Funds") in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trusts to offer the New Funds that, except as described in the application, would operate in a manner identical to the existing Equity Funds that are subject to the Prior Order.

3. Each New Fund will invest in fixed-income securities ("Portfolio Securities") selected to correspond generally to the price and yield performance, before fees and expenses, of a specified securities index (an "Index").² No entity that creates, compiles, sponsors, or maintains an Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trusts, the Adviser, the Distributor or any Sub-Adviser, or promoter to a New Fund.

4. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the relevant Index. The Adviser may fully replicate a New Fund's relevant Index or use a representative sampling strategy where the New Fund will seek to hold a representative sample of the component securities of the Index. Applicants currently expect that each New Fund will use a sampling technique to track its Index.

5. Under the Prior Order, applicants stated that each Equity Fund would invest at least 90% of its total assets in common stocks that comprise the relevant Index, and may invest up to 10% of its total assets in securities, options and futures not included in its

¹ Claymore Exchange-Traded Fund Trust, et al., Investment Company Act Release Nos. 27469 (Aug. 28, 2006) (notice) and 27483 (Sept. 18, 2006) (order).

² The Indexes for the New Funds are: CPMKTS—The Capital Markets Index, CPMKTB—The Capital Markets Bond Index, and CPMKTL—The Capital Markets Liquidity Index.

Index which the Adviser believes would help the Equity Fund track the Index. Applicants seek to amend the Prior Order to provide that each Fund generally will invest at least 80% or 90% of its total assets in the securities that comprise the relevant Index, but at times may invest up to 20% of its total assets in certain futures, options, and swap contracts, cash and cash equivalents, including money market funds, as well as securities not included in its Index which the Adviser believes will help the Fund track its Index. At all times, a Fund will hold, in the aggregate, at least 80% of its total assets in component securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the component securities of its Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Index of less than 5 percent.

6. Applicants state that a New Fund will comply with the federal securities laws in accepting a deposit of a portfolio of securities designated by the Adviser to correspond generally to the price and yield of the New Fund's Index ("Deposit Securities")³ and satisfying redemptions with portfolio securities of the New Fund ("Fund Securities"), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.⁴ The specified Deposit Securities and Fund Securities generally will correspond pro rata, to the extent practicable, to the Portfolio Securities of a New Fund.

7. Applicants state that the New Funds will operate in a manner identical to the operation of the existing Equity Funds in the Prior Order, except

as specifically noted by applicants (and summarized in this notice), and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Future Relief

8. Applicants also seek to amend the Prior Order to modify the terms under which the Trusts may offer additional series in the future based on other securities indices ("Future Funds"). The Prior Order is currently subject to a condition that does not permit applicants to register the shares of any Future Fund by means of filing a post-effective amendment to a Trust's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or if the Future Fund could be listed on a national securities exchange ("Exchange") without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

9. The order would amend the Prior Order to delete this condition. Any Future Funds will: (a) Be advised by the Adviser or an entity controlled by or under common control with the Adviser; (b) track Indexes that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trusts or any Sub-Adviser or promoter of a Future Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

10. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing series of the Trusts and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is

not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Condition

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-19385 Filed 10-1-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 1, 2007:

An Open Meeting will be held on Monday, October 1, 2007 at 10 a.m., in the Auditorium, Room L-002 and a Closed Meeting will be held on Wednesday, October 3, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Open Meeting, scheduled for Monday, October 1, 2007 will be:

The Commission will hear oral argument in an appeal by Stephen J. Horning from the decision of an administrative law judge. Horning was the president, registered financial and operations principal, compliance officer, and a director of Rocky Mountain Securities & Investments, Inc., formerly a registered broker-dealer.

The law judge found that:

Horning failed reasonably to supervise two former Rocky Mountain employees with a

³ Applicants state that a cash-in-lieu amount will replace any "to-be-announced" ("TBA") transaction that is listed as a Deposit Security or Fund Security of any New Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or Fund Security.

⁴ In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the New Fund will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The prospectus for a New Fund will also state that an authorized participant that is not a "Qualified Institutional Buyer," as defined in rule 144A under the Securities Act, will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

view to preventing their violations of Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; and

Horning was a cause of Rocky Mountain's inaccurate books and records and its filing of materially false reports in violation of Exchange Act Sections 15(c)(3), 17(a), and 17(e) and Exchange Act Rules 15c3-1, 15c3-3, 17a-3, 17a-5(a), 17a-5(c), 17a-5(d), 17a-11, and 17a-13.

The law judge barred Horning from association with any broker or dealer in a supervisory capacity and suspended him from association with any broker or dealer in any capacity for twelve months.

Among the issues likely to be argued are

1. Whether Horning failed reasonably to supervise; or
2. Whether Horning was the cause of the alleged financial, books, and recordkeeping violations; and
3. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, October 3, 2007 will be:

Formal order of investigation;
Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; and
Other matters related to enforcement actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: September 26, 2007.

Nancy M. Morris,
Secretary.

[FR Doc. E7-19384 Filed 10-1-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-56534; IA-2658; File No. S7-24-07]

Public Alert: Unregistered Soliciting Entities ("Pause") Program

AGENCY: Securities and Exchange Commission.

ACTION: Notice; request for comment.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is announcing a new program that will post on its Web site certain factual

information about unregistered entities that are engaged in the solicitation of securities transactions.

DATES: Comments should be submitted on or before November 1, 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/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-24-07 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 S7-24-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>); Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Reed Stark, Chief of the Office of Internet Enforcement and Counselor to the Director, at (202) 551-4540, Jack Hardy, Branch Chief, Office of Investor Education and Advocacy, at (202) 551-6500, Alberto Arevalo, Acting Assistant Director, Office of International Affairs, at (202) 551-6690, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION: The Commission today is announcing a new program for informing the public about unregistered entities engaged in solicitations of securities transactions. Through this new program, "Public Alert: Unregistered Soliciting Entities" ("PAUSE"), the Commission will publish on its Web site certain factual information about unregistered soliciting entities that have been the subject of complaints forwarded by investors and others, including fellow

securities regulators. By making this information readily available, the Commission expects investors to be better able to evaluate solicitations to buy and sell securities. Before the program and Web site become operational December 3, 2007 the Commission is interested in receiving comments and suggestions on the PAUSE program.

1. Background

Generally, entities that solicit purchases or sales of securities for the accounts of other persons in the United States are required to register with the SEC. The Commission regularly receives complaints and inquiries from investors and others, including foreign securities regulators, about solicitations made by entities claiming to be registered, licensed and/or operating in the United States, and in some cases, entities soliciting U.S. investors that are not registered in the United States. When an entity claims to be registered with the SEC, it is in effect claiming that it has made itself available for SEC regulation and oversight. For this reason, it is important for prospective investors to consider whether a soliciting entity is, in fact, registered with the SEC.

The Commission's Office of Investor Education and Advocacy ("OIEA") fields investor complaints and inquiries. The single largest number of investor complaints received by OIEA concern solicitations of investors by unregistered entities that appear to be involved in boiler room and secondary advance fee schemes.¹ In 2005 and 2006, OIEA

¹ Boiler room operations use high-pressure sales tactics generally over the telephone and solicit investors with false and/or misleading information. They frequently purport to be registered broker dealers and/or operating in the United States and offer "opportunities" to invest in securities, often issued by companies organized in the United States. The schemes are disbanded and the wrongdoers disappear after investors wire their money, which is then transferred to offshore accounts. Secondary "advance fee" schemes work very similarly to boiler room operations, the difference being that an advance fee scheme generally targets investors who purchased underperforming securities, perhaps through an affiliated boiler room, offering to arrange a lucrative sale of those securities, but first requiring the payment of an "advance fee" in the form of a commission, regulatory fee or tax, or some other incidental expense. The advance fees are paid, but the promised sale of the securities is never arranged.

For more information about boiler rooms and advance fee schemes, please see the following discussions on our Web site:

- The Fleecing of Foreign Investors: Avoid Getting Burned by "Hot" U.S. Stocks (<http://www.sec.gov/investor/pubs/fleecing.htm>)
- Worthless Stock: How to Avoid Doubling Your Losses (<http://www.sec.gov/investor/pubs/worthless.htm>)
- Protect Your Money: Check Out Brokers and Investment Advisers (<http://www.sec.gov/investor/brokers.htm>)

received respectively 1,385 and 1,418 complaints from investors who were solicited by unregistered entities, many of which purported to be U.S.-based securities firms trading in securities of U.S.-based issuers.

Moreover, perpetrators of boiler rooms and advance fee schemes increasingly use new devices to convince investors that their solicitations are legitimate, including:

- Impersonating U.S. registered securities firms by, for example, using the same or a similar name or providing an address that closely resembles that of a U.S. registered securities firm;
- Making false reference to, including false claims of endorsement by, governmental agencies and international organizations (sometimes even impersonating them); and
- Claiming endorsements by, or making other reference to, governmental agencies and international organizations that sound official, but do not exist.²

Our staff is frequently able to determine quickly the accuracy of various claims made by the soliciting entities. For example, a claim by an entity that it is a U.S. registered broker-dealer is easily verifiable by checking public sources, including the Central Registration Depository database administered by the Financial Industry Regulatory Authority, Inc. (formerly, the NASD).³ Entities that use names that are the same as, or similar to, the names of U.S. registered securities firms can also be verified by checking public sources and obtaining information from officials at the firms. In this way, our staff can also determine whether the complained-of entity has any actual affiliation with the registered firm. A claim that an entity operates from a particular location in the United States can also be established. Finally, if a soliciting entity claims that the securities it offers are approved or endorsed by a particular governmental agency, that claim can usually also be quickly confirmed.

In appropriate cases, our staff's review may lead to a referral to the Division of Enforcement, which may begin an investigation of possible securities law violations, and the Commission may ultimately bring an enforcement action for such violations. However, in a significant number of cases there may be

obstacles to effective enforcement action. Soliciting entities change names frequently, often before law enforcement action can be taken. Often the subjects of complaints purport to be based in the United States, but in fact operate from numerous jurisdictions overseas. Notwithstanding cooperation with foreign counterparts, investigations of offshore operations can be complex and time-consuming. Even if the Division of Enforcement's investigation determines that the entities involved in such activities have sufficient contacts with the United States to grant the Commission and U.S. courts with jurisdiction over their conduct, there can be substantial obstacles to completing legal action against these foreign operators and obtaining meaningful relief, while in the meantime investors can suffer significant harm.

2. The PAUSE Program

In light of the challenges associated with taking enforcement action against such operations, the Commission believes that it is useful to devise a complementary approach that serves to empower prospective investors. The goal of the PAUSE Program is to provide prospective investors with relevant information about unregistered soliciting entities before they invest.

To implement the PAUSE Program, the Commission will post on its public Web site specific information about unregistered soliciting entities that have been the subject of complaints. For each of these entities, the Commission's staff will have determined either (1) That there is no U.S. registered securities firm with that name, or (2) that there is a U.S. registered securities firm with the same (or a similar) name but that solicitations appear to have been made by persons not affiliated with the U.S. registered securities firm.

In addition, the PAUSE list will contain a "Comments" section for each entry. The Comments section will reflect certain results of the staff's investigation addressing the entity's U.S. registration status; any use of a name that is the same or similar to that of a U.S. registered securities firm; and any references to governmental agencies and international organizations in the solicitations. The **COMMENTS** section may include other relevant information that may be helpful to investors, such as the use of addresses that do not appear to exist.

A second PAUSE list will name fictitious governmental agencies and international organizations referred to by complained-of entities.

3. Additional Information

The Commission's intent is to publish factual information that may be valuable to investors in connection with their investment decisions.⁴ A listing on the PAUSE web page does not mean that the Commission has found violations of U.S. federal securities laws or made a judgment about the merits of any securities offered by listed entities. As well, the PAUSE web page will not necessarily include information about all unregistered entities or entities that have been the subject of complaints. There may be various reasons, including law enforcement and policy, which may militate against including information about an entity on the PAUSE web page. The Commission intends to regularly update the PAUSE lists and archive information approximately nine months from the date of last observed activity.

4. Corrections

The Commission is committed to providing accurate information under the PAUSE Program. Before listing an entity on PAUSE, the Commission's staff will notify the entity and provide an opportunity—two calendar days from the date of the staff's notification letter—for the entity to respond. If, after being listed on PAUSE, an entity believes it should be removed from a list because information included about it is incorrect, or for other reasons, it should notify the Commission's staff and provide such documents and other information as reasonably necessary to support its assertion.

To notify the Commission of a factual error or to request removal from a list, please write to the following address: U.S. Securities and Exchange Commission, Attn: PAUSE Program Administrator, 100 F Street, NE., Washington, DC 20549-5631, *enf-pauseresponse@sec.gov*, Fax: 202-772-9278.

Submissions will be reviewed for appropriate action by Commission staff.

* * * * *

Dated: September 26, 2007.

By the Commission.

Nancy M. Morris,
Secretary.

[FR Doc. E7-19343 Filed 10-1-07; 8:45 am]

BILLING CODE 8011-01-P

² In one case, a soliciting entity impersonated the International Organization of Securities Commissions ("IOSCO"). The Securities Investor Protection Corporation ("SIPC") has also been impersonated by virtue of a "look alike" Web site and responded by posting an alert identifying the fictitious organization, the "International Brokerage Association."

³ <http://www.nasd.com/InvestorInformation/InvestorProtection/ChecktheBackgroundofYourInvestmentProfessional/index.htm>

⁴ See, e.g., Securities Exchange Act § section 21(a). Cf. *Kukatash Mining Corp. v. Securities and Exchange Commission*, 309 F.2d 647 (D.C. Cir. 1962); and Freedom of Information Act, 5 U.S.C. 552.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56530; File No. SR-Amex-2007-102]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Requirements for Listing Commodity-Linked Securities and Currency-Linked Securities

September 25, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 107E and 107F of the Amex *Company Guide* (the "Company Guide") relating to the listing requirements for commodity-linked securities ("Commodity-Linked Securities") and currency-linked securities ("Currency-Linked Securities"). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and <http://www.amex.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend sections 107E and 107F of the Company Guide to permit the listing of Commodity-Linked Securities and Currency-Linked Securities, respectively, where the pricing information for up to 10% of the dollar weight of the Commodity Reference Asset,³ in the case of Commodity-Linked Securities, or the Currency Reference Asset,⁴ in the case of Currency-Linked Securities, is derived from markets that do meet the general requirements as set forth in sections 107E(g)(1)(ii) and 107F(g)(1)(ii), respectively.⁵ The Exchange further proposes that no single component subject to the foregoing proposed exception may exceed 7% of the dollar weight of the Commodity or Currency Reference Asset, as the case may be.

Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of the Commodity Reference Asset. Such securities may or may not provide for the repayment of the original principal investment amount. Under section 107E of the Company Guide, an issuance of Commodity-Linked Securities cannot be listed unless either:

- The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act⁶ and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of a Commodity Reference

³ Commodity Reference Asset is defined as one or more commodities, commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Rule 1200A of the Company Guide) or a basket or index of any of the foregoing. See Section 107E of the Company Guide.

⁴ Currency Reference Asset is defined as one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in Rule 1200B of the Company Guide) or a basket or index of any of the foregoing. See Section 107F of the Company Guide.

⁵ E-mail from Candice Fordin, Assistant General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated September 20, 2007 (clarifying the proposed amendments to the generic listing standards for Commodity-Linked and Currency-Linked Securities).

⁶ 15 U.S.C. 78s(b)(2).

Asset must be derived from a market which is a self-regulatory organization ("SRO") member or affiliate member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has a comprehensive surveillance sharing agreement ("CSSA"); notwithstanding the foregoing, the pricing information for gold and silver bullion may be derived from the London Bullion Market Association.

The Exchange proposes to amend the listing requirements relating to the source of pricing information for components of Commodity-Linked Securities. Specifically, the proposal seeks to permit the listing of such securities where a maximum of 10% of the dollar weight of the Commodity Reference Asset is comprised of components from markets that are not SRO members or affiliate members of ISG or with which the Exchange does not have a CSSA. In addition, no component subject to this exception may exceed 7% of the dollar weight of the Commodity Reference Asset.⁷

Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of the Currency Reference Asset. Such securities may or may not provide for the repayment of the original principal investment amount. Under Section 107F of the Company Guide, an issuance of Currency-Linked Securities cannot be listed unless either:

- The Currency Reference Asset to which the security is linked shall have previously reviewed and approved for the trading of Currency Trust Shares or options or other derivatives by the Commission under section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- The pricing information for each component of a Currency Reference Asset must be: (1) The generally accepted spot price for the currency exchange rate in question or (2) derived from a market (a) which is either an ISG SRO member or affiliate member or with which the Exchange has a CSSA and (b) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

The Exchange proposes to amend the listing requirements relating to the source of pricing information for components of Currency-Linked Securities. Specifically, the proposal seeks to permit the listing of such

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ See *supra* note 5.

securities where a maximum of 10% of the dollar weight of the Currency Reference Asset is comprised of components (1) For which there is no generally accepted spot price, (2) the pricing of which is derived from markets that are not SRO members or affiliate members of ISG or for which the Exchange does not have a CSSA, and (3) the pricing source of which has not previously been approved by the Commission.⁸ In addition, no component subject to this exception may exceed 7% of the dollar weight of the Currency Reference Asset.

The Exchange states that many commodity and currency markets and exchanges are not SRO members or affiliates of ISG. In addition, the Exchange frequently experiences difficulty entering into CSSAs with such commodity and currency markets outside the United States. The Exchange believes, consistent with this proposal, that its surveillance procedures would not be materially hampered as long as it has access to trading information with respect to at least 90% of the dollar weight of the components comprising the Commodity Reference Asset or Currency Reference Asset, as the case may be. With respect to Commodity-Linked Securities, the pricing information for at least 90% of the dollar weight of the Commodity Reference Asset must be derived from ISG member markets or markets with which the Exchange has a CSSA. With respect to Currency-Linked Securities, the Exchange believes that the fact that up to 10% of the dollar weight of the Currency Reference Asset may be comprised of components (1) The pricing information for which is not the generally accepted spot price, (2) the pricing information for which is not derived from a SRO ISG member or affiliate or a market that is a party to a CSSA with the Exchange, or (3) the pricing source of which has not been previously approved by the Commission, should not constitute a material risk to investors.

The Exchange notes that the Commission has previously approved similar approaches to this proposal.⁹

⁸ See *id.*

⁹ See Section 107D(g)(vi) of the Company Guide (permitting the inclusion of foreign country securities or American Depositary Receipts or "ADRs," provided that such foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of ISG or are not parties to CSSAs with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the underlying index. See also Commentary .06(b) to Amex Rule 915 (providing for exceptions to certain eligibility requirements for options trading where

The Exchange states that the proposed amendment would provide Amex with greater flexibility to list Commodity-Linked and Currency-Linked Securities under Sections 107E and 107F of the Company Guide, respectively, and provide issuers with a faster and less cumbersome means of listing such securities, to the benefit of the investing public.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁰ in general, and section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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.

the underlying component securities of an index or portfolio are traded on foreign markets); Commentary .02(a)(10) to Amex Rule 901C (allowing the Exchange to trade options on a broad stock index group comprised of non-U.S. component securities as long as the non-U.S. component securities that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index); and Commentary .03(a)(5) to Amex Rule 901C (permitting the listing of options on stock industry index groups comprised of foreign country securities or ADRs thereon, so long as such foreign country securities of ADRs that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-102 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-2007-102. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-102 and should be submitted on or before October 23, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,¹³ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the Exchange's surveillance procedures would not be materially hampered as long as the Exchange has access to trading and pricing information of the underlying components that constitute at least 90% of the dollar weight of the Commodity Reference Asset or Currency Reference Asset, as the case may be. In addition, the Commission believes that so long as the pricing information for at least 90% of the dollar weight of the Commodity Reference Asset or Currency Reference Asset, as the case may be, is based on the general pricing information requirements, the proposed amendment to the Exchange's generic listing standards should not constitute a material risk to investors, while potentially benefiting investors by providing the Exchange flexibility to list a broader array of products.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved similar approaches to the instant proposal, where an underlying equity index may include foreign country securities or foreign country securities underlying American Depositary Receipts having their primary trading market outside the United States on foreign trading markets that are not members or affiliates of ISG or parties to CSSAs with the Exchange, as long as such securities do not, in the aggregate, represent more than 20% of the dollar weight of such underlying index.¹⁴ The Commission further notes that it has approved a substantively identical proposed rule change for another

national securities exchange.¹⁵ The Commission believes that accelerated approval of the proposed rule change should expedite the listing and trading of additional Commodity-Linked Securities and Currency-Linked Securities, subject to the standards discussed herein, to the benefit of the investing public. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁶ to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-2007-102) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris,
Secretary.

[FR Doc. E7-19361 Filed 10-1-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56525; File No. SR-NYSE-2007-76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change Relating to Requirements for the Listing and Trading of Commodity-Linked Securities and Currency-Linked Securities

September 25, 2007.

I. Introduction

On August 22, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the generic listing standards for commodity-linked securities ("Commodity-Linked Securities") and currency-linked securities ("Currency-

Linked Securities") under section 703.22 of the NYSE Listed Company Manual ("Manual"). The proposed rule change was published for comment in the **Federal Register** on September 6, 2007 for a 15-day comment period.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposed to amend section 703.22(B)(II)(1)(b) and section 703.22(B)(III)(1)(b) of the Manual to permit the listing and trading of Commodity-Linked Securities and Currency-Linked Securities, respectively, where the underlying Commodity Reference Asset⁴ or Currency Reference Asset,⁵ as the case may be, may include components representing not more than 10% of the dollar weight of such Commodity Reference Asset or Currency Reference Asset, for which the pricing information is derived from markets which do not meet the general requirements of the respective rule, as described below. In addition, the Exchange proposed that no single component of a Commodity Reference Asset or Currency Reference Asset, as the case may be, subject to the foregoing proposed exception may exceed 7% of the dollar weight of such Commodity Reference Asset or Currency Reference Asset, as applicable.

Under section 703.22(B)(II)(1) of the Manual, an issuance of Commodity-Linked Securities currently cannot be listed unless either:

- The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity Trust Shares or options or other derivatives by the Commission under Section 19(b)(2)⁶ of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements ("CSSAs"), continue to be satisfied; or
- The pricing information for each component of a Commodity Reference Asset is derived from a market which is

³ See Securities Exchange Act Release No. 56332 (August 29, 2007), 72 FR 51285 ("Notice").

⁴ Commodity Reference Asset is defined as one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity Trust Shares (as defined in NYSE Rule 1300B) or a basket or index of any of the foregoing. See Section 703.22 of the Manual.

⁵ Currency Reference Asset is defined as one or more currencies, options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Rule 1300A) or a basket or index of any of the foregoing. See *id.*

⁶ 15 U.S.C. 78s(b)(2).

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 8.

¹⁵ See Securities Exchange Act Release No. 56525 (September 25, 2007) (SR-NYSE-2007-76) (approving the same amendments to the New York Stock Exchange LLC's generic listing standards for Commodity-Linked and Currency-Linked Securities).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

an Intermarket Surveillance Group ("ISG") member or affiliate or with which the Exchange has a CSSA. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association.

Similarly, under section 703.22(B)(II)(1) of the Manual, an issuance of Currency-Linked Securities currently cannot be listed unless either:

- The Currency Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Currency Trust Shares or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to CSSAs, continue to be satisfied; or
- The pricing information for each component of a Currency Reference Asset must be (1) The generally accepted spot price for the currency exchange rate in question or (2) derived from a market which is (a) An ISG member or affiliate or with which the Exchange has a CSSA and (b) the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

The Exchange proposed to amend the requirements as to the source of pricing information for components of Commodity-Linked Securities and Currency-Linked Securities so as to permit the listing of such securities where a maximum of 10% of the dollar weight of the Commodity Reference Asset or Currency Reference Asset, as the case may be, is made up of components that do not meet the respective general pricing information requirements. In addition, the Exchange proposed that no single component subject to the proposed exception may exceed 7% of the dollar weight of the Commodity Reference Asset or Commodity Reference Asset, as the case may be.

The Exchange stated that many commodity and currency markets are not members or affiliates of ISG, and the Exchange frequently experiences difficulty entering into CSSAs with such markets. The Exchange noted that the proposed amendment would provide the Exchange with greater flexibility to list securities under section 703.22 of the Manual that are linked to a broader range of underlying assets, such as commodities and currencies, thereby providing issuers with a faster and less cumbersome means of listing new Commodity-Linked Securities and

Currency-Linked Securities and benefiting the investing public.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the Exchange's surveillance procedures would not be materially hampered as long as the Exchange has access to trading and pricing information of the underlying components that constitute at least 90% of the dollar weight of the Commodity Reference Asset or Currency Reference Asset, as the case may be. In addition, the Commission believes that so long as the pricing information for at least 90% of the dollar weight of the Commodity Reference Asset or Currency Reference Asset, as the case may be, is based on the general pricing information requirements, the proposed amendment to the Exchange's generic listing standards should not constitute a material risk to investors, while potentially benefiting investors by providing the Exchange flexibility to list a broader array of products.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved similar approaches to the instant proposal, including another provision in section 703.22 of the Manual permitting the listing of Equity Index-Linked Securities,⁹ where the underlying equity

index may include foreign country securities or foreign country securities underlying American Depositary Receipts having their primary trading market outside the United States on foreign trading markets that are not members or affiliates of ISG or parties to CSSAs with the Exchange, as long as such securities do not, in the aggregate, represent more than 20% of the dollar weight of such underlying index.¹⁰ The Commission believes that accelerated approval of the proposed rule change should expedite the listing and trading of additional Commodity-Linked Securities and Currency-Linked Securities, subject to the standards discussed herein, to the benefit of the investing public. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹¹ to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2007-76) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris,
Secretary.

[FR Doc. E7-19362 Filed 10-1-07; 8:45 am]

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underlying index or indexes of equity securities. See Section 703.22 of the Manual.

¹⁰ See Section 703.22(B)(I)(2)(vii) of the Manual. See also Securities Exchange Act Release Nos. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving the generic listing and trading standards for Index-Linked Securities, including Equity Index-Linked Securities); and 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR-NYSE-2006-17) (approving the listing and trading of shares of the iShares GSCI Commodity Indexed Trust and providing that, if a new component is added to the underlying index that constitutes more than 10% of the overall weight of the index and with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement, the Exchange would seek to delist such shares).

¹¹ 15 U.S.C. 78s(b)(2).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Equity Index-Linked Securities are defined as securities that provide for the payment at maturity of a cash amount based on the performance of an

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56535; File No. SR-Phlx-2007-59]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a System Change to the Phlx's Electronic Options Trading Platform, Phlx XL

September 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 10, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Phlx. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(5) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to add a new feature to the Exchange's electronic options trading platform, Phlx XL,⁵ that will automatically purge quotations submitted by specialists, Streaming Quote Traders ("SQTs"),⁶ and Remote Streaming Quote Traders ("RSQTs")⁷ with a bid price of \$0.00 and an offering price of \$99,999.00.

The proposed rule change is available at the Phlx, in the Commission's Public Reference Room, and on the Phlx's Web site at <http://www.phlx.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

⁵ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (order approving File No. SR-Phlx-2003-59).

⁶ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange-approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Phlx Rule 1014(b)(ii)(A).

⁷ An RSQT is a participant in Phlx XL who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which the RSQT has been assigned.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to help Exchange members manage risk by adding a new mechanism to the Phlx XL system to purge certain electronic quotations.

Members quoting and trading on Phlx XL currently have the ability to purge electronic quotations in specific options series under certain circumstances by sending the appropriate electronic message to Phlx XL.

It has recently come to the Exchange's attention, however, that certain members do not have the ability to send a formatted "purge" message. Instead, such members that wish to remove their electronic quotations in a series submit an artificially wide quotation of \$0.00 bid, \$99,999.00 offered with the expectation that the Exchange will purge their quotation for the series. Currently, the Exchange does not purge such quotations. The Phlx believes that this could result in trading errors of great magnitude, necessitating nullification of such trades based on the Phlx's obvious error rule.⁸ The Phlx believes that member organizations could be inconvenienced during the time period needed to investigate and correct the error, and could miss trading opportunities while their accounts are corrected.

To address this issue, the Exchange has built a feature of the Phlx XL system that will purge any electronic quotation received with a bid price of \$0.00 and an offering price of \$99,999.00. The Exchange believes that this will eliminate the substantial risk borne by the Exchange and its members in handling such quotations.

⁸ See Phlx Rule 1092.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by enabling members to better manage risk through the automated quote purge feature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(5) of Rule 19b-4 thereunder.¹² Because the Phlx has designated the foregoing proposed rule change as one that effects a change in an existing order entry or trading system that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) have the effect of limiting access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(5) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(5).

¹³ See 15 U.S.C. 78s(b)(3)(C).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-59 and should be submitted on or before October 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-19398 Filed 10-1-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56526; File No. SR-Phlx-2007-67]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to XLE Fees

September 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "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 the Exchange. On September 20, 2007, Phlx filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend the Exchange's current XLE⁵ Fee Schedule to: (1) Adopt definitions for Net Makers of liquidity ("Net Makers") and Net Takers of liquidity ("Net Taker") on XLE; (2) update the current volume tier structure by reducing the volume breakpoints to create two new volume

pricing tiers; (3) amend the amount of the credits or rebates to Net Makers and the fees for Net Takers; and (4) make two other minor changes to update the XLE Fee Schedule.

The proposed fees will be assessed on Exchange members or member organizations, which may include Sponsoring Member Organizations⁶ (collectively "member organizations").

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and www.phlx.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In an effort to enhance liquidity on XLE, the Exchange proposes to amend the XLE fee schedule to provide economic incentives to help attract additional order flow to the Exchange. The proposed amendments to the XLE Fee Schedule are discussed in detail below:

i. Adopt Definitions for Net Makers and Net Takers

An XLE Participant Organization⁷ would qualify as a Net Maker if the total volume from providing liquidity for that XLE Participant Organization is at least one share greater than the total volume from removing liquidity during a single

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ XLE refers to the Exchange's equity trading system. XLE is designed to provide the opportunity for entirely automated executions to occur within a central matching system accessible by Exchange members and member organizations and their Sponsored Participants. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

⁶ See Exchange Rules 1(jj) and 1(kk) (defining "Sponsored Participant" and "Sponsoring Member Organization").

⁷ For purposes of this fee proposal, an XLE Participant Organization refers to Sponsored Participants, Sponsoring Member Organizations, and member organizations without Sponsored participants. See Exchange Rules 1(jj) and 1(kk). Sponsoring Member Organizations are responsible for the fees generated by their Sponsored Participant(s).

billing period.⁸ Additionally, if in one month the total volume from providing liquidity is equivalent to the total volume from removing liquidity, the XLE Participant Organization would be considered a Net Maker for purposes of this proposal.

For example, for the month of August, if an XLE Participant Organization's total volume from providing liquidity is 2 million shares executed and for that same month that XLE Participant Organization's total volume from removing liquidity was 1.5 million shares executed (total executed volume is therefore 3.5 million shares) that XLE Participant Organization would qualify as a Net Maker for that same month.

Conversely, an XLE Participant Organization would qualify as a Net Taker if the total volume from removing liquidity for that XLE Participant Organization is at least one share greater than the total volume from providing liquidity during a single billing period. For example, for the month of August, if an XLE Participant Organization's total volume from removing liquidity is 3 million shares executed and for that same month, that XLE Participant Organization's total volume from providing liquidity was 2 million shares executed, that XLE Participant Organization would qualify as a Net Taker for that same month.

Volume would be calculated based on volume generated from Maker (providing liquidity) or Taker (removing liquidity) executions, and volume from single-sided odd lot orders⁹ executed on XLE against an XLE Participant.¹⁰ Volume from the following transactions would not be included in determining Net Maker and Net Taker volumes: Immediate or Cancel ("IOC") Cross¹¹ and Mid-Point Cross Orders¹² entered over technology provided by Phlx,¹³ including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and

volume from Routed Away Orders, referred to on the XLE Fee Schedule as "Fee for Routing Liquidity (Per Share Executed)."

Consistent with current practice, the Net Maker or Net Taker calculation will be determined separately per XLE Participant Organization. Volume generated from a Sponsored Participant's executions will accrete towards that Sponsored Participant's volume to determine whether Maker or Taker fees will be assessed, and not towards the Sponsoring Member Organization's volume. Once an XLE Participant Organization has been designated as a Maker or Taker for a specific month, all transactions that month would be subject to the fee that corresponds with whether the XLE Participant Organization is a Maker or Taker.¹⁴

ii. Update the Current Volume Tier Structure by Reducing the Volume Breakpoints To Create Two New Volume Pricing Tiers

The Exchange also proposes to change the aggregate volume calculations and lower the current volume-based breakpoints to entice XLE Participant Organizations to generate additional trading activity.

Currently, there are four volume tiers based on monthly shares executed. The total of monthly executed shares includes executions resulting from removing and providing liquidity on XLE and crosses executed on XLE, as well as shares executed when routed via XLE to an away trading center and executed on that away trading center. The existing fee schedule established four volume breakpoints based on the aggregate monthly shares executed with the last two tiers set at "greater than 50 million and less than or equal to 200 million shares executed" in one month and "greater than 200 million shares," respectively. These levels have proven to be difficult for XLE Participant Organizations to reach. Therefore, the Exchange proposes to lower the volumes used in the volume-based tiers and to change the volume calculation from a monthly one to one based on average daily volume.

The proposed two volume tiers would be as follows: Tier One would be comprised of volume of less than one

million shares executed (average daily volume) and Tier Two would be comprised of volume of greater than or equal to one million shares executed (average daily volume). The proposed volume tiers would be determined by calculating the average daily volume of total shares executed (volume from providing liquidity and the volume from removing liquidity) during the applicable billing period. Consistent with calculating volume levels for Net Maker/Net Taker activity, the tier volume is calculated based on volume generated from Maker/Taker executions and volume from single-sided odd lot orders executed on XLE against an XLE Participant.

To calculate the average daily shares executed, the total number of executed shares (comprised of liquidity provided, liquidity removed, and single-sided odd lot orders executed on XLE against an XLE Participant during the applicable billing period) would be divided by the number of trading days during the applicable billing period. For example, for a billing period with 20 trading days, if an XLE Participant Organization executed 23 million shares (comprised of 15 million executed shares from providing liquidity and 8 million shares from removing liquidity), the average daily volume is calculated by adding the liquidity provided (15 million executed shares), to the liquidity removed (8 million executed shares), which totals 23 million shares, and then dividing by 20 days (or applicable trading days in the month), which equals 1,150,000 average daily shares executed.

Due to the lower volume tier breakpoint, the following transactions would not be included in determining the applicable volume tier breakpoints:¹⁵ IOC Cross and Mid-Point Cross Orders entered over technology provided by Phlx, including odd lot IOC Cross and Mid-Point Cross Orders; all other IOC Cross and Mid-Point Cross Orders, including all other odd lot IOC Cross and Mid-Point Cross Orders; Single-sided odd lot orders executed at an away market; and volume from Routed Away Orders, referred to on the XLE Fee Schedule as "Fee for Routing Liquidity (Per Share Executed)."

Consistent with current practice, the total monthly shares will be calculated separately per XLE Participant Organization. Sponsored Participant executions will accrete towards that Sponsored Participant's volume tier and not towards the Sponsoring Member

⁸ Currently, the Exchange assesses fees on a monthly calendar basis based on the settlement date of the transactions.

⁹ An odd lot order means an order for less than a round lot, which is defined for purposes of XLE as a unit of trading that is 100 shares. See Exchange Rules 1(w) and 1(gg).

¹⁰ All odd lot transactions refer to those orders that are initially entered as odd lot orders. Fees for these types of transactions are set forth on the Exchange's XLE fee schedule under the heading Miscellaneous Transaction fees.

¹¹ See Exchange Rules 185(c) and 185(c)(2).

¹² See Exchange Rules 185(c) and 185(c)(1).

¹³ Phlx provides optional technology to XLE Participants for the entry of two-sided orders into XLE.

¹⁴ Securities executed on XLE with a per share price below \$1.00 that remove liquidity, will continue to be charged 0.1% (*i.e.*, 10 basis points) of total dollar value of the transaction. Consistent with current practice, there would be no credit for providing liquidity for shares with a per share price below \$1.00. Executed volume in such shares will accrete towards the volume tier breakpoint (discussed below) and Maker/Taker category per XLE Participant Organization.

¹⁵ These are the same requirements for determining Net Maker and Net Taker volumes. All volume calculations would be based settlement dates.

Organization's volume tier. Once a specific tier has been reached in a month, all transactions for that month would be subject to the fee that corresponds with that volume tier.

iii. Amend the Amount of the Credits or Rebates to Net Makers and the Fees for Net Takers

The Exchange is proposing to amend the Net Maker credits or rebates and Net Taker fees in an effort to balance the need to offer liquidity Makers sufficient economic incentives to participate on XLE (in the form of competitive "Maker" credit) and the need to earn sufficient transaction revenue from a business standpoint (in the form of liquidity taking fees). The Exchange proposes to adopt the following fees: (1) For less than one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be \$0.0030 per share executed and the credit for providing liquidity would be \$0.0025 per share executed; the Net Taker fee for removing liquidity would be \$0.0030 per share executed and the credit for providing liquidity would be \$0.0022 per share executed; (2) for greater than or equal to one million shares executed (average daily volume), the Net Maker fee for removing liquidity would be \$0.0024 per share executed and the credit for providing liquidity would be \$0.0028 per share executed; the Net Taker fee for removing liquidity would be \$0.0026 per share executed and the credit for providing liquidity would be \$0.0024 per share executed.

Consistent with current practice, the dollar value of the Net Maker credits would appear on the member organization's monthly invoice. The dollar amount of the excess credits would continue to be carried over into subsequent months or rebated to the applicable member organization as requested by the member organization.

The purpose of this proposal is to attract more business by enticing Net Makers to the Exchange and by creating financial incentives to XLE Participant Organizations to encourage them to send additional order flow to the Exchange. The economics of the proposed fee schedule are focused around creating financial incentives to attract additional order flow to the Exchange while managing the risk associated with those financial incentives. The proposed changes to the XLE Fee Schedule are intended to stimulate liquidity and generate a reasonable return.

iv. Additional Changes to the XLE Fee Schedule

The Exchange also proposes to make the following two minor changes to the XLE fee Schedule: (1) Under Miscellaneous Fees for "Execution Fee for Single-Sided Odd Lot Orders executed on XLE against another XLE Participant," the Exchange proposes to change the word "another" to "an" to clarify that the same XLE Participant could be on both sides of the transaction; and (2) delete the reference to Monthly Drop Copy Feed Fee.¹⁶ Although there is no charge for this service, at this time the Exchange is not providing a Monthly Drop Copy Feed.

The purpose of the two minor changes is to clarify and update the XLE fee schedule to more accurately reflect the XLE fees being charged by the Exchange.

The changes set forth in this proposal are scheduled to become operative beginning with transactions settling on or after September 4, 2007.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁸ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable and reasonable in that it is designed to create financial incentives for all XLE Participant Organizations to encourage them to send additional order flow to the Exchange. This additional order flow should, in turn, stimulate additional transaction volume and liquidity at the Exchange.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

¹⁶ The Drop Copy Feed refers to real-time information concerning trades executed by an XLE Participant Organization.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act¹⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder²⁰ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.²¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-67 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-Phlx-2007-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ For purposes of calculating the 60-day period within the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 20, 2007, the date on which Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-67 and should be submitted on or before October 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-19404 Filed 10-1-07; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11045]

Idaho Disaster # ID-00005 Declaration of Economic Injury.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Idaho, dated 09/25/2007.

Incident: Central Idaho Wildland Fires.

Incident Period: 07/07/2007 and Continuing.

Effective Date: 09/25/2007.

EIDL Loan Application Deadline Date: 06/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Canyon: Idaho, Lemhi, Valley.

Contiguous Counties:

Idaho: Ada, Adams, Boise, Butte, Clark, Clearwater, Custer, Gem, Lewis, Nez Perce, Owyhee, Payette, Ravalli.

Montana: Beaverhead, Missoula,

Ravalli.

Oregon: Malheur, Wallowa.

The Interest Rate is: 4.000.

The number assigned to this disaster

for economic injury is 110450.

The States which received an EIDL Declaration # are Idaho, Montana,

Oregon.

(Catalog of Federal Domestic Assistance

Number 59002)

Dated: September 25, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7-19391 Filed 10-1-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11044]

Missouri Disaster # MO-00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA-1728-DR), dated 09/21/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/19/2007 through 08/21/2007.

Effective Date: 09/21/2007.

Physical Loan Application Deadline Date: 11/20/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/21/2007, Private Non-Profit organizations that provide essential

services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Dade, Dallas, Greene, Laclede,

Lawrence, Polk, Webster.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11044.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7-19395 Filed 10-1-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11043]

Montana Disaster # MT-00024 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the state of Montana, dated 09/25/2007.

Incident: Wildland Fires.

Incident Period: 07/21/2007 and continuing.

Effective Date: 09/25/2007.

EIDL Loan Application Deadline Date: 06/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

²² 17 CFR 200.30-3(a)(12).

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lewis and Clark, Missoula.

Contiguous Counties:

Montana: Broadwater, Cascade, Flathead, Granite, Jefferson, Lake, Meagher, Mineral, Powell, Ravalli, Sanders, Teton.

Idaho: Clearwater, Idaho.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is: 110430.

The States which received an EIDL Declaration # are Montana, Idaho.

(Catalog of Federal Domestic Assistance Number 59002)

Steven C. Preston,
Administrator.

[FR Doc. E7-19397 Filed 10-1-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10927 and # 10928]

Oklahoma Disaster Number OK-00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA-1712-DR), dated 07/07/2007.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/10/2007 through 07/25/2007.

Effective Date: 09/24/2007.

Physical Loan Application Deadline Date: 11/05/2007.

EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 07/07/2007 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/05/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-19390 Filed 10-1-07; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Monday, October 29, 2007, from 9 a.m. to 4:30 p.m.; Tuesday, October 30, 2007, from 9 a.m. to 4:30 p.m.; and Wednesday, October 31, 2007, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Marriott Wardman Park Hotel, McKinley Room, 2660 Woodley Road, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, Executive Director, ATPAC, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493-4527.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Monday, October 29, 2007, from 9 a.m. to 4:30 p.m.; Tuesday, October 30, 2007, from 9 a.m. to 4:30 p.m.; and Wednesday, October 31, 2007, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the Committee's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and

6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Executive Director, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify the person listed above no later than October 19, 2007. The next quarterly meeting of the FAA ATPAC is scheduled for January 15-17, 2008, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 25, 2007.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. E7-19413 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Interoperability Requirements, Standards, or Performance Specifications for Automated Toll Collection Systems; Public Meeting

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of public meeting.

SUMMARY: On September 20, 2007, the FHWA published its Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 72 FR 53736. This publication announced a public meeting on October 11, 2007, to discuss the NPRM. In response to comments received, the FHWA has decided to hold an additional public meeting on October 18, 2007, at 1:30 p.m. All interested persons are invited to offer views at these two public meetings.

DATES: The first public meeting will be held on October 11, 2007, beginning at 1:30 p.m. The second public meeting will be held on October 18, 2007, beginning at 1:30 p.m.

ADDRESSES: Both public meetings will be held at the U.S. Department of Transportation headquarters conference center, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical questions or information about this notice of proposed rulemaking, contact Mr. Robert Rupert, FHWA Office of Operations, (202) 366-2194. For legal questions, please contact Mr. Michael

Harkins, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2007, the FHWA published its NPRM in the **Federal Register** at 72 FR 53736. As required under section 1604(b)(6) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the proposed rule specifies the interoperability requirements for automated toll collection systems for the facilities that are tolled under any of the tolling programs contained in section 1604 of SAFETEA-LU. Specifically, this NPRM proposes to require facilities operating with authority under section 1604 of SAFETEA-LU to use electronic toll collection systems and for these systems to address their interoperability with other toll facilities. Although a nationwide interoperability standard has not yet been established, the proposed rule seeks to accelerate progress toward achieving nationwide interoperability by requiring these facilities to upgrade their electronic toll collection systems to the national standards whenever adopted.

The September 20, 2007, notice announced a public meeting on October 11, 2007, to discuss the NPRM. In response to comments received, the FHWA has decided to hold an additional public meeting on October 18, 2007.

Public Meetings

The public meetings will be held at the address listed above. The FHWA invites participation in these meetings by all those interested in the above noted NPRM. Written submissions are welcome, although not required for participation. The FHWA expects each meeting to last approximately three hours. No pre-registration is required for participation.

Issued on: September 26, 2007.

Anthony Furst,

Acting Associate Administrator for Operations.

[FR Doc. E7-19409 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Draft Bay Area to Central Valley High-Speed Train Programmatic Environmental Impact Report/Environmental Impact Statement

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of extension of draft environmental impact statement comment period.

SUMMARY: On July 2, 2007, FRA approved for release and agency and public review the Draft Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Area to Central Valley portion of the California High Speed Rail Authority's (Authority) proposed High Speed Train Program for the State of California. FRA is the lead federal agency on the environmental review in accordance with the National Environmental Policy Act (NEPA) and the Authority is the project sponsor and lead agency for the California Environmental Quality Act review. In releasing the Draft Program EIR/EIS, FRA and the Authority established a 70-day public comment period that was scheduled to end on September 28, 2007. The public was notified of the 70-day comment period through a variety of avenues, including newspaper publications, information included on both agencies' Web sites, at public hearings held throughout the affected area, and through the U.S. Environmental Protection Agency's weekly **Federal Register** publication (72 FR 39808, July 20, 2007), which noted the availability of the Draft Program EIR/EIS, identified as EIS No. 20070303.

At its September 26, 2007 board meeting, the Authority considered a number of public requests to extend the comment period and decided to accept comments until noon on October 26, 2007. FRA agrees with the Authority that this extension will facilitate public participation and is extending the comment period for NEPA purposes to October 26, 2007 as well.

DATES: The comment period on the Draft Bay Area to Central Valley HST Program EIR/EIS is extended until October 26, 2007.

ADDRESSES: Comments may be submitted to the California High-Speed Rail Authority, EIR/EIS Comments, 925 L Street, Suite 1425, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For further information regarding the

programmatic environmental review, please contact: Mr. Dan Leavitt, Deputy Director of the California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814 (telephone 916-324-1541); or Mr. David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington, DC 20590 (telephone 202-493-6368).

SUPPLEMENTARY INFORMATION: More information about the proposed HST system, the first-tier Program EIR/EIS addressing the HST system and the Draft Bay Area to Central Valley HST EIS are available at <http://www.cahighspeedrail.ca.gov>.

Issued in Washington, DC, on September 26, 2007.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 07-4854 Filed 9-27-07; 1:10 pm]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA-2007-29355]

Notice of Request for a New Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a new collection: 49 U.S.C. Section 5317, New Freedom Program.

DATES: Comments must be submitted before December 3, 2007.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site:* www.regulations.gov. Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at www.regulations.gov. Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202-493-2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to www.regulations.gov. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit www.regulations.gov. Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Schneider, FTA Office of Program Management 202-493-0175, fax: 202-366-3475, or e-mail: david.schneider@dot.gov.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. 5317, New Freedom Program.

(OMB Number: 2132-NEW)

Background: 49 U.S.C. 5317, the New Freedom Program, authorizes the Secretary of Transportation to make grants to states and designated

recipients in urbanized areas of 200,000 persons or greater to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information from designated recipients in rural areas, small urbanized areas and other direct recipients for small urbanized areas annually and collects performance information from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A-102.

Respondents: State & local government, private non-profit organizations and public transportation authorities.

Estimated Annual Burden on Respondents: 251 hours for each of the 206 respondents.

Estimated Total Annual Burden: 122,374 hours.

Frequency: Annual and quarterly.

Issued: September 26, 2007.

Ann Linnertz,
Associate Administrator for Administration.
[FR Doc. E7-19420 Filed 10-1-07; 8:45 am]
BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement on the Restoration of Rail Service in the Northern Branch Corridor, Bergen and Hudson Counties, NJ

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the New Jersey Transit Corporation (NJ TRANSIT) intend to prepare an Environmental Impact Statement to study the restoration of rail passenger service on the Northern Branch rail corridor between North Bergen, Hudson

County, and Tenafly, Bergen County. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 *et seq.*) of 1969 and the regulations implementing NEPA set forth in 40 CFR Parts 1500-1508 and 23 CFR Part 771, as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The purpose of this Notice is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted. This notice supersedes the FTA notice of June 18, 2001 entitled "Major Investment Study/Draft Environmental Impact Statement for the Northern Branch Corridor, Bergen County, New Jersey."

DATES: Written comments on the scope of the EIS should be sent to Linda A. Mosch, P.E., NJ TRANSIT Project Manager, by November 7, 2007. Public scoping meetings will be held on Wednesday, October 24, 2007 at 3 to 5 p.m. and at 7 to 9 p.m. at locations indicated under **ADDRESSES** below. An interagency scoping meeting will be scheduled after agencies with an interest in the proposed project have been identified.

ADDRESSES: Written comments on the scope of the EIS should be sent to Linda A. Mosch, P.E., Project Director—Northern Branch EIS, NJ TRANSIT, One Penn Plaza East, Newark, NJ 07105-2246. Comments may also be offered at the public scoping meetings. The address for the public scoping meeting is as follows: Crowne Plaza Englewood Hotel, 401 S. Van Brunt St., Englewood, NJ 07631.

This location is accessible by persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact the Project Director, Linda A. Mosch, P.E., at (973) 491-8481 least 48 hours before the meeting. A scoping information packet is available on the NJ TRANSIT Web site at <http://NorthernBranchCorridor.com> or by calling the Project Director, Linda A. Mosch, P.E., at (973) 491-8481. Copies will also be available at the scoping meetings.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Reyes-Alicea, Community Planner, Federal Transit Administration, One Bowling Green, Room 429, New York, New York, 10004-1415, telephone (212) 668-2203.

SUPPLEMENTARY INFORMATION: I. Scoping

In accordance with Section 6002 of SAFETEA-LU, FTA and NJT invite comment on the scope of the EIS, specifically on project's purpose and need, the alternatives to be evaluated that may address the purpose and need, and the impacts of the alternatives considered. To ensure that these issues are identified, the scoping meetings will begin with a formal presentation followed by the opportunity for the public to comment on the scope of the EIS. Oral and written comments may be given at the scoping meetings; a stenographer will record all comments. Those wishing to speak are required to register at the meeting location. Registration to speak will begin at 2:30 p.m. and will remain open until 4:30 p.m. for the afternoon session; registration to speak will begin at 6:30 p.m. and will remain open until 8:30 p.m. for the evening session. Written comments may be submitted at the meeting or may be mailed to the project manager at the address in **ADDRESSES** above.

II. Purpose and Need for the Proposed Project

The purpose of the Northern Branch project is to address the transportation needs of the Northern Branch Corridor through the re-introduction of rail transit service. The project area is heavily populated and is centrally located in the New York/New Jersey metropolitan area. The area is directly west of the Hudson River, in close proximity to Manhattan. The area's location relative to New York City has played an important role in its development and continues to be an important factor in the economy of the area.

Most of the transportation problems in the project area are the result of the great changes that have taken place during the past 30 years. While Bergen County's population had not changed significantly until 1990, there have been other significant changes. The number of households has grown, resulting in smaller households and more workers per household than in the past. Even more significant has been the growth in employment from 1960 to today. The number of jobs only tells part of the story about the project area's economy. The economy is diversifying. A growing number of the jobs are now service oriented, with fewer in the manufacturing sector. This shift has contributed to the area's transportation problems because service sector businesses generate more trips than manufacturing businesses, especially during the off-peak travel periods.

The growth in households and the diversification of the economy have caused an increase in travel in the project area in recent years. The increases have been during the peak travel periods, the off-peak weekday periods, and the weekend periods. Congestion on the roads is a growing problem, which is reducing overall mobility in the area and could constrain future economic growth, and may affect the area's very high standard of living.

While the transportation system continues to provide a fairly high level of mobility for some residents and businesses, many parts of the system are straining to accommodate the new demands caused by a growing economy. The area's roadways provide the best evidence of the strains on the system. While more roads are congested for longer periods, there are few opportunities to expand local or regional roadway capacity. The project area has a substantial transit system. However, there is evidence that the system is not providing service for all of the markets that could be served. Further investments in transit would improve mobility in Bergen County, alleviating some traffic congestion, and supporting continued economic growth. Provision of new transportation service in the Northern Branch Corridor would address:

- Commuting to New York City (trans-Hudson) from Bergen County;
- Inter- and intra-corridor commuting, both to employment centers within the project corridor, and from the project corridor to employment locations in other areas of New Jersey; and,
- Non-work trips including business, shopping, recreational, and education to New York City, within the corridor, and to destinations outside the corridor in New Jersey.

Based on the needs identified in the project area, goals and objectives in the Northern Branch Corridor were identified in the early planning studies and are as follows.

Goal 1: Meet the Needs of Travelers in the Project Area**Objectives:**

- *Attract riders to transit.* A central goal of the project is to attract more riders to rail transit in the Northern Branch corridor. In spite of its proximity to New York, eastern Bergen County continues to have high single occupancy vehicle commutation. The goal of re-introducing rail transit is to encourage a greater transit ridership both on opening day and into the future.
- *Improve travel time.* Travelers in the project area put a high value on their

time, and are looking for travel options that will improve their travel time and reliability.

- *Improve convenience.* Travelers are looking for new travel options that will make traveling in the region more convenient. They are looking for frequent service, adequate parking at stations, competitive travel times, and convenient connections to other transit services, such as ferries, PATH, and feeder services.

- *Provide more options for travelers.* Today, travelers are severely limited in their travel options. Transit can be used for only a very small portion of the area's travel needs. Travelers want more travel options to meet their diverse travel needs. Options could include service to many destinations, including Midtown, Lower Manhattan, the Hudson River Waterfront, Newark, and recreational areas, such as the Sports Complex and the Jersey Shore, especially on weekends and at night.

- *Improve services for the low-income/minority/transit dependent travelers.* Transit dependent residents in the project area need good transit options to more of the region's jobs, not only the jobs in Manhattan, but growing employment centers in New Jersey, like the Hudson River Waterfront area, Newark, the Meadowlands, and Bergen and Rockland employment centers.

Goal 2: Advance Cost-Effective Transit Solutions**Objectives:**

- *Support favorable farebox recovery.* For the vast majority of transit systems, fare revenue does not cover the cost of providing service. However, higher farebox recovery ratios allow transit agencies to maximize the amount of service that can be provided for the same dollar of public operating subsidy. One of the goals of the Northern Branch project is to introduce rail transit to the corridor in a manner that is sensitive to the need to minimize the operating subsidy required to run the service. This will help ensure that the provision of transit service in the corridor is financially sustainable.

- *Advance cost-effective transit solutions.* The objective is to advance a project that, from a cost-benefit perspective, provides the greatest overall benefit at the lowest capital cost.
- *Support future expansion, scalability and affordability.* The Northern Branch project should allow for future transit expansion while at the same time provide a solution that is affordable to construct. With limited capital funds, the ability to advance projects in phases helps to keep the projects affordable. Project scalability

allows projects to be constructed without precluding future expansion projects. One of the criteria on which the Northern Branch project will be evaluated is the degree to which one phase of a project integrates into a more global planning effort for transportation improvement in the region.

Goal 3: Encourage Economic Growth

Objectives:

- *Provide transportation capacity to support growth.* Population and employment growth in and around Bergen County and Hudson County is expected to continue in the future.

Additional transportation capacity and new travel options will be needed to support this growth, providing access between the jobs in the counties and surrounding residential communities. Growing congestion will continue to have negative impacts on the area's economy in the future.

- *Help attract new businesses.*

Companies looking to locate new facilities, or expand existing facilities in Bergen County and Hudson County, will be looking for assurances that steps are being taken to provide the area with new travel alternatives. One of the major assets of this area is its proximity to New York City and its role in sustaining the strength of the State Plan's Metropolitan Planning Area. New transportation choices that improve access to New York and the rest of the region will help Bergen County and Hudson County to maintain its competitive advantage in the region.

Goal 4: Improve regional access

Objectives:

- *Provide connections to a variety of locations within the region.* With the one exception of Manhattan, Bergen County's access to the rest of the region is almost entirely by auto, on highways that are becoming increasingly congested. With the completion of the Secaucus Transfer, the areas served by the Main, Bergen, and Pascack Valley lines now benefit from rail access to the growing Hudson River Waterfront area, to Newark, to Trenton, and to the major recreational attractions, like the Meadowlands and the New Jersey Shore.

Goal 5: Reduce Roadway Congestion

Objectives:

- *Provide more travel options for travelers trying to avoid highway congestion.* Major regional highways in the project area are heavily congested. There are a limited number of major highways, each serving intra-county and regional travel needs. Congestion in Bergen County is a growing problem,

which is likely to become more serious in the future. Transit strategies are unlikely to substantially reduce congestion, but can provide useful new travel alternatives for travelers trying to avoid congestion.

Goal 6: Enhance the Transit Network

Objectives:

- *Eliminate gaps in the rail network.*

Bergen County's transit share for trips to Manhattan is lower than any other part of northern New Jersey. This is due to several gaps in the transit network serving the area. For example, there is no rail service in eastern Bergen County. The closest rail line is the Pascack Valley Line, which is west of the Hackensack River. This inconvenient and capacity-constrained line is not an option for most residents of eastern Bergen County. Also, rail service is infrequent during off-peak periods. Rail service is best to Lower Manhattan, via PATH and ferry, less effective to the Valley, between Canal Street and 34th Street, via PATH, and most difficult to Midtown.

- *Eliminate gaps in the bus network.*

The bus network in eastern Bergen County also has some gaps. First, the network only serves Midtown Manhattan. Also, in the eastern most parts of the county, there is little or no bus service. In the more central parts of the study area there are many bus routes. However, these routes are generally slow because they travel on local roads and make many stops along the route to pick up passengers.

III. Alternatives Proposed for Consideration

It is proposed that the EIS evaluate a Future No Build Alternative and Build alternatives of two modes: diesel-multiple-unit service from North Bergen to Tenafly, with a connection to the Hudson-Bergen Light Rail at Tonnelle Avenue in North Bergen; and an extension of the Hudson-Bergen Light Rail from its existing terminus at Tonnelle Avenue in North Bergen to Tenafly. Additionally, the EIS will evaluate both modal alternatives with a terminus at NJ Route 4 in Englewood.

Future No Build Alternative: the Future No Build consists of the transportation system expected to be in place in the project design year if the proposed project were not built. It includes all other projects currently in the North Jersey Transportation Authority's 20-year metropolitan transportation plan.

Diesel-multiple-unit vehicle: These alternatives would involve simultaneous operation of rail passenger and freight operations using the

Northern Branch Corridor right-of-way. Terminal stations would be located at Tenafly, in the vicinity of Hudson Avenue; or at NJ Route 4 in Englewood.

Light rail vehicle: These alternatives would involve time-separated operation of rail passenger and freight operations using the Northern Branch Corridor right-of-way. Rail passenger service would operate between 5:30 a.m. and 10:30 p.m. with freight operations between 11 p.m. and 5 a.m. Terminal stations would be located at Tenafly, in the vicinity of Hudson Avenue; or at NJ Route 4 in Englewood. In order to accommodate the shift of freight service to nighttime operation, corridor improvements would be constructed between Tenafly and Northvale.

The build alternatives will involve construction of new transportation infrastructure, including tracks, stations and yards. As many as 11 station locations will be evaluated. Any additional reasonable alternatives that come to light during the scoping process will also be evaluated.

IV. Probable Effects

The FTA and NJ TRANSIT will evaluate both project-specific and cumulative changes to the social, economic and physical environment—including land use and socioeconomic conditions, ecology, water resources, historic and archaeological resources, visual character and aesthetics, contaminated and hazardous materials, transportation, air quality, noise and vibration, and environmental justice effects. Mitigation of all adverse impacts will be considered.

V. FTA Procedures

In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), section 4(f) of the DOT Act (23 CFR 771.135), and Executive Orders

12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: September 24, 2007.

Brigid Hynes-Cherin,

Regional Administrator, FTA Region 2.

[FR Doc. E7-19434 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for Proposed Transit Improvements in the Crenshaw-Prairie Transit Corridor, Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) intend to prepare an Environmental Impact Statement (EIS) for the proposed Crenshaw-Prairie Transit Corridor Project. The proposed project would provide for transit improvements within the Crenshaw-Prairie Corridor, which extends approximately 10 miles from Wilshire Boulevard on the north to El Segundo Boulevard on the south.

The study area for the project includes portions of five jurisdictions: the Cities of Los Angeles, Inglewood, Hawthorne, El Segundo, as well as portions of unincorporated Los Angeles County, California. The study area is generally defined as the area extending north to Wilshire Boulevard, east to Arlington Avenue, south to El Segundo Boulevard, and west to Sepulveda and La Tijera Boulevards. A variety of land uses exist within the study area including single- and multi-family residences and commercial uses north of the Interstate 10 (I-10) freeway and south of Slauson Avenue, commercial uses along Crenshaw Boulevard and in Hawthorne, industrial and public land uses in Inglewood and El Segundo, as well as redevelopment areas in Los Angeles, Inglewood, and Hawthorne.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The Draft EIS will be combined with the planning Alternatives Analysis required by 49 U.S.C. 5309 for New Starts-funded projects. LACMTA will also use the EIS document to comply with the California Environmental Quality Act (CEQA),

which requires an Environmental Impact Report (EIR). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process (including providing comments on the scope of the Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS), to announce that public scoping meetings will be conducted, and to identify participating and cooperating agency contacts.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to LACMTA on or before November 5, 2007 at the address below. See **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the EIS/EIR will be held on the following dates:

- Monday, October 15, 2007, from 6 p.m. to 8 p.m., at Darby Park, 3400 W. Arbor Vitae Street, Inglewood, CA 90305.
- Wednesday, October 17, 2007, from 6 p.m. to 8 p.m., at Nate Holden Performing Arts Center, 4718 W. Washington Boulevard, Los Angeles, CA 90016.
- Saturday, October 20, 2007, from 9 a.m. to 11 a.m., at Audubon Middle School, 4120 11th Avenue, Los Angeles, CA 90008.

The project's purpose and need, and the initial set of alternatives proposed for study will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Susan Gilmore, Los Angeles County Metropolitan Transportation Authority (LACMTA) at 213-922-7287, or gilmores@metro.net.

Scoping materials will be available at the meetings and are available on the LACMTA Web site (www.metro.net/crenshaw). Hard copies of the scoping materials may also be obtained from Ms. Susan Gilmore, Los Angeles County Metropolitan Transportation Authority (LACMTA) at 213-922-7287, or gilmores@metro.net. An interagency scoping meeting will be held on Tuesday, October 16, 2007 from 1 p.m. to 3 p.m. at LACMTA, One Gateway Plaza (Gateway Conference Room, 3rd Floor), Los Angeles, CA 90012.

ADDRESSES: Written comments should be sent to Mr. Alan Patashnick, Project Manager and Director of South Bay Area Team, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop: 99-22-3, Los Angeles, California 90012, e-mail address patashnickalan@metro.net. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone (213) 202-3950, e-mail ray.tellis@dot.gov.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives, and the identification of any significant social, economic, or environmental issues relating to the alternatives.

Purpose and Need for the Project

The project purpose is to improve public transit service and mobility in the Crenshaw-Prairie Corridor between Wilshire and El Segundo Boulevards. The overall goal of the proposed project is to improve mobility in the corridor by connecting with existing lines such as the Metro Green Line or approved transit lines, such as the Exposition Light Rail Transit (LRT) Line (under construction). The proposed project is included in the current LACMTA Long-Range Transportation Plan and in the Southern California Association of Governments' 2004 Regional Transportation Plan (<http://www.scag.ca.gov/rtp2004/2004/Final/07RTPProjectList.xls>).

Mobility issues in this corridor have been well documented in many studies, including the *Crenshaw-Prairie Corridor Preliminary Planning Study* (1994), the *Route Refinement Study* (2000), and the *Major Investment Study* (MIS) (2003). These reports are available for review on the LACMTA Web site (<http://www.metro.net/crenshaw>). Additional considerations supporting the project's need include:

- Several major activity centers and destinations are concentrated in the Crenshaw-Prairie Corridor including Los Angeles International Airport (LAX); the Great Western Forum; Hollywood Park; the commercial centers in Koreatown, the Crenshaw District, and downtown Inglewood; as well as office developments on Wilshire Boulevard and in downtown Inglewood and El Segundo.

- The MIS established that a north-south, high-capacity transportation connection is needed west of downtown Los Angeles and the Interstate 110 (I-110) freeway.

- The "Centers Concept" Land Use Policy in the Los Angeles Basin supports the development of high capacity transit corridors connecting the Centers, including Los Angeles, Inglewood, and LAX.

- The Crenshaw-Prairie Corridor's existing bus routes are some of the most productive and highest used.

- The Crenshaw-Prairie Corridor's transportation capacity needs to be increased to serve growth, without increasing mobile source ozone emissions in this air quality nonattainment area.

- The Crenshaw-Prairie Corridor currently has a high concentration of transit-supportive land uses and has high densities of both population and employment.

- Substantial numbers of transit-dependent persons reside in the Crenshaw-Prairie Corridor.

- Significant population and employment growth is projected for the Crenshaw-Prairie Corridor.

- Existing and future travel demand patterns demonstrate a strong and growing need for high-capacity transit in the Crenshaw-Prairie Corridor.

- Local policy direction is focused on travel demand management and transit solutions, rather than expansion of the roadway network.

The public and participating and cooperating agencies are invited to consider and comment on this preliminary statement of the purpose and need for the proposed project.

Alternatives

In addition to a No-Build Alternative, a range of reasonable alternatives will be evaluated in the EIS/EIR including, but not limited to, alternative transit technologies, alignments, operating plans, station locations, and a Transportation Systems Management (TSM) Alternative. The transit technologies to be evaluated, in addition to the No-Build and TSM Alternatives, will include Bus Rapid Transit (BRT), Light Rail Transit (LRT), and any other

reasonable alternatives identified during scoping for the project.

The primary alignments to be initially considered include:

Wilshire/Crenshaw/Metro Green Line: This alternative alignment would extend south along Crenshaw Boulevard from Wilshire Boulevard through Koreatown, the Crenshaw District, and downtown Inglewood. From Crenshaw Boulevard, the alignment would turn southwest along the LACMTA owned Harbor Subdivision railroad right-of-way, adjacent to Florence Avenue, and continue south to the existing Metro Green Line Aviation Station. A transfer connection would be provided to LAX from the Aviation Station.

Exposition/Crenshaw/Metro Green Line: This alignment alternative would extend from the Exposition LRT Line (under construction) south along Crenshaw Boulevard, through the Crenshaw District and downtown Inglewood. From Crenshaw Boulevard, the alignment would turn southwest onto the Harbor Subdivision railroad right-of-way, adjacent to Florence Avenue, and continue south to the existing Metro Green Line Aviation Station. A transfer connection would be provided to LAX from the Aviation Station.

Wilshire/Crenshaw/La Brea/Hawthorne: This alignment alternative would extend south along Crenshaw Boulevard from Wilshire Boulevard to the Harbor Subdivision railroad right-of-way in Inglewood. From the right-of-way, the alignment would travel south along La Brea Avenue to Hawthorne Boulevard.

Exposition/Crenshaw/Prairie/Hawthorne: This alignment alternative would extend south from the Exposition LRT Line (under construction) along Crenshaw Boulevard to the Harbor Subdivision railroad right-of-way. From the right-of-way, the alignment would turn south along Prairie Avenue, turn west to connect to the existing Metro Green Line Hawthorne Station along the I-105 freeway, and continue south along Hawthorne Boulevard.

The transit alternatives to be considered include:

Bus Rapid Transit Alternative: This alternative would utilize BRT and operate via the Wilshire/Crenshaw/Metro Green Line or Wilshire/La Brea/Hawthorne alignments described above.

Light Rail Transit Alternative: This alternative would utilize LRT and operate via the Exposition/Crenshaw/Metro Green Line or Exposition/Crenshaw/Prairie/Hawthorne alignments described above.

No Build Alternative: This alternative includes the committed highway and

transit projects in the current LACMTA Long Range Transportation Plan and the 2030 Southern California Association of Governments' Regional Transportation Plan. For purposes of this EIS and comparison of alternatives, the major fixed-guideway investments under study for the Exposition Phase 2 and Westside Extension transit corridors are not included in the No-Build Alternative. The completion of the Metro Rapid Bus Program is included as well as possible additional feeder bus networks to serve the region's major activity centers.

Transportation System Management (TSM) Alternative: The TSM alternative enhances the No Build Alternative and emphasizes transportation system upgrade, such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, expanded park/ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

In addition to the alternatives described above, other transit alternatives identified through the public and agency scoping process will be evaluated for potential inclusion in the EIS.

Probable Effects

The purpose of the EIS process is to explore, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and LACMTA will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: Transportation; land use, zoning and economic development; secondary development; land acquisition, displacements and relocations; cultural resources (including historical, archaeological, and paleontological resources) and parklands/recreation areas; neighborhood compatibility and environmental justice; visual and aesthetic impacts; natural resources (including air quality, noise and vibration, wetlands, water resources, geology/soils, and hazardous materials); energy use; safety and security; and wildlife and ecosystems (including endangered species). Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe,

Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), call for public involvement in the EIS process. Section 6002 of SAFETEA-LU requires that FTA and LACMTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and LACMTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on LACMTA's Web site (Crenshaw-Prairie Transit Corridor Project Web page: <http://www.metro.net/crenshaw>). The public involvement program includes a full range of activities including the project webpage on the LACMTA Web site, development and distribution of project newsletters, and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the public involvement program.

LACMTA may seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) Part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a Locally Preferred Alternative and the inclusion of this alternative in the long-range transportation plan adopted by the LACMTA and Southern California Association of Governments. LACMTA

plans to develop the Draft EIS/EIR to satisfy the required planning Alternatives Analysis. The New Starts regulations also require the submission of certain project-justification information to support a request to initiate preliminary engineering. This information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR Part 93); the Section 404(b)(1) guidelines of EPA (40 CFR Part 230); the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800); the regulation implementing Section 7 of the Endangered Species Act (50 CFR Part 402); Section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: September 27, 2007.

Leslie T. Rogers,

Regional Administrator, Federal Transit Administration, Region IX.

[FR Doc. E7–19415 Filed 10–1–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement and Section 4(f) Evaluation for High-Capacity Transit Improvements in the I–10 West Corridor

AGENCY: Federal Transit Administration, U.S. Department of Transportation.

ACTION: Notice of intent to prepare an Alternatives Analysis/Environmental

Impact Statement and Section 4(f) Evaluation.

SUMMARY: The Federal Transit Administration (FTA) and Valley Metro Rail, Inc. (METRO) intend to prepare an Alternatives Analysis (AA)/Environmental Impact Statement (EIS) and Section 4(f) Evaluation on proposed high capacity transit improvements, including a potential light rail transit (LRT) line and/or bus rapid transit (BRT) in the Interstate 10 (I–10) West study area between the Central Phoenix/East Valley LRT Starter Line on Central Avenue and State Route 101 extending through the cities of Phoenix and Tolleson in Maricopa County, Arizona. The proposed study area is bounded by State Route 101 on the west; Thomas Road on the north; 7th Street on the east; and Buckeye Road on the south. Transit improvements and alignments within the I–10 right-of-way will be considered among the alternatives. The AA/EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508, and its implementing regulations. The AA/EIS process will be initiated with a scoping process that provides opportunities for the public to comment on the scope of the project and proposed alternatives to be considered in the AA and Draft Environmental Impact Statement (DEIS). This input will be used to assist decisionmakers in determining a locally preferred alternative (LPA) for the I–10 West Corridor. After the completion of the DEIS and upon selection of an LPA, METRO will request permission from FTA to enter into preliminary engineering per requirements of New Starts regulations 49 CFR part 611. The Final Environmental Impact Statement (FEIS) will be issued after FTA approves entrance into preliminary engineering.

The purpose of this notice is to alert interested parties regarding the intent to prepare the AA/EIS and Section 4(f) Evaluation, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the AA/EIS process, including comments on the scope of the alternatives proposed in this notice, to announce that public scoping meetings will be conducted, and to identify participating agency contacts.

DATES: Written and e-mailed comments on the scope of study, including the alternatives to be considered, and the impacts to be assessed, should be sent to METRO on or before November 16, 2007. See **ADDRESSES** below for the street address and e-mail address to which written comments may be sent. Public scoping meetings to accept

comments on the scope of the study will be held on the following dates:

- Tuesday, October 23, 2007, at 6 p.m., Desert West Community Center, 6501 West Virginia Avenue, Phoenix, AZ 85035.

- Thursday, October 25, at 3 p.m., University Park Center, 350 North 10th Avenue, Phoenix, Arizona 85007.

An interagency scoping meeting will be held on the following date:

- Tuesday, October 23, 2007 at 10 a.m., Valley Metro Rail, Inc. (METRO), 101 North 1st Avenue, Suite 1300, Phoenix, Arizona 85003.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Maria Hyatt, City of Phoenix City Manager's Office, 200 West Washington Street, 12th Floor, Phoenix, AZ 85003 (Telephone 602-261-8897) at least 48 hours in advance of a meeting in order for METRO and the City of Phoenix to make the necessary arrangements. Scoping materials will be available at the meetings and through the project's Web site at <http://www.metrolightrail.org/I-10West>. Hard copies of the scoping materials are also available from Mr. Rick Pilgrim whose contact information is given in **ADDRESSES** below.

ADDRESSES: Written comments should be sent to the attention of Mr. Rick Pilgrim, Valley Metro Rail, Inc., 101 North 1st Avenue, Suite 1300, Phoenix, AZ 85003. E-mail: I-10West@metrolightrail.org. Phone: (602) 495-8216; Fax: (602) 252-7453. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Hymie Luden, Office of Planning and Program Development, Federal Transit Administration, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744-2732. E-mail: hymie.luden@dot.gov.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and METRO invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the AA and the EIS, including the project's preliminary statement of purpose and need, the alternatives to be studied and the impacts to be evaluated. Comments should focus on the purpose and need for the proposed project; alternatives that may be less costly or have less environmental or community impacts

while achieving similar transportation objectives; and significant social, economic, or environmental issues relating to the alternatives.

Purpose and Need for the Project

The purpose is defined as follows:

1. Identify a transit alternative that increases efficient access to employment opportunities throughout the Central Phoenix/West Valley region.
2. Identify an improvement that provides effective transit options to relieve peak period congestion.
3. Identify a transit improvement alternative, with a recommended alignment and technology, to connect the LRT system currently under construction with the West Valley.
4. Identify a transit improvement alternative that would facilitate continued development of a comprehensive and inter-connected regional transit network that is multi-modal, that offers a range of effective mobility choices for current and future transit riders, and that attracts new transit riders to use the growing regional system.
5. Identify an alternative that improves the efficiency of transit operations.
6. Identify an alternative that provides cost-effective transit improvements and expands access to corridor destinations.
7. Identify a transit alternative that supports economic development (including transit-oriented development), and ensures enhanced connectivity among existing and planned regional and local activity center and attractions.

Additional considerations supporting the project's need include:

The Regional Transportation Plan (RTP), adopted by the Maricopa Association of Governments (MAG) and financed under the one-half cent sales tax extension, identifies 57-miles of major light rail/high capacity transit corridors to be implemented by 2026. Currently, the 20-mile starter segment is under construction. An 11-mile extension into west Phoenix is one of five corridors identified in the RTP.

The City of Phoenix, which spans approximately 515 square miles, is the largest city in Arizona, and the fifth largest in the nation. The Arizona Department of Commerce estimates the 2006 population of Phoenix at approximately 1.5 million. The population of Phoenix is estimated by MAG to grow to approximately 2.2 million by 2030. According to the U.S. Census Bureau 73 percent of Phoenix workers drove to work alone in 2005, 16 percent carpooled, 3 percent took public transportation, 4 percent used other

means, and 3 percent worked at home. Commute times averaged 26.9 minutes. The City of Phoenix currently operates a bus fleet of 485 vehicles with a daily ridership of nearly 154,000, providing over 18 million miles of annual service.

In general, travel on highways and arterials is expected to increase by approximately 30 percent between 2004 and 2030 within Maricopa County; peak period travel to work is expected to grow by about 40 percent; similar trends are anticipated for the City of Phoenix. Growth in the City of Phoenix and adjacent jurisdictions has caused substantial increases in traffic congestion on the existing roadway network, and has generated the need for new or improved public transportation service. Even with implementation of the projects included in the MAG RTP, service levels in 2030 on the area freeways and arterials is expected to deteriorate substantially due to increased travel demand, resulting in a significant increase in congestion.

The MAG 2006 Freeway Level of Service (LOS) Study shows I-10 West direction during AM and PM peak hour at LOS E and F for significant portions of the study corridor. Preliminary analysis of recent MAG traffic modeling for 2030 indicate similar poor LOS conditions in the future for the section of I-10 within the study area.

The AA/EIS will analyze the potential for the proposed high capacity transit improvements to address increased demand for travel by connecting the project corridor with the LRT Starter Line on Central/First Avenue.

Alternatives:

The alternatives proposed for evaluation include:

- A no-build alternative, which includes the current network plus all ongoing, programmed, and committed projects listed in the MAG RTP;

- A Transportation Systems Management (TSM) alternative, which would include improving existing transit services such as additional bus service and routes, and which also serves as a baseline for evaluation against which all other alternatives may be compared for federal funding purposes (referred to as the FTA Future Baseline and implements all of the projects in the No-Build Alternative);

- Bus Rapid Transit alternatives; and
- Light Rail Transit alternatives.

Each build alternative will explore the construction of new transportation infrastructure such as tracks, stations, and maintenance yards. Underground, surface and/or aerial design options may be developed for each of the build alternative alignments. Multi-modal alternatives will also be explored.

The EIS Process and the Role of Participating Agencies and the Public

The purpose of the NEPA process is to explore, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and METRO will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: Land use; development potential; secondary development; land acquisition, displacements, and relocations; cultural resources (including impacts on historical and archaeological resources); parklands and recreation areas; visual and aesthetic qualities; air quality; noise and vibration; ecosystems (including threatened and endangered species); energy use; business and neighborhood disruptions; environmental justice; changes in traffic and pedestrian circulation and congestion; and changes in transit service and patronage. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified and evaluated.

The methodology for evaluation of impacts will focus on the areas of investigation mentioned above. As the public involvement and agency consultation process proceeds, additional evaluation criteria and impact assessment measures will be included in the analysis. Potential alternatives will be developed to a conceptual level, and will be screened and ranked against these evaluation criteria and local community considerations. Travel time savings, potential for congestion reduction and improved mobility options for residents of the City of Phoenix and adjacent metropolitan areas will be assessed for the transportation alternatives considered. The public involvement program and agency coordination plan discussed below will provide the vehicle through which these evaluation analyses will be conducted.

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), call for public involvement in the EIS process. Section 6002 of SAFETEA-LU requires that FTA and METRO do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become "participating agencies"; (2) provide an opportunity for involvement by participating agencies and the public in

helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process.

A list of interested agencies has been developed, and an invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify, at the earliest opportunity, the person identified above under **ADDRESSES**.

A comprehensive Public Involvement Program will be developed, and a public and agency involvement Coordination Plan will be created. The Public Involvement Program will include a full range of involvement activities. Activities will include outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; organizing periodic meetings with various local agencies, organizations and committees; a public hearing upon release of the Draft Environmental Impact Statement (DEIS); development and distribution of project newsletters and the establishment of a project Web site. Opportunities to participate in the scoping process, in addition to the public meetings announced in this notice, will be made available. Specific mechanisms for involvement will be detailed in the Public Involvement Program.

METRO may seek New Starts funding for the proposed project under 49 U.S.C. 5309 and will therefore be subject to New Starts regulations (49 CFR part 611). The New Starts regulations require a planning Alternatives Analysis that leads to the selection of a locally preferred alternative and the inclusion of the locally preferred alternative as part of the long-range transportation plan adopted by the MAG. The New Starts regulations also require the submission of certain project-justification information in support of a request to initiate preliminary engineering, and this information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final EIS.

The AA/EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800), the regulation implementing Section 7 of the Endangered Species Act (50 CFR part 402), and Executive Orders 12898 on environmental justice, 11988 on floodplain management and 11990 on wetlands. The Section 4(f) Evaluation will comply with the United States Department of Transportation Act (23 CFR 771.135).

Issued on: September 27, 2007.

Leslie T. Rogers,

Regional Administrator, FTA Region IX.

[FR Doc. E7-19417 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2007-28638]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public

comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 3, 2007.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA 2007–28638] by any of the following methods:

If filing comments by September 27, 2007, please use:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted between September 28, 2007, and October 1, 2007.

If filing comments on or after October 1, 2007, use:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.dms.dot.gov> or <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> until September 27, 2007, or the street address listed above. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the internet access to the docket will be at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Carlita Ballard, NHTSA, 1200 New Jersey, SE., Room W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

- (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- (ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- (iii) How to enhance the quality, utility, and clarity of the information to be collected and;

- (iv) How 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, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Petitions for Exemption from the Vehicle Theft Prevention Standard (49 CFR part 543).

OMB Control Number: 2127–0542.

Form Number: None.

Affected Public: Motor vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: Manufacturers of passenger vehicle lines may petition the agency for an exemption from Part 541 requirements, if the line is equipped with an anti-theft device as standard equipment and meets agency criteria. Device must be as effective as partsmarking.

Estimated Annual Burden: 3,164.

Number of Respondents: 14.

49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. 33106 provides for an exemption to this identification process by petitions from manufacturers who equip covered vehicles with standard original equipment antitheft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as partsmarking. NHTSA may exempt a vehicle line from the partsmarking requirements, if the manufacturer installs an antitheft device as standard equipment on the entire vehicle line for which it seeks an exemption and NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the partsmarking requirements. In accordance with 49 U.S.C. 33106, after model year (MY) 2000, the number of new exemptions is contingent on a finding by the Attorney General as part of its long-range review of effectiveness. After consulting with DOJ, the agency decided it could continue granting one exemption per model year pending the results of the long-term review.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle rating of 6,000 pounds or less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Consistent with this DOJ consultation, the April 6, 2004 final rule amended the general requirements of Section 543.5 of Chapter 49 of the Code of Federal Regulations, allowing a manufacturer to petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of the theft prevention standard for each model year after MY 1996. The final rule became effective September 1, 2006.

Prior to September 1, 2006, manufacturers were only allowed to petition NHTSA for high-theft vehicle lines. In its April 6, 2004 final rule, the agency amended part 543 to allow vehicle manufacturers to file petitions to exempt all vehicle lines that would become subject to parts-marking requirements beginning with the effective date of the final rule. As a result of this amendment, vehicle manufacturers are allowed to file petitions to exempt all vehicle lines that would become subject to the parts-marking requirements regardless of their theft status (high or low). While there are approximately 27 vehicle manufacturers, since the effective date of the rule, a maximum of 14 petitions for exemption from the parts-marking requirements have been received by the agency for any single model year. We anticipate this to remain the average number of yearly responses received by the agency.

NHTSA estimates that the average hours per submittal will be 226, for a total annual burden of 3,164. This was an increase from the previous OMB inventory of 1,130 burden hours. NHTSA estimates that the cost associated with these burden hours is \$36.62 per hour, for a total cost of approximately \$115,866.

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 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.

Issued on: September 24, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 07-4796 Filed 10-1-07; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 26, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 1, 2007 to be assured of consideration.

Treasury Inspector General for Tax Administration (TIGTA)

OMB Number: 1591—New.

Type of Review: Emergency.

Title: Refund Anticipation Loans—Individual Taxpayers.

Description: The Treasury Inspector General for Tax Administration (TIGTA), as part of its FY 2008 audit plan, will interview, via survey, a valid sample of individual taxpayers who received Refund Anticipation Loans (RALs) after submitting electronically filed (e-file) tax returns. RALs target low-income taxpayers, especially those who receive an Earned Income Tax Credit (EITC) or who do not have banking accounts. Because the duration of a RAL is approximately 7–14 days (the difference between the time a RALs are obtained and when they are repaid by with taxpayers' refunds), fees for these loans translate into triple digit annualized interest rates. While the IRS has eliminated the marketing of RALs from its Free File Program, educating taxpayers about the cost and burden of RALs and the ability to receive refunds quickly without RALs would further help reduce the financial burden RALs place on taxpayers. In addition, this data will help in learning how RALs affect tax administration, what changes are possible and could be taken to better monitor e-file providers, and what actions could be taken to mitigate burden through taxpayer education and/or changes to the administration of the tax system.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 51 hours.

Clearance Officer: Joseph Ananka, (202) 622-5964, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7-19366 Filed 10-1-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Abbott, Matthew, Deputy Assistant Secretary (Federal Finance);
Carfine, Kenneth E., Fiscal Assistant Secretary;
Carroll, Robert J., Deputy Assistant Secretary (Tax Analysis);
Duffy, Michael D., Deputy Assistant Secretary/Chief Information Officer;
Eddy, Lynn M., Associate Chief Information Officer (HR Connect);
Foster, Wesley T., Deputy Assistant Secretary (Management and Budget);
Fuller, Reese H., Advanced Counterfeit Deterrence Program Director.
Gerardi, Geraldine A., Director for Business and International Taxation;
Glaser, Daniel L., Deputy Assistant Secretary (Terrorist Financing and Financial Crimes);
Granat, Rochelle F., Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer;
Daly, Nova James, Deputy Assistant Secretary (Investment Security);
Dick, Denise, White House Liaison;
Foster, Robert U., Deputy Assistant Secretary for Legislative Affairs (Banking & Finance);
Foster, Wesley T., Deputy Assistant Secretary (Management and Budget);

Grippo, Gary E., Deputy Assistant Secretary (Fiscal Operations and Policy);
 Hammerle, Barbara C., Deputy Director, Office of Foreign Assets Control;
 Hastings, Charles R., Deputy Chief Human Capital Officer;
 Kiefer, Donald W., Director, Office of Tax Analysis;
 Larue, Pamela J., Departmental Budget Director;
 Lee, Nancy, Deputy Assistant Secretary (Eurasia and Middle East);
 Mathiasen, Karen V., Director, Office of Financial Reconstruction and Stabilization;
 McDonald, William L., Deputy Assistant Secretary (Technical Assistance Policy);
 McLaughlin, Brookly, Deputy Assistant Secretary (Public Affairs);
 Mendelsohn, Howard S., Deputy Assistant Secretary (Intelligence & Analysis);
 Norton, Jeremiah O., Deputy Assistant Secretary (Financial Institutions and Government Sponsored Enterprise Policy);
 Peel, Kenneth L., Deputy Assistant Secretary (Multilateral Development Banks);
 Reed, Kimberly A., Director, Community Development Financial Institutions Fund;
 Sills, Gay H., Director, Office of International Investment;
 Skud, Timothy E., Deputy Assistant Secretary (Tax, Trade and Tariff Policy);
 Smith, Taiya, Deputy Chief of Staff and Executive Secretary;
 Sobel, Mark D., Deputy Assistant Secretary (International Monetary and Financial Policy);
 Szubin, Adam J., Director, Office of Foreign Assets Control;
 Tvardek, Steven F., Director, Office of Trade Finance;
 Warren, Mark E., Deputy Assistant Secretary for Legislative Affairs (Tax and Budget);
 Warthin, Thomas W., Director, Office of Financial Services Negotiations;
 Wilkinson, James R., Chief of Staff.

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Christine Nalli, Supervisory Human Resources Specialist, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone: 202-622-1105.

This notice does not meet the Department's criteria for significant regulations.

James Hyland,

Director, Office of Human Resources.

[FR Doc. E7-19381 Filed 10-1-07; 8:45 am]

BILLING CODE 4810-35-P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Peter B. McCarthy, Assistant Secretary for Management and Chief Financial Officer
 Clay Lowery, Assistant Secretary for International Affairs
 Eric Solomon, Assistant Secretary for Tax Policy
 Kenneth E. Carfine, Fiscal Assistant Secretary
 Rochelle F. Granat, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
 Charles R. Hastings, Deputy Chief Human Capital Officer
 Linda E. Stiff, Deputy Commissioner, Services and Enforcement, Internal Revenue Service
 John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
 Vicky I. McDowell, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
 James H. Freis, Jr., Director, Financial Crimes Enforcement Network
 William F. Baity, Deputy Director, Financial Crimes Enforcement Network
 Kenneth R. Papaj, Commissioner, Financial Management Service
 Judith R. Tillman, Deputy Commissioner, Financial Management Service
 Frederick Van Zeck, Commissioner, Bureau of the Public Debt

Nancy C. Fleetwood, Deputy Commissioner, Bureau of the Public Debt

Larry R. Felix, Director, Bureau of Engraving and Printing

Pamela J. Gardiner, Associate Director for Management, Bureau of Engraving and Printing

David A. Lebyrk, Deputy Director, United States Mint

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Catherine R. Schmader, Executive Resources Program Manager, 1500 Pennsylvania Avenue, NW., Attn: 1750 Pennsylvania Avenue, NW., Suite 8100, Washington, DC 20220, Telephone: (202) 622-0396.

This notice does not meet the Department's criteria for significant regulations.

Dennis Cannon,

Director, Office of Human Capital Strategic Management.

[FR Doc. E7-19382 Filed 10-1-07; 8:45 am]

BILLING CODE 4811-42-P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Legal Division Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Legal Division Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Legal Division PRB. The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Legal Division.

Composition of Legal Division PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Lily Fu, Deputy General Counsel, who shall serve as Chairperson;
 Peter A. Bieger, Deputy Assistant General Counsel (Banking and Finance);
 Michael J. Davidson, Chief Counsel, Bureau of Engraving and Printing;
 Michael Desmond, Tax Legislative Counsel;
 John Harrington, International Tax Counsel;

H. Stephen Kesselman, Acting Deputy Chief Counsel (Operations), Internal Revenue Service;
 Bernard J. Knight, Assistant General Counsel (General Law and Ethics);
 Donald L. Korb, Chief Counsel, Internal Revenue Service;
 M.J.K. Maher, Jr., Deputy Assistant General Counsel (Enforcement & Intelligence);
 Margaret V. Marquette, Chief Counsel, Financial Management Service;
 Thomas M. McGivern, Assistant to the General Counsel (Legislation & Litigation);
 Mark Monborne, Assistant General Counsel (Enforcement & Intelligence);
 Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);
 Russell L. Munk, Assistant General Counsel (International Affairs);
 Clarissa C. Potter, Deputy Chief Counsel (Technical), Internal Revenue Service;
 Daniel P. Shaver, Chief Counsel, United States Mint;
 Sean M. Thornton, Chief Counsel, Office of Foreign Assets Control;
 Robert M. Tobiasen, Chief Counsel, Alcohol and Tobacco Tax and Trade Bureau, and Paul Wolfeich, Chief Counsel, Bureau of Public Debt.

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Kitty Russell, Administrative Management Coordinator, 1500 Pennsylvania Avenue, NW., Room 3000, Washington, DC 20220, Telephone: (202) 622-0264.

This notice does not meet the Department's criteria for significant regulations.

Kitty Russell,

Administrative Management Coordinator.

[FR Doc. E7-19383 Filed 10-1-07; 8:45 am]

BILLING CODE 4811-42-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War has scheduled a

meeting for October 22-24, 2007 in the auditorium (Room A036) at the Department of Veterans Affairs Medical Center, 1601 SW., Archer Road, Gainesville, Florida. The meeting will be held from 9 a.m. to 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care, and rehabilitation.

The agenda for October 22 will include an introduction of committee members, remarks from dignitaries, review of committee reports, an update of activities since the last meeting, and a period for FPOW veterans and/or the public to address the Committee. On October 23, the Committee will hear a presentation from the Robert E. Mitchell Center for Prisoner of War Studies. The day will conclude with new business and general discussion. On October 24, the Committee's medical and administrative work groups will meet to discuss their activities and then will report back to the Committee in the afternoon. Additionally, the Committee will review comments discussed throughout the meeting to compile a report to be sent to the Secretary.

Members of the public may submit written statements for review by the Committee in advance of the meeting to Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by October 10, 2007.

Dated: September 26, 2007.

By Direction of the Secretary

E. Philip Riffin,

Committee Management Officer.

[FR Doc. 07-4849 Filed 10-1-07; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463

(Federal Advisory Committee Act) that the Veterans' Advisory Committee on Education will meet on October 25-26, 2007 in the main conference room (2nd floor) at the Paralyzed Veterans of America National Headquarters, 801 18th Street, NW., Washington, DC. On October 25, the session will begin at 8 a.m. and end at 4:15 p.m. On October 26, the session will begin at 8:30 a.m. and end at 12 noon. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans, servicepersons, reservists, and dependents of veterans under Chapters 30, 32, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

On October 25, the meeting will begin with opening remarks and an overview by Mr. James Bombard, Committee Chair. The agenda for this meeting will include discussions on pending legislation, a presentation by guest speaker Mr. Allison Jones, Vice Chancellor of California State University, an overview of licensing and certification opportunities, and discussion concerning outreach efforts to veterans before their enrollment in higher education programs. Oral statements will be heard at 4 p.m. on October 25. On October 26, the Committee will review and summarize issues addressed during this meeting.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Salminio Garner, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Mr. Salminio Garner or Andrea Jones at (202) 461-9832.

Dated: September 26, 2007.

By Direction of the Secretary

E. Philip Riffin,

Committee Management Officer.

[FR Doc. 07-4848 Filed 10-1-07; 8:45 am]

BILLING CODE 8320-01-M



Federal Register

**Tuesday,
October 2, 2007**

Part II

Department of Veterans Affairs

38 CFR Part 5

**Payments to Beneficiaries Who Are
Eligible for More Than One Benefit;
Proposed Rule**

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900-AL95

Payments to Beneficiaries Who Are Eligible for More Than One Benefit

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language provisions applicable to payments to beneficiaries who are eligible for more than one benefit. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries, and VA personnel in locating and understanding these rules.

DATES: Comments must be received by VA on or before December 3, 2007.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026 (not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900-AL95-Payments to Beneficiaries Who Are Eligible for More than One Benefit." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 (not a toll free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-9515 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve

the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 "VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs." The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve the VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding payment to beneficiaries who are eligible for more than one benefit. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

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Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most of the provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will enable claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This

subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

“Subpart B—Service Requirements for Veterans” would include information regarding a veteran’s military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

“Subpart C—Adjudicative Process, General” would inform readers about types of claims and filing procedures, VA’s duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680. The second, covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings, was published as proposed on May 22, 2007 (AM01). *See* 72 FR 28770.

“Subpart D—Dependents and Survivors” would inform readers how VA determines whether an individual is a dependent or a survivor of a veteran. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

“Subpart E—Claims for Service Connection and Disability Compensation” would define service-connected compensation, including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614.

“Subpart F—Non-service-Connected Disability Pensions and Death Pensions” would include information regarding the three types of non-service-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension, and the effective dates governing each pension. This subpart

would be published in two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

“Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary,” would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

“Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors” would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

“Subpart I—Benefits for Certain Filipino Veterans and Survivors” would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

“Subpart J—Burial Benefits” would pertain to burial allowances.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

“Subpart L—Payments and Adjustments to Payments” would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, subpart L will be published in two separate NPRMs. The portion of subpart L that concerns payments to beneficiaries who are eligible for more than one benefit is the subject of this NPRM.

The final subpart, “Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries,” would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted “[regulation that will be published in a future Notice of Proposed Rulemaking]” where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of This Notice of Proposed Rulemaking

This NPRM pertains to payments to claimants and beneficiaries who are eligible for more than one VA benefit or one VA benefit in addition to certain benefits from other Federal agencies. These regulations would be contained in proposed Subpart L of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that

do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.740—Election	3.701(b). New.
5.740—Initial election	New.
5.740—Reelection	3.750(b) [third sentence].
5.740—Timely filed ...	3.155(a), 3.701(b), 13.55, 13.57, 13.58, 13.59, and New.
5.741(a)	3.155(b), 3.701(b). 3.702(d)(1) [second sentence] and 3.711 [second sentence].
5.741(b)	New.
5.742(a)	3.702(d)(1) [last sentence] and New.
5.742(b)	New.
5.742(c)	3.400(j)(1). 3.500(e) [first sentence], (i), and (x).
5.742(d) and (e)	3.401(e) and 3.750.
5.743(a)	3.654(a) [second sentence] and 3.700(a)(1)(ii).
5.743(b)	3.654(a) [first sentence] and 3.700(a)(1)(i).
5.745	3.501(a) and 3.654(b)(1).
5.746(a)	3.654(b)(2) [first sentence].
5.746(b)	New.
5.746(c)	3.654(b)(2) [third and fourth sentences].
5.746(d)(1)	New.
5.746(d)(2)(i)	3.654(b)(2) [second sentence].
5.746(d)(2)(ii)	3.654(b)(2) [last sentence].
5.746(d)(3)	3.654(c) and 3.700(a)(1)(iii).
5.746(d)(4)	3.700(a)(2)(iii) [first sentence].
5.746(d)(5)	3.700(a)(2)(iv).
5.746(e)	3.700(a)(3).
5.747(a)(1)	3.700(a)(5)(i) [first sentence].
5.747(a)(2)	3.700(a)(5)(ii).
5.747(b)	3.700(a)(2)(iii), (a)(3), and (a)(5)(i).
5.747(c)(1)	3.753.
5.747(c)(2)	3.708(a)(1) and (a)(4).
5.747(d)	3.708(a)(2).
5.748	New.
5.750(a)(1)	3.708(a)(3).
5.750(a)(2)	3.708(b)(1) [first sentence].
5.750(a)(3)	
5.750(b)	
5.751(a)(1)	

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.751(a)(2)	3.708(b)(1) [second sentence] and 3.958.
5.751(b)	3.708(b)(2).
5.751(c)	3.708(b)(1) [second and third sentences (excluding intervening cross reference)].
5.751(d)	New.
5.751(e)	3.708(a)(3) and 3.708(b)(1) [last sentence].
5.752	New.
5.753	3.710.
5.754(a)	New.
5.754(b) and (c)	3.715.
5.754(d)	3.500(x).
5.756	3.700 [introduction].
5.757(a)	3.701(a) [sentences one and two].
5.757(b)	3.701(a) [sentences one and two].
5.757(c)	3.701(a) and New.
5.757(d)	3.701(a) [first and third sentences].
5.757(e)(1)	3.701(a) [first and fourth sentences].
5.757(e)(2)	New.
5.757(e)(3)	3.701(a) [fifth sentence].
5.758(a)	3.711 [first sentence].
5.758(b)	3.711 [last sentence].
5.758(c)	3.960(a).
5.758(d)	3.701(a) [fifth sentence].
5.759(a)(1)(i)	3.702(a).
5.759(a)(1)(ii)	3.702(d)(1).
5.759(a)(2)	3.702(a).
5.759(b)	3.702(c).
5.760	3.702(d)(2) and New.
5.761	3.700(b)(1).
5.762(a), (b)	3.700(b)(2).
5.762(c)	3.659, 3.703, and 3.503(a)(7).
5.763	3.704(a).
5.764(a)	3.503(a)(8), 3.659(b), 3.703(c), 3.707(a), and 21.3023.
5.764(b), (c), and (d)	3.707 and 21.3023.

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a

part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be carried forward to part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

Payments to Beneficiaries Who Are Eligible for More Than One Benefit—General Provisions

5.740 Definitions Relating to Elections

Proposed § 5.740 defines four terms applicable to elections. The first definition is of the term "election." Current § 3.701(b) provides that VA may accept a statement meeting the requirements of an informal claim as an election. The requirements of an informal claim are contained in the first two sentences of current § 3.155(a). They are, essentially, any communication or action from a claimant or certain other listed persons that indicates an intent to apply for one or more VA benefits and that identifies the benefit(s) sought. Additionally, current § 3.1(p) requires that all claims be in writing.

We believe that it would be clearer to define an election directly, rather than through a reference to informal claims. We also note that there is an element inherent in the concept of an "election" that is not necessarily present in an informal claim, the element of choice, and that in practice VA requires that an election be signed by a person with authority to make the election. Considering all of these factors, we propose to define an election as "any writing, signed by a person authorized by § 5.741, 'Persons who may make an election,' expressing a choice between two or more VA benefits to which the person is entitled, or between VA and other Federal benefits to which the person is entitled." No substantive change is intended by this definition.

The next two terms that are defined are "initial election" and "reelection." An initial election is the first election that a person authorized by § 5.741 makes between two or more benefits. A reelection is a later, different election between benefits that were the subject of an initial election. We note that "initial election" and "reelection" are not defined in part 3. We think that adding these definitions in part 5 will prove

very helpful to the reader. The definitions are based on VA's current election regulations and no substantive change is intended.

The last term defined is "timely filed." We propose to state that, with respect to elections, "timely filed" means that a person authorized by § 5.741 filed an election within 1 year of VA's notice that such an election is required. This definition is consistent with the definition of a "timely filed" election in current § 3.750(b). While that definition is in the context of an election between VA benefits and military retirement pay, the definition in fact applies to all elections. See 38 U.S.C. 5103(b), which provides that when VA notifies a claimant that information or evidence is necessary to substantiate a claim, such information or evidence must be received by VA within 1 year of the date such notice is sent.

5.741 Persons Who May Make an Election

Proposed § 5.741 describes persons who may make an election. Paragraph (a) lists persons who are authorized to sign an election. They include a claimant, a beneficiary, or a person authorized to act on behalf of a claimant or beneficiary. This list is based in part on current § 3.155(a) and § 3.701(b) and in part on long-standing VA practice. We have listed a beneficiary as a person authorized to sign an election, which is consistent with long-standing VA practice. We have also listed persons who are authorized to act on behalf of a claimant or beneficiary according to the requirements of certain VA regulations in part 13 of title 38 CFR, regarding fiduciaries. This is consistent with long-standing VA practice, and no substantive change is intended.

Paragraph (b) of proposed § 5.741 is also based on current § 3.155(a), which states that Members of Congress or a claimant or beneficiary's duly authorized representative are able to file an informal claim. They are, therefore, able to communicate a claimant's or beneficiary's intent to elect a particular benefit, as per § 3.701(b). However, consistent with long-standing VA practice, they are not able to sign an election. Further, as stated in § 3.155(b), a communication from certain representatives, namely a service organization, an attorney, or an agent, may not be accepted unless a power of attorney existed at the time the communication was written.

In keeping with long-standing VA practice, paragraph (b) of proposed § 5.741 states that VA will provide notice to the claimant or beneficiary of

the right to make an election when it receives a communication from a Member of Congress or from a claimant or beneficiary's duly authorized representative. If VA receives an election signed by a person authorized to do so under § 5.741(a) within 1 year of the notice, it will then consider the election to have been filed on the date it received the communication from the Member of Congress or the representative. These procedures are substantively consistent with rules in current § 3.701(b), which permit VA to accept a statement meeting the requirements of an informal claim as an election, and in current § 3.155, which permits VA to accept an informal claim from a Member of Congress or representative subject to confirmation through filing a benefit application within 1 year from the date VA sends the application. The end result would be the same under proposed § 5.741(b) as it would be under current part 3 rules; however, proposed § 5.471(b) does not use the "informal claim" language, which lacks clarity in the context of benefit elections.

5.742 Finality of Elections; Cancellation of Certain Elections

Proposed § 5.742 states rules for determining when an election is "final." As explained in the introductory paragraph of proposed § 5.742, this section explains that a final election or reelection ordinarily may be changed only by cancellation under paragraph (d) or (e) of this section or by reelection, if authorized. The introductory paragraph also explains that other provisions of this part specify when reelection is authorized and when a final election or reelection is irrevocable.

Provisions similar to proposed § 5.742(a), (b), (d), and (e) were previously published as part of another part 5 NPRM, "Elections of Improved Pension; Old-Law Pension and Section 306 Pension," which was published as proposed on December 27, 2004, 69 FR 77578. These provisions were contained in proposed § 5.461(b). We now propose to remove that regulation (§ 5.461) and address these concepts in this NPRM in proposed §§ 5.742 and 5.758 instead. This will help achieve consolidation of benefit election rules in this NPRM.

Proposed § 5.742(a) states that an election is final when a beneficiary (or someone authorized to act for the beneficiary under § 5.741) has negotiated a check for the elected benefit. This is based on the last sentence of § 3.702(d)(1) (which is applicable to elections of dependency and indemnity compensation (DIC)) and

the second sentence of § 3.711 (which is applicable to elections of Improved Pension). Although § 3.702(d)(1) concerns DIC elections and § 3.711 concerns pension elections, it is long-standing VA practice to apply this rule to other elections of benefits. We note that § 3.711 refers to an exception to the rule that an election is final upon negotiation of a check. The exception is found in current § 3.714. We have not included this exception in proposed § 5.742 because § 3.714 is obsolete. VA proposed the removal of § 3.714 in a prior rewrite package ("Elections of Improved Pension; Old Law and Section 306 Pension," RIN 2900-AL83). See 69 FR 77578, 77587.

The vast majority of VA beneficiaries now receive benefits by direct deposit or electronic funds transfer rather than by check. In such cases the rule regarding negotiating a check in proposed § 5.742(a) could not apply. To cover benefits received by direct deposit or electronic funds transfer, we have proposed new § 5.742(b), which states that elections by beneficiaries who receive benefits by direct deposit or electronic funds transfer are final when the applicable financial institution receives the second payment of the elected benefit. This is consistent with long-standing VA practice. The reasoning is that a deposit in the beneficiary's account serves as notice that the elected benefits are being paid, just as receipt of a check is notice that the elected benefits are being paid.

Proposed § 5.742(c) provides a general rule that an election is final if the payee dies before negotiating a check or before receiving a second payment by direct deposit or electronic funds transfer. It is derived from the more specific provision contained in the last sentence of § 3.702(d)(1), which states that an election of DIC is final even if the payee dies before negotiating a check. This expansion of the rule from § 3.702(d)(1) is consistent with long-standing VA practice and allows for the orderly and consistent administration of payments to the estates of deceased beneficiaries. In proposed § 5.742(c), we have also added a provision addressing direct deposit and electronic funds transfer, which we have added to be consistent with proposed § 5.742(b).

Proposed § 5.742(d) states that if VA determines that a beneficiary was incompetent when he or she elected a benefit, the election can be canceled. This is consistent with long-standing VA practice and helps ensure that incompetent beneficiaries receive all the benefits to which they are entitled under the law.

Proposed § 5.742(e) states that a beneficiary can cancel an election if he or she made the election based on erroneous information that was provided by VA. However, VA must determine that the information was erroneous based on the same evidence of record used previously to provide the erroneous information. One example of this rule's application would be if VA mistakenly informed a claimant or beneficiary that he or she would be entitled to a higher rate if a particular benefit were elected and then later determines that this was not the case (based on the same evidence of record at the time that VA mistakenly informed the claimant or beneficiary of his or her entitlement to a higher rate). This is consistent with long-standing VA practice and helps ensure that beneficiaries are not unfairly deprived of VA benefits.

Note that when provisions similar to § 5.742(d) and (e) were previously proposed as § 5.461(b)(2) and (3), they provided that a request to cancel the election must be received within 1 year from the date that the election had become effective. Following internal reconsideration of this provision, we have determined that this limitation might be overly narrow in some cases. Therefore, proposed § 5.742(d) and (e) contain no such limitation.

5.743 General Effective Dates for Awarding, Reducing, or Discontinuing VA Benefits Because of an Election

Proposed § 5.743(a) is based on current § 3.400(j)(1), which states the general effective date rule for elections. (Other part 5 provisions may contain specific additional effective date rules.) Under current § 3.400(j)(1), unless otherwise provided, the effective date of an award of elected VA benefits is "the date of receipt of election, subject to prior payments." The effective date is "subject to prior payments" in order to avoid impermissible concurrent payment of benefits which a beneficiary cannot lawfully receive for the same time period. This could potentially occur when a person receiving Benefit A elects to receive Benefit B instead, and the award of Benefit B is retroactive for some period of time. Because Benefit A and Benefit B cannot be received for the same time period, VA would offset the payments already issued for Benefit A against the amount payable for Benefit B. Proposed paragraph (a)(2) provides for this offset. The reader should note that no substantive change is intended in paragraph (a)(2). The offset is provided for in current § 3.400(j)(1), and proposed § 5.743(a)(2) merely explains it in more detail.

Section 3.400(j)(1) covers situations where a beneficiary elects a different benefit. It does not address situations where a claim is pending and an election is timely filed under § 5.740(d). In such cases, VA's long-standing practice has been to assign an effective date that is the same as the effective date VA would assign for the awarded benefit if no election were required. We have added such language to § 5.743(a) to address such situations.

Paragraph (b) provides the effective date for reduction or discontinuance when VA reduces or discontinues a benefit because another benefit is elected. It is based on current § 3.500(e) (first sentence), pertaining to Federal employees' compensation, § 3.500(i), pertaining to elections in general, and § 3.500(x), pertaining to the Radiation Exposure Compensation Act of 1990. We have consolidated these three effective date provisions in proposed § 5.743(b). We note that part 3 regulations provide effective dates for reductions and discontinuances of VA benefits in terms of the last date of entitlement to payment at the previous rate. We believe that it is clearer to state that the effective date for a reduction or discontinuance is the first day of payment of the new reduced rate or "no-pay date," rather than as the last day of the old rate. This approach is consistent throughout the rewrite project. We have taken that approach in proposed paragraph (b).

Payments From Service Departments and the Effects of Those Payments on VA Benefits for Veterans

5.745 Entitlement to Concurrent Receipt of Military Retired Pay and VA Disability Compensation

Proposed § 5.745 pertains to the concurrent receipt of military retirement pay and VA disability compensation. It closely follows the language of current § 3.750, which was recently amended. No substantive changes are proposed.

Section 3.401(e) contains the effective date rules for elections between military retirement pay and VA disability compensation. We have incorporated these provisions into § 5.745(e). No substantive change is intended.

5.746 Prohibition Against Receipt of Active Military Service Pay and VA Benefits for the Same Period

Proposed § 5.746(a) defines active military service pay. It is based on current § 3.654(a) and § 3.700(a)(1)(ii). We propose to state "active military service pay" rather than "active service pay" for clarity. No substantive change is intended.

Proposed § 5.746(b) states the general rule that VA will not pay disability compensation or pension for any period in which the veteran received active military service pay. It is based on § 3.700(a)(1)(i) and the first sentence of § 3.654(a). However, we have not included the reference to "retirement pay" found in current §§ 3.654(a) and 3.700(a)(1)(i), since VA does not administer any veteran's benefit titled "retirement pay." VA previously paid emergency officers' retirement pay (EOR), which is no longer a viable benefit. Therefore, references to EOR would not be carried forward to new part 5. Although military retirement pay may also be discontinued when a veteran returns to active duty, VA does not administer that benefit.

Proposed § 5.746(c) states the effective date of discontinuance of payments for VA benefits during active duty status. It is based on current §§ 3.501(a) and 3.654(b)(1). We propose to state that VA will discontinue payments "effective the day the veteran begins active duty service." This is consistent with our proposal throughout the Rewrite Project to state effective dates for discontinuances as the actual day payment stops, rather than the last day benefits are paid.

Title 10 U.S.C. 12316 gives veterans who return to active duty the right to continue to receive VA compensation or pension rather than active duty pay. This principle is not stated in current § 3.654 but we believe it is important for veterans to be aware of this right. Accordingly, we have included this information in proposed § 5.746(c).

Proposed § 5.746(d) concerns the resumption of payments for VA benefits after release from active duty. It is based on current § 3.654(b)(2). Current § 3.654(b)(2) provides that compensation will be authorized based on the degree of disability found to exist at the time the award is resumed, and that the disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. The practical consequence of this is that while the effective date for the resumption of payments can be as early as the day following release from active duty, the award that will generate those payments can be delayed while VA evaluates the degree of current disability.

In some cases, however, it might be clear from the record that the degree of impairment resulting from a service-connected disability had already become "static" when the veteran returned to active duty. A "static" disability is one that has stabilized and

is unlikely to either progress or improve. For example, the impairment resulting from an injury may remain permanently the same after the injury has fully healed. In the case of such static service-connected disabilities, the processing of resumed payments need not be delayed to reassess current impairment because impairment is not expected to change.

Accordingly, we propose to provide in proposed § 5.746(d)(2)(i) that VA will resume payments for service-connected disabilities at the same disability level that was in effect immediately prior to entering active duty if the evidence of record shows that the level of disability was static at the time of entry. This proposed provision is consistent with long-standing VA practice and prevents unnecessary delays in resuming VA disability compensation payments for veterans returning from military service where the degree of impairment for a service-connected disability is already known. This would not preclude the veteran from requesting an increase if he or she believed the disability had worsened. As provided in proposed § 5.746(d)(2)(ii), other disabilities (which may have gotten better or worse during the period of active duty) would continue to be evaluated before resumed payments are awarded.

Proposed new § 5.746(d)(3) clarifies how the provisions of current § 3.31, concerning delayed beginning dates for certain VA benefit payments, applies to payments resumed under § 5.746(d). With one exception, § 3.31 does not apply because its application is limited to "original, reopened, or increased awards" and does not apply to awards that "provide only for continuity of entitlement with no increase in rate of payment." See § 3.31(b). The exception is that § 3.31 does apply to the portion of the payment that represents the amount of the increase if the disability evaluation is increased.

Members of the Reserves and National Guard cannot receive both training pay and VA compensation or pension payments at the same time. However, they may waive their VA benefits in order to receive their training pay, which may be a greater amount. Proposed § 5.746(e) combines and updates the rules relating to waiver of VA benefits while on training duty that are located in current §§ 3.654(c) and 3.700(a)(1)(iii). We have omitted a now obsolete reference to "retirement pay" for the reasons noted above. We have clarified that the waivers apply to pay received by Reservists and National Guard members for active duty for training or inactive duty for training and included a cross reference to § 5.23,

which explains how VA classifies Reserve and National Guard duty. (The text of proposed § 5.23 may be found at 69 FR 4833.) We have also clarified that while VA does continue to accept prospective waivers, each waiver is good for not more than 1 year. In most cases, VA generates annual waiver forms to send to veterans based upon training duty data provided by the Department of Defense.

5.747 Effect of Military Readjustment Pay, Disability Severance Pay, and Separation Pay on VA Benefits

Proposed § 5.747 is derived from current § 3.700(a)(2) through (5). We propose not to repeat current § 3.700(a)(2)(i) and (ii), concerning readjustment pay under former 10 U.S.C. 687 and 3814, because they are no longer necessary. These sections of title 10, United States Code, were repealed by §§ 109(a) and 214 of the Defense Officer Personnel Management Act (the Act) in 1980. Public Law 96–513, 94 Stat. 2835, 2870 and 2885. The repeal was effective September 15, 1981. Public Law 96–513, section 701(a), 94 Stat. 2955.

Although a savings provision was included in the Act, which allows persons who were on active duty on September 14, 1981, and were subsequently involuntarily separated from service, to elect payment under repealed 10 U.S.C. 687 and 3814, it is unlikely that there are still any eligible recipients. Therefore it is unlikely that the application of § 3.700(a)(2)(i) and (ii) would be required under proposed new part 5. Should that be necessary in a specific case, VA may always proceed under the applicable statutes.

Proposed § 5.747(a) pertains to lump-sum readjustment pay. Paragraph (a)(1) of proposed § 5.747 repeats nearly verbatim the first sentence of current § 3.700(a)(2)(iii). It describes the recoupment of lump-sum readjustment from VA compensation. Paragraph (a)(2) is derived from 3.700(a)(2)(iv), and describes the prohibition against recoupment of lump-sum readjustment pay from VA compensation awarded for a subsequent period of service.

Proposed § 5.747(b) is derived from current § 3.700(a)(3) and restates the conditions under which VA will recoup disability severance pay from a subsequent award of VA disability compensation. We have not included provisions regarding nondisability severance pay because it is highly unlikely that there will be any remaining eligible recipients. Nondisability severance pay was authorized under former 10 U.S.C. 8786, which was repealed by the Act in 1980.

Although the savings provision allows personnel who were on active duty on September 14, 1981, to be awarded nondisability severance pay, it is highly unlikely that it would still be awarded, since, due to the passage of time, such personnel would now be eligible for retirement benefits. The purpose of nondisability severance pay was to provide for service members who were involuntarily separated from the military prior to eligibility for retirement benefits. Now that these personnel would more than likely be eligible for retirement benefits, we believe a regulation pertaining to nondisability severance pay is no longer necessary.

We note that § 3.700(a)(3) indicates that VA will recoup the total amount of disability severance pay from an award of VA compensation when entitlement to VA compensation was established on or after September 15, 1981, even if the award for VA compensation is not for the same disability for which disability severance pay was granted. While this may be true for recoupment of nondisability severance pay, this proposed rule would explain that it is not true for disability severance pay. Under 10 U.S.C. 1212(c), VA must only recoup disability severance pay from VA compensation when the VA compensation is for the same disability for which disability severance pay was granted.

The current regulation reflects an ambiguity existing between two statutes. Section 1212(c) permits VA to recoup disability severance pay from VA compensation when the VA compensation is for the same disability for which disability severance pay was granted. However, 10 U.S.C. 1174(h)(2) states more broadly that if a veteran received separation pay, severance pay, or readjustment pay under any provision of law based on service in the armed forces, VA must deduct the "total amount" of such payment from VA disability compensation payments to the veteran. The current provision in section 3.700(a)(3) may suggest the view that the general rule stated in section 1174(h)(2) supersedes the more specific, but earlier-enacted rule in section 1212(c). However, the Supreme Court has stated that "it is a commonplace of statutory construction that the specific governs the general." *Morales v. TWA*, 504 U.S. 374, 384 (1992). Further, section 1161 of title 38, United States Code, which governs VA disability compensation awards, continues to refer to 10 U.S.C. 1212(c), rather than 10 U.S.C. 1174(h)(2), as the statute governing payment of disability compensation in cases involving

disability severance pay. Accordingly, the provision in this proposed rule that VA will recoup disability severance pay from VA disability compensation only where both awards involve the same disability more accurately reflects the requirements of the governing statutes. For the reasons stated above, provisions regarding nondisability severance pay are no longer necessary and are not included in proposed § 5.747.

Proposed § 5.747(c) pertains to recoupment of separation pay and special separation benefits. Paragraph (c)(1) of proposed § 5.747 repeats nearly verbatim the first sentence of current § 3.700(a)(5)(i). It describes the recoupment of separation pay from VA compensation. Paragraph (c)(2) of proposed § 5.747 is derived from current § 3.700(a)(5)(ii), and describes the prohibition against recoupment of separation pay from VA compensation awarded for a subsequent period of service.

Proposed § 5.747(d) states the amount VA must recoup from VA disability compensation for lump-sum readjustment pay, disability severance pay, separation pay, or special separation benefits paid to veterans upon their separation from service. It consolidates portions of current §§ 3.700(a)(2)(iii), (a)(3), and (a)(5)(i).

There is one change concerning the amount of special separation benefits awarded under 10 U.S.C. 1174a that VA must recoup. Current § 3.700(a)(5) provides, in part, that VA will recoup the full amount of special separation benefits paid on or before September 30, 1996, but will reduce the amount recouped by the amount of Federal income tax withheld from special separation benefits paid after September 30, 1996. That was accurate at the time that § 3.700(a)(5) was drafted. However, section 8208 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 107, 495 (1998), extended the provision allowing the deduction of Federal income tax withholding back to December 5, 1991, the date that section 1174a was added to title 10, United States Code. Public Law 102-190, section 661(a)(1), 105 Stat. 1290, 1394 (1991). Thus, the deduction of Federal income tax withheld from the amount VA must recoup applies to all 10 U.S.C. 1174a special separation benefits. Proposed § 5.747(d)(2) reflects this change.

5.748 Concurrent Receipt of VA Disability Compensation and Retirement Pay by Certain Officers of the Public Health Service

Proposed § 5.748 is based on current § 3.753 with no substantive change. We have added authority citations.

Payments From Federal Agencies and the Effects of Those Payments on VA Benefits for Veterans and Survivors

5.750 Election Between VA Benefits and Compensation Under the Federal Employees' Compensation Act for Death or Disability Due to Military Service

Proposed § 5.750 is based on current § 3.708(a), pertaining to benefits payable under the Federal Employees' Compensation Act (FECA), based on service in the U.S. Armed Forces before January 1, 1957. (FECA compensation is also payable based on Federal civilian employment, which is the subject of proposed § 5.751.) Paragraph (a)(1) of proposed § 5.750 is based on current § 3.708(a)(1) and (a)(4). Current § 3.708(a)(1) is entitled "initial election." We have changed this to "election required," because "initial election" might imply that a reelection is possible. Under 5 U.S.C. 8116(b), however, an election between VA benefits and FECA compensation generally is irrevocable and thus is not subject to a subsequent reelection (with an exception noted in proposed § 5.750(a)(2)). Thus, the title has been changed to "election required." In addition, we have added a provision indicating that an election between VA benefits and FECA compensation is irrevocable, aside from the exception provided for in proposed § 5.750(a)(2). We believe that providing this clarification will be helpful to the reader. No substantive change is intended.

Paragraph (a)(2) of proposed § 5.750 is based on current § 3.708(a)(2). We have changed the heading from "right of reelection" to "right to elect DIC in lieu of FECA compensation at any time." We believe the heading "right of reelection" is too broad, and may imply that any election involving FECA compensation is subject to reelection. As noted above, this is not the case. We believe the new, more specific heading, is more accurate and more helpful to the reader. No substantive change is intended. The basis for allowing a one-time election of DIC is the statutory provision under 38 U.S.C. 1316, which prohibits any return to FECA compensation once DIC has been granted.

Paragraph (a)(3) of proposed § 5.750 provides that if a veteran makes an election of FECA compensation instead

of VA disability compensation for a particular disability, and the veteran subsequently is awarded increased VA compensation based on a subsequent increased impairment of that disability, the veteran may elect to receive FECA compensation or VA compensation as to that additional disability. The basis for this policy is that the increase in payment is considered a new award that is subject to an initial election.

Paragraph (b) of proposed § 5.750 is based on current § 3.708(a)(3), and involves the effect of a surviving spouse's election of FECA compensation or VA benefits on the rights of children. We have divided the provisions of current § 3.708(a)(3) into proposed § 5.750(b)(1) and (b)(2). Proposed § 5.750(b)(1) addresses situations where the rights of the child are controlled by the surviving spouse. Proposed § 5.750(b)(2) addresses situations where the rights of the child are independent of the surviving spouse.

We have added an authority citation at the end of proposed § 5.750, which includes section 8116(b) of title 5, United States Code, which is the statute governing elections between VA benefits and FECA compensation, section 501(a) of title 38, United States Code, which is the statute authorizing the Secretary of VA to prescribe regulations that are necessary or appropriate to carry out the laws administered by VA, and section 1316(b) of title 38, United States Code, which is the statute pertaining to elections between DIC and FECA compensation.

5.751 Election Between VA Benefits and Compensation Under the Federal Employees' Compensation Act for Death or Disability Due to Federal Civilian Employment

Proposed § 5.751 is based primarily on current §§ 3.708(b) and 3.958, regarding FECA compensation for death or disability due to Federal civilian employment. However, paragraph (d) of proposed § 5.751 is new.

Proposed § 5.751(a)(1) is based on current § 3.708(b)(1), and states the requirement that an individual must make an election between FECA compensation and VA disability compensation or dependency and indemnity compensation (DIC) if both FECA compensation and VA benefits are awarded based on the same disability or death.

Proposed § 5.751(a)(2) is based on current §§ 3.708(b)(1) and 3.958. It states that an individual may receive FECA compensation and VA benefits at the same time if there was an award prior to September 13, 1960, approving such

receipt. In such cases, an election between FECA compensation and VA benefits is not required.

Proposed § 5.751(b) is based on current § 3.708(b)(2) and states that there is no prohibition against concurrent payment of FECA compensation and VA compensation if entitlement to each benefit is based on a different disability or death. An election between FECA compensation and VA benefits is not required in such cases.

Proposed § 5.751(c) is based on current § 3.708(b)(1) and states that a Federal civilian employee's election between FECA compensation and VA benefits for the same disability is irrevocable, with the exception of the situation addressed in paragraph (d) of proposed § 5.751.

Paragraph (d) of proposed § 5.751, which is similar to paragraph (a)(3) of proposed § 5.750, provides for the situation where a veteran has elected FECA compensation, but later there is an increase in the disability which would warrant an increase in VA compensation. The veteran may elect between FECA compensation and VA compensation as to that additional disability. The basis for this policy is that the increase in payment is considered a new award that is subject to an initial election.

Paragraph (e)(2) of proposed § 5.751 is based on current § 3.708(b)(1) and states that a child who is eligible for DIC or other VA benefits independent of a surviving spouse may receive those benefits concurrently with the payment of FECA compensation to the surviving spouse. We have added paragraph (e)(1) to address a situation where the surviving spouse's election controls the rights of a child. This is the same provision as found in current § 3.708(a)(3) and proposed § 5.750(b)(1), which apply to elections involving FECA compensation based on disability or death due to military service. The provision equally applies to elections involving FECA compensation based on a disability or death due to civilian employment, so we have included it in proposed § 5.751(e)(1).

We have added an authority citation at the end of proposed § 5.751, which includes section 8116(b) of title 5, United States Code, which is the statute governing elections between VA benefits and FECA compensation, and section 501(a) of title 38, United States Code, which is the statute authorizing the Secretary of VA to prescribe regulations which are necessary or appropriate to carry out the laws administered by VA.

5.752 Procedures for Elections Between VA Benefits and Compensation Under the Federal Employees' Compensation Act

This is a new regulation which sets out the special election procedures that apply to elections between VA benefits and compensation under the Federal Employees' Compensation Act (FECA). Unlike other elections involving VA benefits, an election between VA benefits and FECA compensation is made with the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP), not with VA. The procedures described in proposed § 5.752 are based on long-standing VA practice; no substantive change to these procedures is intended.

5.753 Payment of VA Benefits and Civil Service Retirement Benefits for the Same Period

Proposed § 5.753 is a restatement of current § 3.710 without substantive change.

5.754 Effect of Payment of Compensation Under the Radiation Exposure Compensation Act of 1990 on Payment of Certain VA Benefits

Proposed § 5.754 is based on current § 3.715, which was recently amended, pertaining to the concurrent receipt of Radiation Exposure Compensation Act of 1990 (RECA) compensation and VA benefits. In addition, we have added paragraph (d), which is based on current § 3.500(x), regarding the effective date of discontinuance or reduction of VA benefits due to receipt of RECA compensation. In keeping with the practice used throughout proposed part 5, we have reframed this discontinuance effective date rule in terms of the first day that benefits are not paid rather than in terms of the last day benefits are paid. In addition, we have changed the cite to current § 3.309(d), which appears in current § 3.715, to § 5.268, "Service connection for diseases presumed to be due to exposure to ionizing radiation," which was published as proposed on July 27, 2004. *See* 69 FR 44614.

Rules Concerning the Receipt of Multiple VA Benefits

5.756 Prohibition Against Concurrent Receipt of Certain VA Benefits Based on the Service of the Same Veteran

Proposed § 5.756 is based on portions of the introduction to § 3.700 that relate to disability and death compensation, dependency and indemnity compensation (DIC), and pension benefits. The text has been simplified and restructured for clarity. No substantive changes are intended.

Paragraph (a) of proposed § 5.756 is based on the first sentence of current § 3.700. We note that this sentence refers to veterans, because it states that not more than one award will be paid to any person "based on his or her own service." Although the first sentence of current § 3.700 refers to "compensation," we have specified in proposed § 5.756 that this is "disability compensation."

Paragraph (b) of proposed § 5.756 is based on the second sentence of current § 3.700. Although § 3.700 refers to "dependents," proposed § 5.756(b) refers to "survivors," which is the term used throughout Part 5 to refer to persons who may receive benefits based on the death of a veteran. Dependents of a VA beneficiary are not entitled to compensation, pension, or DIC in their own right, and the prohibition on payment of multiple benefits therefore is not applicable to dependents. We note that dependents may receive apportionments of amounts otherwise payable to VA beneficiaries. In such cases, however, the prohibition on multiple benefits and the rights of election apply to the beneficiary, rather than the apportionee, except where a statute or regulation expressly provides otherwise (see proposed § 5.757(e)(3)). Additionally, although the second sentence of current § 3.700 refers to "compensation," we have specified that this is "death compensation." This is not a substantive change, because the current rule has no application to awards of disability compensation, a benefit awarded only to living veterans. The reader should see the discussion in the preamble regarding proposed § 5.757 for a further explanation of the effort to be more specific when referring to compensation.

Although the introduction to § 3.700 includes references to other benefits, including emergency officers', regular or reserve retirement pay, and naval pension, these references have not been repeated in proposed § 5.756, for the following reasons. Regarding emergency officers' retirement pay, we note that there are no longer any veterans receiving this benefit. Therefore, there are no regulations pertaining to this benefit that will be included in proposed part 5. Regarding military retirement pay, we plan to specifically address the concurrent receipt of military retirement pay and VA benefits in another regulation, § 5.745. Regarding naval pension, we note that the concurrent receipt of naval pension and VA benefits will be addressed in subpart H of proposed part 5 in a separate NPRM.

5.757 Elections Between VA Disability or Death Compensation and Pension

Paragraphs (a) and (b) of proposed § 5.757(a) are based on portions of the first two sentences of current § 3.701(a). The first sentence of current § 3.701(a) states that, except as otherwise provided, a person entitled to receive pension or compensation under more than one law or section of a law administered by VA may elect to receive either benefit, regardless of whether it is the greater or lesser benefit, even though the election reduces the benefits payable to his or her dependents. The second sentence of current § 3.701(a) states that such person may at any time elect or reelect the other benefit. These two sentences of current § 3.701(a) have been slightly reworded and reorganized into paragraph (a) of proposed § 5.757, pertaining to elections between disability compensation and pension, and paragraph (b) of proposed § 5.757, pertaining to elections between death compensation and pension. We have not included the provisions regarding the effect of an election on dependents and survivors in these new paragraphs, however. Instead, we have included them in paragraphs (d) and (e)(1) of proposed § 5.757. These paragraphs, as discussed below, deal exclusively with the effect of an election on a dependent or survivor.

There are several matters that we seek to clarify in proposed § 5.757. First, we note that some current part 3 regulations are not specific about what is included when the term “compensation” is used. This could lead to misinterpretation. Therefore, we are attempting to be more specific in part 5. When current § 3.701 refers to “compensation,” it is referring to disability or death compensation and not dependency and indemnity compensation (DIC). In that regard, we adopt the analysis included in paragraph 8 of VA General Counsel Opinion VAOPGCPREC 4–92, which states that it is clear not only from the context of section 3.701, but from its history that the term “compensation” used in that section refers only to disability and death compensation, not DIC. The Opinion goes on to state that other provisions dealing with concurrent payments and elections use the term DIC when reference to that benefit is intended. *See* 38 CFR 3.700 and 3.703 through 3.709.

Further, the Opinion states that § 3.701 was primarily derived from former 38 CFR 4.52 (1956), which predated establishment of the DIC program. *See* Transmittal Sheet 200 (May 29, 1959). Section 3.702 (“Dependency and indemnity

compensation”), in contrast, incorporates terms of former 38 CFR 4.424, et seq. (1958), which implemented the DIC program. *See* Transmittal Sheet 200 (May 29, 1959). Also noted in the Opinion, § 3.701(a) permits reelection of the other benefit at any time, while § 3.702(d) states that an election to receive DIC is final and the claimant may not thereafter reelect death pension or compensation.

In addition to clarification of the term “compensation,” we have also clarified the term “pension,” which can refer to Improved Pension, Old-Law Pension, Section 306 Pension, or Improved Death Pension, depending on the context. In paragraphs (a) and (b) of proposed § 5.757, we specifically state that the option to freely elect or reelect between disability and death compensation and pension applies to elections and reelections involving Improved Pension or Improved Death Pension. We have set out the election rules pertaining to Old-Law Pension and Section 306 Pension in a separate paragraph, which is paragraph (c) of proposed § 5.757.

Paragraph (d) of proposed § 5.757 pertains to the effect of a veteran’s election on the rights of dependents. It is based on the third sentence of current § 3.701(a), which states that an election by a veteran controls the rights of all dependents in that case. We have also included the provision from the first sentence of current § 3.701(a), which states that an election may result in a reduction of the benefits payable to a dependent.

Paragraph (e)(1) of proposed § 5.757 pertains to the effect of a surviving spouse’s election on the rights of a child. It is based on the fourth sentence of current § 3.701(a), which states that an election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse. We have also included a provision stating that the election may result in a reduction of the benefits payable to a child. This is based on the provision from the first sentence of current § 3.701(a), which states that a person’s election may result in a reduction of the benefits payable to a dependent.

Paragraph (e)(2) of proposed § 5.757 contains an exception to the general rule stated in paragraph (e)(1). This exception is not contained in current § 3.701. It is based on 38 U.S.C. 1542, which states that children who are not in the custody of a surviving spouse have independent eligibility for Improved Death Pension. For the text of proposed § 5.417 (corresponding to current § 3.57(d)), referenced in

proposed § 5.757(e)(2), *see* 70 FR #####, #####.

Paragraph (e)(3) of proposed § 5.757 contains another exception to the general rule stated in paragraph (e)(1). It is based on the fifth sentence of current § 3.701(a)(1), which states that the election of Improved Pension by a surviving spouse shall not prejudice the rights of any child receiving an apportionment on December 31, 1978. It has been slightly reworded for the sake of clarity, and we have added the terms Old-Law pension and Section 306 Pension to describe the apportionment. No substantive change is intended.

We note that we have not included the last two sentences of current § 3.701(a) in proposed § 5.757 because they are redundant of current § 3.960(d). They state that termination of the marriage of a surviving spouse who lost eligibility for Section 306 or Old-Law Pension because of that marriage does not restore eligibility for that pension. Regulations pertaining to the Section 306 Pension and Old-Law Pension programs are addressed in a separate NPRM. This includes a proposed regulation addressing the provisions of current § 3.960(d). *See* proposed § 5.470, “Reasons for Discontinuing or Reducing Section 306 or Old-Law Pension,” 69 FR 77578, 77589.

Paragraph (f) of proposed § 5.757 is a restatement of current § 3.701(c). In general, it states that when a person who is receiving VA pension or compensation is entitled to a higher rate under another law (that is, another VA compensation or pension program), VA will not pay that person under the other law unless that person makes an election.

5.758 Electing Improved Pension Instead of Old-Law Pension or Section 306 Pension

A version of proposed § 5.758 was previously published as part of another part 5 NPRM, “Elections of Improved Pension; Old-Law Pension and Section 306 Pension,” which was published on December 27, 2004, at 69 FR 77578. The regulation was proposed § 5.461, “Electing Improved Pension Instead of Old-Law or Section 306 Pension.” We now propose to remove that regulation (§ 5.461) and place it in this NPRM as proposed § 5.758 instead. This will help achieve consolidation of benefit election rules in this NPRM.

Proposed § 5.758(a), (b), and (c) are the same as previously proposed § 5.461(a), (c), and (d), respectively, with minor editorial changes. Readers should refer to the remarks at 69 FR 77578, 77580–81 for comments concerning those paragraphs.

Previously proposed § 5.461(a) states the basic rule that, subject to certain exceptions, “a pension beneficiary who was entitled to receive Old-Law Pension or Section 306 Pension on December 31, 1978, may instead elect (choose) to receive Improved Pension.” It is restated in proposed § 5.758(a), and is based on current § 3.711.

Previously proposed § 5.461(c) states that if a veteran’s spouse is also a veteran eligible to elect Improved Pension, neither veteran may receive Improved Pension unless both elect to receive it. It is restated in proposed § 5.758(b), and is based on current § 3.711.

Previously proposed § 5.461(d) states that if a beneficiary does not elect Improved Pension, VA will continue to pay that beneficiary Old-Law Pension or Section 306 Pension at the monthly rate in effect on December 31, 1978, unless that rate must be reduced or discontinued under proposed § 5.470 or another regulation in this part. It is restated in proposed § 5.758(c), and is based on current § 3.960(a). For the text of § 5.470, cited in proposed § 5.758(c), see 69 FR 77578, 77589.

Previously proposed § 5.461(b) contains rules concerning the finality of elections. These provisions are now contained in proposed § 5.742.

The last provision of proposed § 5.758, paragraph (d), is based on the fifth sentence of current § 3.701(a). We note that this provision also appears in proposed § 5.757(e)(3). We believe it is helpful to the reader to place the provision in both places (§ 5.757(e)(3) and § 5.758(d)), as the subject matter is appropriate for both regulations.

5.759 Election Between Death Compensation and Dependency and Indemnity Compensation

Proposed § 5.759 is a plain language restatement of paragraphs (a), (c), and (d)(1) of current § 3.702. It applies to elections between DIC and death compensation.

Paragraph (a) of proposed § 5.759 is based on current § 3.702(a). It states that a person entitled to receive both death compensation and DIC must choose one or the other benefit. It also states that a claim for service-connected death benefits will be considered a claim for DIC, subject to confirmation from the applicant. This is a plain language restatement of § 3.702(a). No substantive change is intended. Paragraph (a) also restates the rule contained in current § 3.702(d)(1) that an election to receive DIC instead of death compensation is final once the beneficiary receives payment for DIC.

Paragraph (b) of proposed § 5.759 is based on current § 3.702(c), which states that a claim for DIC may not be filed or withdrawn after the death of the surviving spouse, child, or parent.

We propose not to carry forward paragraphs (b), (e), and (f) of current § 3.702 because they are obsolete. Current paragraph (b) pertains only to surviving spouses receiving death compensation, the amount of which is based in part on the existence of a child who has attained the age of 18 years. Such a situation is highly unlikely, since death compensation is only awarded for deaths occurring before January 1, 1957. It is highly unlikely that a surviving spouse of a veteran who died before January 1, 1957, would have a dependent child.

Paragraph (e) of current § 3.702 provides for a surviving spouse to elect death compensation if he or she becomes eligible, even though DIC has been paid to a child or children of the veteran. This provision is no longer necessary, as it is highly unlikely that a surviving spouse would choose to receive death compensation instead of DIC, because the rate of DIC is higher than the rate of death compensation.

Paragraph (f) of current § 3.702 is also obsolete. It attempted to ensure that, under a complex and staggered rate-setting system for DIC benefits, the lowest possible DIC payment (for a service-connected death) was equal to or greater than the lowest possible payment made for a nonservice-connected death. However, in 1992, Congress reformed the DIC program by passing Public Law 102–568. Effective January 1, 1993, even the lowest possible DIC rate always exceeds the highest possible death pension rate.

5.760 Electing Improved Death Pension Instead of Dependency and Indemnity Compensation

Proposed § 5.760 is based on current § 3.702(d)(2), which states that a surviving spouse who is receiving DIC may elect to receive Improved Death Pension instead. This is a simple restatement of the current provision, with no substantive change. However, we have not included the reference to November 2, 1994 because, under 1317(b), as enacted by Public Law 103–446, the right of election applies to anyone who is now or will become entitled to DIC, irrespective of when the award originally became effective.

5.761 Concurrent Receipt of Disability Compensation, Pension, or Death Benefits by a Surviving Spouse Based on the Service of More Than One Veteran

Paragraphs (a), (b), and (c)(1) of proposed § 5.761, concerning the payment of multiple VA benefits to a surviving spouse, are based on the first sentence of current § 3.700(b)(1), which provides that a surviving spouse’s receipt of death pension, death compensation, or dependency and indemnity compensation (DIC) as the survivor of one veteran, or receipt of pension or disability compensation in his or her own right as a veteran, does not bar the payment of death pension, death compensation, DIC, or an apportionment of compensation or pension to that surviving spouse because of the death or disability of a different veteran.

Current § 3.700(b)(1) includes a reference to current § 3.700(a)(4). The proposed part 5 equivalent of § 3.700(a)(4) is § 5.464, “Multiple pension awards not payable.” Therefore we reference § 5.464 instead of § 3.700(a)(4) in proposed § 5.761. For the text of proposed § 5.464, see 69 FR 77578, 77589.

Proposed § 5.761(c)(2) is based on the second, third, and fourth sentences of § 3.700(b)(1). These sentences describe the election the surviving spouse is entitled to make for death benefits based on the death of more than one veteran to whom the surviving spouse was married. The current regulation states that when a surviving spouse elects death benefits based on the death of one veteran, then the death benefits to which the surviving spouse is entitled based on the death of another veteran are put in “suspense.” Rather than referring to this “suspension of benefits” in the proposed regulation, we propose merely to state that a surviving spouse may “elect” or “reelect” such benefits. The terms “elect” and “reelect” are more consistent with other regulations in this NPRM and are clearer to readers. No substantive change is intended.

5.762 Payment of Multiple VA Benefits to a Surviving Child Based on the Service of More Than One Veteran

Paragraphs (a) and (b) of proposed § 5.762 are based on current § 3.700(b)(2), pertaining to concurrent receipt of VA benefits by a child. Paragraph (c) of proposed § 5.762 is primarily based on current §§ 3.659 and 3.703, both of which are entitled, “Two parents in same parental line.” It is also based on long-standing VA practice.

With few exceptions, VA is prohibited from paying a benefit to a child, based on the service of one parent, while paying a benefit to the same child, based on the service of a different parent in the same parental line. "Same parental line" is not defined in current VA regulations. It means that a child has more than one veteran father or more than one veteran mother for VA purposes. For example, if a child's biological father, who is a veteran, dies, and another male veteran subsequently adopts the child, VA considers the child to have two fathers in the same parental line. We have added a definition of "same parental line" in paragraph (c)(1) of proposed § 5.762.

The prohibition against a child's concurrent receipt of death benefits for more than one parent in the same parental line applies only to DIC or death compensation (but not death pension) between January 1, 1957, and June 8, 1960. In other words, a child could receive death pension for one parent at the same time as DIC or death compensation for another parent in the same parental line if both parents died before June 9, 1960. From June 9, 1960, and thereafter, the prohibition against concurrent receipt includes all three death benefits. The effective dates of these prohibitions are included in the introductory paragraph of current § 3.659 and paragraph (a) of current § 3.703. We have restated the effective dates of these prohibitions in plain language in paragraph (c)(3) of proposed § 5.762.

Paragraph (c)(4) of proposed § 5.762 is based on the last sentence of current § 3.703(b), which states that a child has the right to elect or reelect one or more times to receive benefits based on the death of either parent in the same parental line. It is rewritten in plain English; no substantive change is intended.

Paragraph (c)(5) of proposed § 5.762 is based on current § 3.659(a), which describes the offset VA applies when a child makes a reelection.

Paragraph (c)(6)(i) of proposed § 5.762 is based on current § 3.703(c). It addresses the effect of a child's election on other beneficiaries. It has been rewritten for improved clarity. No substantive changes are intended. The reference to "dependents' educational assistance" (DEA) in current § 3.703(c) has not been repeated because proposed § 5.762 involves death benefits only, and the effects of a child's election of DEA are included in proposed § 5.764, "Payment of Survivors' and Dependents' Educational Assistance and VA pension or dependency and

indemnity compensation for the same period."

Paragraph (c)(6)(ii) of proposed § 5.762 is based on current § 3.659(b), which describes the effective date of an award based on the child's election, and current § 3.503(a)(7), which states the effective date of discontinuance of pension, compensation, or DIC in two-parent cases. These provisions are rewritten in plain English; no substantive change is intended.

5.763 Payment of Multiple VA Benefits to More Than One Child Based on the Service of the Same Veteran

Proposed § 5.763 is a plain language rewrite of current § 3.704(a). We have limited the application of § 5.763 to Improved Pension, dependency and indemnity compensation (DIC), and Survivors' and Dependents' Educational Assistance (DEA). We have not included a reference to death compensation, as it is highly unlikely that there will be any children receiving death compensation. We have not included references to Old-Law Pension or Section 306 Pension, as it has been indicated in other regulations that VA cannot pay increased rates for Old-Law or Section 306 Pension.

We note that current § 3.704(b) is addressed in a separate NPRM, subpart G, which is titled, "Dependency and Indemnity Compensation Benefits." The rule was published as proposed § 5.536(h) in that NPRM on October 21, 2005. *See* 70 FR 61326.

5.764 Payment of Survivors' and Dependents' Educational Assistance and VA Death Pension or Dependency and Indemnity Compensation for the Same Period

Proposed § 5.764 is a plain language restatement of current paragraphs (a) and (b) of § 3.707, as well as §§ 3.503(a)(8), 3.659(b), and 3.703(c) concerning Survivors' and Dependents' Educational Assistance (DEA). We have removed the references to "compensation," which are referring to death compensation, because it is highly unlikely that a current recipient of DEA would be eligible for death compensation, since death compensation may only be awarded for deaths occurring before January 1, 1957. Proposed § 5.764 is also based on § 21.3023, which contains the specific substantive criteria for elections of DEA.

Proposed § 5.764(a)(1) states that a child over the age of 18 must elect between VA pension or DIC and DEA, because VA cannot pay DEA to such a child at the same time it pays the child pension or DIC. It is based on current § 3.707(a) and current § 21.3023(a).

Proposed § 5.764(a)(2) is based on current § 3.703(c) and states that when an election is made by a child with more than one parent in the same parental line, VA will determine the entitlement and the rate of benefits payable to other beneficiaries in the same case as if the child electing DEA did not exist. This is a plain language restatement of current § 3.703(c).

Proposed § 5.764(a)(3) states the applicable effective dates when a child elects DEA. It is a plain language restatement of current §§ 3.503(a)(8) and 3.659(b).

Proposed § 5.764(b) is based on current § 3.707(a) and current § 21.3023(b). It states that a child who is under the age of 18 or helpless may receive VA pension or DIC at the same time as DEA.

Proposed § 5.764(c) is based on current § 3.707(b) and current § 20.3023(d). It states that a surviving spouse may receive VA pension or DIC at the same time as DEA.

Proposed § 5.764(d) is based on § 3.707(a) and directs the reader to the provisions of current § 20.3023 for specific criteria regarding elections of DEA.

Non-Inclusion of Other Part 3 Provisions

As discussed earlier in this NPRM, there are certain regulations or portions of regulations that we propose not to carry forward to part 5.

We propose that paragraphs (j)(2) through (j)(6) of current § 3.400 not be repeated in new part 5. These are effective-date provisions for the election of pension payable under Public Law 86-211 ("Section 306 Pension"). New entitlement under this program is no longer possible. A separate NPRM pertains to continuing awards of Section 306 Pension. *See* 69 FR 77578.

We propose not to include the provisions of current § 3.751 in part 5 because it is redundant of the provisions of current § 3.750, which are included in § 5.740 and § 5.745. Furthermore, current § 3.751 provides that military retirees are not entitled to "statutory awards" of disability compensation in addition to military retired pay. "Statutory award" is a term that in VA vernacular means an award of special monthly compensation (SMC) under paragraphs (k) through (s) of 38 U.S.C. 1114. We believe that proposed part 5 would make it sufficiently clear that disability compensation includes SMC. In addition, some readers could be confused by the term "statutory award" in this context, particularly the second reference to it in § 3.751. Because all VA benefits are provided according to

statute, some readers might erroneously believe that a veteran must waive military retired pay in order to receive a clothing allowance or Medal of Honor Pension, for example, when this is not the case.

We propose that § 3.754 concerning emergency officers' retirement pay (EOR) not be included in proposed part 5 because there are no longer any veterans affected by this rule and this rule is obsolete.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

This document contains provisions constituting a collection of information, at 38 CFR 5.764 under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521). No new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for § 5.764 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0098.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Pensions, Radioactive materials, Veterans.

Approved: June 22, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR Part 5, as proposed to be added at 69 FR 4832, January 30, 2004, and as amended, by adding subpart L as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart L—Payments and Adjustment to Payments

Payments to Beneficiaries Who Are Eligible for More Than One Benefit—General Provisions

Sec.

- 5.740 Definitions relating to elections.
- 5.741 Persons who may make an election.
- 5.742 Finality of elections; cancellation of certain elections.
- 5.743 General effective dates for awarding, reducing, or discontinuing VA benefits because of an election.
- 5.744 [Reserved]

Payments From Service Departments and the Effects of Those Payments on VA Benefits for Veterans

- 5.745 Entitlement to concurrent receipt of military retired pay and VA disability compensation.
- 5.746 Prohibition against receipt of active military service pay and VA benefits for the same period.
- 5.747 Effect of military readjustment pay, disability severance pay, and separation pay on VA benefits.
- 5.748 Concurrent receipt of VA disability compensation and retirement pay by certain officers of the Public Health Service.
- 5.749 [Reserved]

Payments From Federal Agencies and the Effects of Those Payments on VA Benefits for Veterans and Survivors

- 5.750 Election between VA benefits and compensation under the Federal Employees' Compensation Act for death or disability due to military service.
- 5.751 Election between VA benefits and compensation under the Federal Employees' Compensation Act for death or disability due to Federal civilian employment.
- 5.752 Procedures for elections between VA benefits and compensation under the Federal Employees' Compensation Act.
- 5.753 Payment of VA benefits and civil service retirement benefits for the same period.
- 5.754 Effect of payment of compensation under the Radiation Exposure Compensation Act of 1990 on payment of certain VA benefits.
- 5.755 [Reserved]

Rules Concerning the Receipt of Multiple VA Benefits

- 5.756 Prohibition against concurrent receipt of certain VA benefits based on the service of the same veteran.

- 5.757 Elections between VA disability or death compensation and pension.
- 5.758 Electing Improved Pension instead of Old-Law Pension or Section 306 Pension.
- 5.759 Election between death compensation and dependency and indemnity compensation.
- 5.760 Electing Improved Death Pension instead of dependency and indemnity compensation.
- 5.761 Concurrent receipt of disability compensation, pension, or death benefits by a surviving spouse based on the service of more than one veteran.
- 5.762 Payment of multiple VA benefits to a surviving child based on the service of more than one veteran.
- 5.763 Payment of multiple VA benefits to more than one child based on the service of the same veteran.
- 5.764 Payment of Survivors' and Dependents' Educational Assistance and VA death pension or dependency and indemnity compensation for the same period.
- 5.765–5.769 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart L—Payments and Adjustments to Payments

Payments to Beneficiaries Who Are Eligible for More Than One Benefit—General Provisions

§ 5.740 Definitions relating to elections.

(a) *Election* means any writing, signed by a person authorized by § 5.741, “Persons who may make an election,” expressing a choice between two or more VA benefits to which the person is entitled, or between VA and other Federal benefits to which the person is entitled.

(b) *Initial election* means the first election a person, authorized by § 5.741, makes between two or more benefits.

(c) *Reelection* means an election a person, authorized by § 5.741, makes between benefits that were the subject of an initial election.

(d) *Timely filed* with respect to elections means that a person, authorized by § 5.741, files an election between two or more benefits within 1 year of VA's notice that such an election is required.

(Authority: 38 U.S.C. 501(a), 5103(b))

Cross reference: § 5.572 “Effective dates for reduction or discontinuance based on increased income-parents’ DIC.”

§ 5.741 Persons who may make an election.

(a) *General.* VA will accept an election signed by a claimant or beneficiary, or if applicable, by any one of the following persons acting on behalf of a claimant or beneficiary:

(1) The spouse of a claimant or beneficiary if the claimant or beneficiary has been declared to be an incompetent veteran under § 13.57 of this chapter.

(2) The legal custodian of a claimant or beneficiary if the claimant or beneficiary is a minor under § 13.58 of this chapter.

(3) A fiduciary that VA designates, under § 13.55 of this chapter.

(4) A court-appointed fiduciary, under § 13.59 of this chapter.

(5) The chief officer of the institution in which the veteran is receiving care and treatment, and whom VA has designated as a payee, under §§ 13.55(b)(6) and 13.61 of this chapter.

(b) *Elections from a Member of Congress or duly authorized representative.* This paragraph (b) applies if VA receives a communication from a Member of Congress or from a claimant or beneficiary's duly authorized representative indicating that a claimant or beneficiary wishes to elect a VA benefit. (If the communication is from a service organization, attorney, or agent, there must be a power of attorney in effect at the time the communication was written.) If VA receives such a communication, VA will provide notice to the claimant or beneficiary that a person listed in paragraph (a) of this section must sign such an election. If a properly signed election is then timely filed under § 5.740(d), VA will consider the properly signed election to have been filed on the date it received the communication from the Member of Congress or the duly authorized representative.

(Authority: 38 U.S.C. 501(a), 5103(b)(1))

§ 5.742 Finality of elections; cancellation of certain elections.

This section explains when an election or reelection becomes final. A final election or reelection ordinarily may be changed only by cancellation under paragraph (d) or (e) of this section or by reelection, if authorized. Other provisions of this part specify when reelection is authorized and when a final election or reelection is irrevocable.

(a) *Finality of an election when benefits are received by check.* Except as otherwise provided in this section, if the beneficiary receives payment of the elected benefit by check, the election is final when the beneficiary (or a person authorized to act on the beneficiary's behalf under § 5.741) negotiates the first check for the elected benefit.

(b) *Finality of an election when benefits are received by direct deposit or electronic funds transfer.* Except as otherwise provided in this section, if the

beneficiary receives payment of the elected benefit by direct deposit or electronic funds transfer, the election is final when the applicable financial institution receives the second payment of the elected benefit.

(c) *Finality of an election when a beneficiary dies after filing an election.* When a beneficiary dies after filing an election, but before the beneficiary had negotiated the check or before the applicable financial institution had received the second payment for the elected benefit, the election is final even though it would not be considered final under paragraph (a) or (b) of this section.

(d) *Cancellation of an election made by an incompetent person.* If VA finds that a beneficiary was mentally incompetent when he or she elected a benefit, the beneficiary, or another person listed in § 5.741(a) who is acting on behalf of the beneficiary, may cancel that election.

(e) *Cancellation of elections that were based on erroneous VA information.* A beneficiary who elected a benefit based on erroneous information that was provided by VA may cancel the election. For this right to cancellation to apply, VA must make a determination that it previously provided erroneous information. This determination must be based on the same evidence that VA used when it previously provided the erroneous information.

(Authority: 38 U.S.C. 501(a))

§ 5.743 General effective dates for awarding, reducing, or discontinuing VA benefits because of an election.

(a) *General effective date for award; offset—(1) Effective date of award.* Unless otherwise provided in this part, when a claim is pending and an election is timely filed under § 5.740(d), the effective date for an award of an elected benefit shall be the same as the effective date VA would assign for the awarded benefit if no election were required. Unless otherwise provided in this part, when a beneficiary elects a different benefit, the effective date for an award of the elected VA benefit is the date VA receives the election.

(2) *Offset.* Payments of the elected benefit are subject to an offset. The payments will be offset by any payments the beneficiary received for another benefit for the same period. This offset will occur only if the two benefits cannot be received concurrently.

(b) *Effective date of reduction or discontinuance.* Unless otherwise provided in this part, when VA must reduce or discontinue payments because a beneficiary elected a different VA

benefit, or a non-VA benefit, the effective date of the reduction or discontinuance is the same date as the effective date of the award of the different VA benefit or the non-VA benefit.

(Authority: 38 U.S.C. 5110, 5112, 5304, 5305)

§ 5.744 [Reserved]

Payments From Service Departments and the Effects of Those Payments on VA Benefits for Veterans

§ 5.745 Entitlement to concurrent receipt of military retired pay and VA disability compensation.

(a) *Definition of military retired pay.* For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or Improved Pension—(1) Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), or based on a determination of individual unemployability under 38 CFR 4.16, is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

(2) *Chapter 61 disability retirees retiring with 20 or more years of service.* Disability retired pay payable under 10 U.S.C. Chapter 61 to a veteran with 20 or more years of creditable service may be paid concurrently with disability compensation to a qualifying veteran subject to the following:

(i) Any waiver required during the phase-in period under paragraph (c)(1)(ii) of this section; and

(ii) If the veteran's disability retired pay exceeds the amount of retired pay the veteran would have received had the veteran retired based on length of service, the veteran must waive that excess amount of disability retired pay in order to receive VA disability compensation.

(3) *Chapter 61 disability retirees retiring with less than 20 years of service.* Veterans who receive disability retired pay under 10 U.S.C. Chapter 61

with less than 20 years of creditable service are not eligible for concurrent receipt.

(4) *Improved Pension.* A veteran may receive Improved Pension and military retired pay at the same time without having to waive military retired pay. However, in determining entitlement to Improved Pension, VA will treat military retired pay in the same manner as countable income from other sources.

(c) *Waiver—(1) When a waiver is necessary.* (i) A waiver of military retired pay is necessary in order to receive disability compensation when a veteran is eligible for both military retired pay and disability compensation but is not eligible under paragraphs (b)(1) or (b)(2) of this section to receive both benefits at the same time.

(ii) All veterans who are eligible to receive both military retired pay and disability compensation at the same time under paragraphs (b)(1) or (b)(2) of this section, except those receiving compensation for a disability rated 100 percent, must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. For veterans receiving disability compensation based on a VA determination of individual unemployability, the phase-in period ends on December 30, 2009. For all other veterans, the phase-in period ends on December 31, 2013. After the phase-in period, veterans retired under 10 U.S.C. Chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2)(ii) of this section.

(Authority: 10 U.S.C. 1414, 38 U.S.C. 5304, 5305)

(2) *How to file a waiver of military retired pay.* A veteran may request a waiver of military retired pay in any written, signed statement, including a VA form, which reflects a desire to waive all or some military retired pay. The statement must be submitted to VA or to the Federal agency that pays the veteran's military retired pay. VA will treat a claim for VA disability compensation filed by a veteran who is entitled to military retired pay as a waiver.

(d) *Elections and the right to reelect either benefit.* (1) A veteran who has filed a waiver of military retired pay under this section has elected to receive disability compensation. A veteran may reelect between benefits covered by this section at any time by submitting a written, signed statement to VA or to the Federal agency that pays the veteran's military retired pay.

(2) An election filed within 1 year from the date of notification of VA entitlement will be considered as "timely filed" for effective date purposes. If the veteran is incompetent, the 1-year period will begin on the date that notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and its effect.

(e) *Effective date rules for elections.*

(1) If an election is timely filed under paragraph (d)(2) of this section, the effective date of the election will be the date of entitlement to the elected benefit.

(2) If a waiver is properly filed under paragraph (c), the effective date of the waiver will be the day following discontinuance or reduction of retirement pay.

(3) If a reelection is made under paragraph (d)(1) of this section, the effective date of the election will be the date that the reelection is received by VA.

(Authority: 38 U.S.C. 5304(a), 5305)

§ 5.746 Prohibition against receipt of active military service pay and VA benefits for the same period.

(a) *Definition of active military service pay.* For the purposes of this section, active military service pay means pay that a veteran receives for active duty, active duty for training, or inactive duty training. Active military service pay does not include pay for time spent by members of the Reserve Officer Training Corps in drills as part of their activities as members of the corps.

(b) *Prohibition against receipt of VA benefits at the same time as active military service pay.* VA will not pay disability compensation or pension to a veteran for any period for which the veteran receives active military service pay.

(c) *Effective date of discontinuance of payments for VA benefits during active duty status.* Unless the veteran elects to receive VA benefits instead of active military service pay, VA will discontinue payments effective the day the veteran begins active duty service. If VA does not know the exact date of the veteran's return to active duty, VA will discontinue payments effective the first day of the month that follows the month for which it last paid benefits. If the exact date of the veteran's return to active duty thereafter becomes known, VA will then discontinue payments effective as of that date.

(d) *Resumption of payments for VA benefits on release from active duty—*

(1) *Effective date.* If otherwise in order, VA will resume payments effective the day after the date of release from active duty if VA receives a claim to resume payments within 1 year after the date of release. Otherwise, the effective date is 1 year prior to the date VA receives the claim to resume payments.

(2) *Rate—(i) Static service-connected disabilities.* If the evidence of record shows that the level of disability had become static at the time of entry into active duty, VA will resume payments for a service-connected disability at the same disability level that was in effect immediately prior to entering active duty.

(ii) *Non-static service-connected disabilities.* Except as provided in paragraph (d)(2)(i) of this section, VA will resume payments based on the degree of disability found to exist when the award is resumed. VA will ascertain the degree of disability by considering all the facts, including facts provided in records from the service department relating to the most recent period of active military service.

(3) *Application of § 3.31.* Resumptions under paragraph (d) of this section are not subject to § 3.31 of this chapter, “Commencement of the period of payment,” except to the extent that the disability evaluation is increased.

(4) *Prior service-connection awards.* In determining whether disability compensation payments should be resumed under paragraph (d) of this section, VA will not disturb prior determinations of service connection except as provided in § 3.105 of this chapter.

(5) *New claims for service connection.* If the veteran incurs or aggravates a disability during the subsequent period of service, VA will not award service connection for the new disability unless it receives a claim for service connection for that disability.

(e) *Waiver of VA benefits during active duty for training or inactive duty for training—(1) Waiver of VA benefits.* Veterans who are Reservists and National Guard members may waive their VA pension or compensation for periods of active duty for training or inactive duty for training (see § 5.23, “How VA classifies Reserve and National Guard duty). Waivers may cover anticipated periods of training; however, each waiver is effective for not more than 1 year.

(2) *Readjustments.* VA may authorize retroactive payments of previously waived VA pension or compensation if readjustment is in order because the veteran did not receive service pay for a period of training duty as anticipated.

However, VA must receive a claim for readjustment within 1 year after the end of the fiscal year during which VA benefits were waived.

(Authority: 10 U.S.C. 12316; 38 U.S.C. 501(a), 5304(c))

§ 5.747 Effect of military readjustment pay, disability severance pay, and separation pay on VA benefits.

(a) *Lump-sum readjustment pay.* This paragraph (a) applies when entitlement to disability compensation was established on or after September 15, 1981.

(1) *Recoupment of lump-sum readjustment pay.* A veteran who has received a lump-sum readjustment payment may also receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment. However, the lump-sum readjustment payment will be recouped from the disability compensation.

(2) *Disability compensation for disability incurred or aggravated in subsequent service is not subject to recoupment.* The veteran must receive the full amount of the monthly compensation including additional amounts for dependents, payable for a service-connected disability that was incurred in or aggravated in a period of service that is subsequent to the period on which the readjustment pay was based.

(Authority: 10 U.S.C. 1174(h)(2); 38 U.S.C. 501(a))

(b) *Disability severance pay—(1) Recoupment of disability severance pay when VA compensation is awarded for a severance disability.* When VA disability compensation is awarded based on the same disability or disabilities for which the veteran received disability severance pay, VA will recoup from the disability compensation award the full amount of the disability severance pay.

(2) *Rate of recoupment of disability severance pay.* Generally, VA will recoup disability severance pay from VA disability compensation at the rate payable for the initial determination of the degree of the disability for which the veteran was awarded disability severance pay. However, the veteran must receive the full amount of the monthly compensation including additional amounts for dependents, payable for any additional nonseverance pay disabilities.

(i) *Definition of “initial determination of the degree of disability”.* The “initial determination of the degree of disability” means the first regular schedular compensable rating

determined under part 4 of this chapter. The “initial determination of the degree of disability” must be made without consideration in whole or in part of a need for hospitalization or a period of convalescence. It does not include a temporary 100 percent rating assigned under §§ 4.28, 4.29, or 4.30 of this chapter.

(ii) *Rate of recoupment prior to an initial determination of the degree of disability.* When a veteran is receiving a temporary evaluation assigned under §§ 4.28, 4.29, or 4.30 of this chapter and VA has not yet made an initial determination of the degree of disability, VA will recoup at the rate payable, based on that temporary evaluation, for the disability or disabilities for which the severance pay was granted.

(iii) *Rate of recoupment after an initial determination of the degree of disability.* After making an initial determination of the degree of disability, VA will recoup VA disability compensation at the monthly rate payable for the degree of disability assigned. VA will not thereafter change the rate of recoupment based on reevaluations of the veteran’s disability that lead to an increased rating.

(Authority: 10 U.S.C. 1174(h) and 1212(c); 38 U.S.C. 501, 1161)

(c) *Separation pay and special separation benefits.* This paragraph (c) applies when entitlement to disability compensation was established on or after September 15, 1981.

(1) *Recoupment of separation pay and special separation benefits.* A veteran who has received separation pay or special separation benefits may also receive disability compensation for a disability incurred in or aggravated by service prior to the date of receipt of separation pay or special separation benefits. However, the separation pay or special separation benefits will be recouped from the disability compensation.

(2) *Disability compensation for disability incurred or aggravated in subsequent service is not subject to recoupment.* The veteran must receive the full amount of the monthly compensation including additional amounts for dependents, payable for a service-connected disability that was incurred in or aggravated in a period of service that is subsequent to the period on which the separation pay or special separation benefits were based.

(Authority: 10 U.S.C. 1174, 1174a)

(d) *Amount recouped—(1) Lump-sum readjustment pay, disability severance pay, and separation pay—(i) Payments*

received before October 1, 1996. VA will recoup from VA disability compensation the total amount of lump-sum readjustment pay, disability severance pay, and separation pay a veteran received before October 1, 1996, regardless of the amount of Federal income tax withheld from such payments.

(ii) *Payments received after September 30, 1996.* VA will recoup from VA disability compensation the total amount of lump-sum readjustment pay, disability severance pay, and separation pay a veteran received after September 30, 1996, less the amount of Federal income tax withheld from such payments.

(2) *Special separation benefits.* VA will recoup from VA disability compensation the total amount of special separation benefits under 10 U.S.C. 1174a less the amount of Federal income tax withheld from such payments.

(Authority: 10 U.S.C. 1174, 1174a, 1174(h)(2), 1212(c))

§ 5.748 Concurrent receipt of VA disability compensation and retirement pay by certain officers of the Public Health Service.

Disability compensation may be paid concurrently with retirement pay to an officer of the commissioned corps of the Public Health Service, who was receiving disability compensation on December 31, 1956, as follows:

(a) An officer who incurred a disability before July 29, 1945, but retired unrelated to disability prior to such date.

(b) An officer who incurred a disability before July 29, 1945, but retired unrelated to disability between July 4, 1952, and December 31, 1956.

(c) An officer who incurred a disability between July 29, 1945, and July 3, 1952, but retired unrelated to disability between July 4, 1952, and December 31, 1956.

(Authority: Sec. 501(b), Pub. L. 84-881, 70 Stat. 881; E.O. 9575, 10 FR 7895; E.O. 10349, 17 FR 3769)

§ 5.749 [Reserved]

Payments From Federal Agencies and the Effects of Those Payments on VA Benefits for Veterans and Survivors

§ 5.750 Election between VA benefits and compensation under the Federal Employees' Compensation Act for death or disability due to military service.

(a) *General—* (1) *Election required.* An individual who is entitled to compensation from the U.S. Department of Labor's Office of Workers' Compensation Programs under the Federal Employees' Compensation Act

(FECA) for a disability or death incurred before January 1, 1957, due to service in the Armed Forces, and who is also entitled to VA pension, compensation, or dependency and indemnity compensation (DIC) based on the same disability or death (including compensation or DIC payable under 38 U.S.C. 1151, "Benefits for persons disabled by treatment or vocational rehabilitation") must elect whether to receive FECA compensation or the applicable VA benefit. An election under this paragraph (a)(1) is irrevocable once the election becomes final under § 5.742, with the exception of the situation addressed in paragraph (a)(2) of this section.

(2) *Right to reelect DIC in lieu of FECA compensation at any time.* An individual who is receiving benefits under FECA based on death in military service may elect at any time to receive DIC in lieu of FECA compensation. However, such an election of DIC is irrevocable once the election becomes final under § 5.742.

(3) *Future increases in impairment.* If a veteran makes an election of FECA compensation instead of VA disability compensation for a particular disability, and there is subsequent increased impairment based on that disability, the award of increased compensation based on the increased impairment will be considered a new benefit and the veteran may elect to receive FECA compensation or VA compensation as to that increased impairment. If the veteran elects VA compensation for the increase, VA will pay only the difference between the rate payable for the increased evaluation and the rate payable for the prior evaluation.

(b) *Effect of a surviving spouse's election of FECA compensation or VA benefits on the rights of children—* (1) *Cases in which a spouse's entitlement controls a child's entitlement.* If a child's entitlement to VA benefits is controlled by the surviving spouse's entitlement, the surviving spouse's election controls the rights of any of the veteran's children, even if the child is not in the custody of the surviving spouse and even if the child is not entitled to receive any benefits under FECA. If the surviving spouse elects to receive FECA compensation, the child's VA benefits will be discontinued on the same day that the surviving spouse's VA benefits are discontinued.

(2) *Cases in which a child has independent entitlement.* If a child is entitled to DIC or other VA benefits independent of the surviving spouse's entitlement, the child may receive such benefits at the same time that the

surviving spouse receives FECA compensation.

(Authority: 5 U.S.C. 8116(b); 38 U.S.C. 501(a), 1316(b), 1317(a))

§ 5.751 Election between VA benefits and compensation under the Federal Employees' Compensation Act for death or disability due to Federal civilian employment.

(a) *When both VA benefits and Federal Employees' Compensation Act (FECA) compensation are based upon the same disability or death—* (1) *Election required.* Except as otherwise provided in this section, an individual who is entitled to compensation from the U.S. Department of Labor's Office of Workers' Compensation Programs under FECA for a disability or death due to Federal civilian employment and who is also entitled to VA compensation or dependency and indemnity compensation (DIC) based on the same disability or death must elect whether to receive FECA compensation or the applicable VA benefit.

(2) *No election is required for VA awards approved prior to September 13, 1960.* Any award approved prior to September 13, 1960, authorizing VA benefits concurrently with an award of FECA compensation for a disability or death due to Federal civilian employment is not subject to the election requirement in paragraph (a)(1) of this section.

(b) *When VA benefits and FECA compensation are each based on a different disability or death.* There is no prohibition against concurrent payment of FECA compensation and VA compensation if entitlement to each benefit is based on a different disability or death. The election described in paragraph (a)(1) of this section is not required in such cases.

(c) *Election is irrevocable.* An election to receive FECA compensation or VA benefits under this section is irrevocable once the election becomes final under § 5.742. There is no right of reelection.

(d) *Future increases in disability.* If a veteran makes an election of FECA compensation instead of VA disability compensation for a particular disability, and there is subsequent increased impairment based on that disability, the award of increased compensation based on the increased disability will be considered a new benefit and the veteran may elect to receive FECA compensation or VA compensation as to that increased disability.

(e) *Effect of a surviving spouse's election of FECA compensation or VA benefits on the rights of children—* (1) *Cases in which a spouse's entitlement controls a child's entitlement.* If a

child's entitlement to VA benefits is controlled by the surviving spouse's entitlement, the surviving spouse's election controls the rights of any of the veteran's children, even if the child is not in the custody of the surviving spouse and even if the child is not entitled to receive any benefits under FECA. If the surviving spouse elects to receive FECA compensation, the child's VA benefits will be discontinued on the same day that the surviving spouse's VA benefits are discontinued.

(2) *Cases in which a child has independent entitlement.* If a child is entitled to DIC or other VA benefits independent of the surviving spouse's entitlement, the child may receive such benefits at the same time that the surviving spouse receives FECA compensation.

(Authority: 5 U.S.C. 8116(b); 38 U.S.C. 501(a))

§ 5.752 Procedures for elections between VA benefits and compensation under the Federal Employees' Compensation Act.

(a) *Procedures prior to VA receipt of an election between Federal Employees' Compensation Act (FECA) compensation and VA benefits.* When there is evidence showing that a claimant is receiving benefits from the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) under FECA for the same disability or death for which VA benefits are claimed, VA will—

(1) Advise OWCP of the pertinent facts in the case, including the disabilities for which VA benefits are payable, and request that OWCP obtain the election; and

(2) Deny the VA claim, advise the claimant of the facts VA furnished to OWCP, and inform the claimant that OWCP will contact the claimant concerning rights of election.

(b) *Procedures when there is an election of VA benefits instead of FECA compensation.* If OWCP informs VA that the claimant has elected VA benefits, VA will pay benefits effective the date of receipt of the claim for VA benefits (or other effective date assigned under this chapter based on such claim). VA will offset FECA payments made during the period between the effective date of the VA award and the date of election.

§ 5.753 Payment of VA benefits and civil service retirement benefits for the same period.

VA will pay VA benefits to an eligible claimant or beneficiary at the same time that the claimant or beneficiary is receiving civil service retirement benefits. However, VA will consider

payments of civil service retirement benefits as income where income is a factor in entitlement to VA benefits except as otherwise provided in this part.

(Authority: 38 U.S.C. 501(a))

§ 5.754 Effect of payment of compensation under the Radiation Exposure Compensation Act of 1990 on payment of certain VA benefits.

(a) *Disability compensation.* (1) A radiation-exposed veteran, as defined in 38 CFR 3.309(d)(3), who receives a payment under the Radiation Exposure Compensation Act of 1990, as amended (42 U.S.C. 2210 note) (RECA), will not be denied disability compensation to which the veteran is entitled under 38 CFR 3.309(d) for months beginning after March 26, 2002.

(2) A veteran who is not a "radiation-exposed veteran," as defined in 38 CFR 3.309(d)(3), is not entitled to VA disability compensation for disability caused by a disease that is attributable to exposure to radiation for which the veteran has received a payment under RECA.

(b) *Dependency and indemnity compensation (DIC).* A person who receives a payment under RECA based upon a veteran's death will not be denied DIC to which the person is entitled under 38 CFR 3.5 and 3.22 for months beginning after March 26, 2002.

(c) *Offset of RECA payment against VA benefits.* Notwithstanding paragraphs (a)(1) or (b) of this section, the amount of a RECA payment will be deducted from the amount of disability compensation payable pursuant to § 3.309(d) or the amount of DIC payable.

(d) *Effective date of discontinuance of VA benefits.* This paragraph applies when VA must discontinue VA disability compensation to an individual because that individual received RECA compensation. In such a case, VA will discontinue its benefits effective the first day of the month that RECA benefits are issued.

(Authority: 38 U.S.C. 1112(c)(4), 1310(c); 42 U.S.C. 2210 note)

§ 5.755 [Reserved]

Rules Concerning the Receipt of Multiple VA Benefits

§ 5.756 Prohibition against concurrent receipt of certain VA benefits based on the service of the same veteran.

(a) *Veterans.* VA may not pay to a veteran an award of disability compensation and an award of disability pension at the same time based on the veteran's own service.

(b) *Survivors.* VA may not pay to a survivor more than one award of death

pension, death compensation, or dependency and indemnity compensation (DIC) based on the service of the same veteran.

(Authority: 38 U.S.C. 5304(a)(1))

§ 5.757 Elections between VA disability or death compensation and pension.

(a) *Elections between disability compensation and Improved Pension.* A person who is entitled to receive both disability compensation and Improved Pension may elect or reelect at any time to receive either benefit unless otherwise provided in this part, regardless of whether it is the greater or lesser benefit.

(b) *Elections between death compensation and death pension.* A person who is entitled to receive both death compensation and death pension may elect or reelect at any time to receive either benefit unless otherwise provided in this part, regardless of whether it is the greater or lesser benefit.

(c) *Elections between disability compensation and Old-Law Pension or Section 306 Pension.* A person who is entitled to receive both disability compensation and Old-Law Pension or Section 306 Pension may elect to receive either benefit. Such person may reelect at any time to receive the other benefit unless otherwise provided in this part, regardless of which is the greater or lesser benefit.

(d) *Effect of a veteran's election of disability compensation or pension on other beneficiaries.* A veteran's election of disability compensation or pension under this section controls the right of any dependent in that case, even though the election results in the reduction of the benefit payable to the dependent.

(e) *Effect of a surviving spouse's election on the rights of a child—(1) General—the election of the surviving spouse controls the claims of the child.* An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse, even though the election results in the reduction of the benefit payable to a child.

(2) *Exception—when a surviving spouse elects death compensation.* When a surviving spouse elects death compensation instead of Improved Death Pension, an otherwise eligible child is not precluded from receiving Improved Death Pension if the child is not in the custody of a surviving spouse. See § 5.417 Child custody for Improved Pension.

(3) *Exception—when a surviving spouse elects Improved Death Pension.* A surviving spouse's election of

Improved Death Pension does not affect the benefits of a surviving child who was receiving a separate apportioned award of Section 306 Pension or Old-Law Pension on December 31, 1978.

(f) *Change from one law to another.* Except as otherwise provided, where payments of pension or compensation are being made to a person under one law, the right to receive benefits under another law being in suspension, and a higher rate of pension or compensation becomes payable under the other law, benefits at the higher rate will not be paid for any date prior to the date of receipt of an election.

(Authority: 38 U.S.C. 501(a), 1542, 5304)

§ 5.758 Electing Improved Pension instead of Old-Law Pension or Section 306 Pension.

(a) *Right to elect Improved Pension.* Except as otherwise provided in this section, a pension beneficiary who was entitled on December 31, 1978 to receive Old-Law Pension or Section 306 Pension, may elect at any time to receive Improved Pension instead. An election to receive Improved Pension instead of Old-Law Pension or Section 306 Pension is irrevocable once the election becomes final under § 5.742. There is no right to reelection.

(b) *When a veteran's spouse is also a veteran who is eligible to elect Improved Pension.* If a veteran who is eligible to elect Improved Pension under this section has a spouse who is also a veteran who is eligible to elect Improved Pension under this section, neither veteran may receive Improved Pension unless both elect to receive it.

(c) *When a beneficiary chooses to receive Old-Law Pension or Section 306 Pension instead of Improved Pension.* If a pension beneficiary who is eligible to elect Improved Pension under this section does not do so, VA will continue to pay that beneficiary Old-Law Pension or Section 306 Pension at the monthly rate in effect on December 31, 1978, unless that rate must be reduced or discontinued under § 5.470, "Reasons for discontinuing or reducing Section 306 Pension or Old-Law Pension," or under another regulation in this part.

(d) *Effect of a surviving spouse's election of Improved Pension on the rights of a child.* A surviving spouse's election of Improved Pension does not affect the benefits of a surviving child who was receiving, on December 31, 1978, a separate apportioned award of Section 306 Pension or Old-Law Pension.

(Authority: 38 U.S.C. 501(a); Sec. 306(a) and (b), Pub. L. 95-588, 92 Stat. 2508)

§ 5.759 Election between death compensation and dependency and indemnity compensation.

(a) *Election between benefits is required.* A person who is eligible for both death compensation and dependency and indemnity compensation (DIC) must elect to receive one or the other benefit.

(1) *Persons currently receiving death benefits.* (i) A person who is currently receiving death compensation may elect to receive DIC.

(ii) An election to receive DIC instead of death compensation is irrevocable once the election becomes final under § 5.742. There is no right to reelection.

(2) *Persons claiming entitlement to service-connected death benefits.* VA will treat a claim for service-connected death benefits as a claim for DIC, subject to confirmation by the claimant, unless the claimant specifically requests death compensation.

(b) *Limitation of election.* An election of DIC may not be filed or withdrawn after the death of the surviving spouse, child, or parent. *See also* § 5.742(c) (concerning the finality of an election of DIC when the beneficiary dies before negotiating a DIC check).

(Authority: 38 U.S.C. 1317(a))

Cross-reference: § 5.512, "Eligibility for death compensation or death pension instead of dependency and indemnity compensation."

§ 5.760 Electing Improved Death Pension instead of dependency and indemnity compensation.

A surviving spouse who is entitled to receive dependency and indemnity compensation (DIC) may elect to receive Improved Death Pension instead of DIC.

(Authority: 38 U.S.C. 1317(b))

§ 5.761 Concurrent receipt of disability compensation, pension, or death benefits by a surviving spouse based on the service of more than one veteran.

(a) *Concurrent receipt of disability compensation or pension and death benefits.* Except as otherwise provided in § 5.464, "Multiple pension awards not payable," if a surviving spouse is receiving disability compensation or pension in his or her own right as a veteran, the surviving spouse is not barred from receiving:

(1) An apportionment of disability compensation or pension based on another veteran's disability, or

(2) Death pension, death compensation, or dependency and indemnity compensation (DIC) due to the death of another veteran.

(b) *Entitlement to death benefits based on the death of more than one veteran.* Except as otherwise provided

in this regulation or in § 5.464, "Multiple pension awards not payable," if a beneficiary is receiving death pension, death compensation, or DIC as the surviving spouse of one veteran, the beneficiary is not barred from receiving death pension, death compensation, or DIC due to the death of a different veteran.

(c) *Limitation—A surviving spouse is entitled to payment of only one award of death benefits at one time based on the death of more than one veteran to whom the surviving spouse was married—*(1) *Payment limitation.* VA may not pay more than one death pension, death compensation, or DIC award at a time to a surviving spouse based on the death of more than one veteran to whom the surviving spouse was married.

(2) *Election.* A surviving spouse who is eligible for death pension, death compensation, or DIC because of the deaths of more than one veteran to whom he or she was married may elect, or reelection, benefits based on the death of any one such deceased spouse. The election or reelection may be made at any time. Benefits payable in the elected case will be offset by any payments the surviving spouse received based on the death of the other spouse for the same period. The offset will occur only if the surviving spouse was entitled to benefits in the elected case prior to the date of receipt of the election under § 5.567, "Effective dates for DIC or death compensation awards," or § 5.431, "Effective dates for Improved Death Pension."

(Authority: 38 U.S.C. 5304(b)(1), (3))

§ 5.762 Payment of multiple VA benefits to a surviving child based on the service of more than one veteran.

(a) *A surviving child is entitled to concurrent receipt of disability compensation or pension and death benefits.* If a surviving child is receiving disability compensation or pension in his or her own right as a veteran, the surviving child is not barred from receiving:

(1) An apportionment of disability compensation or pension based on another veteran's disability, or

(2) Death pension, death compensation, or dependency and indemnity compensation (DIC) due to the death of another veteran.

(b) *A surviving child is entitled to more than one award of death benefits based on the death of more than one veteran.* Except as otherwise provided in paragraph (c) of this section or in § 5.464, "Multiple pension awards not payable," if a surviving child is receiving death pension, death

compensation, or DIC as the surviving child of one veteran, the surviving child is not barred from receiving death pension, death compensation, or DIC due to the death of a different veteran.

(c) *Exception—child with more than one parent in the same parental line—*
(1) *Definition. Same parental line* means that the child has more than one veteran father or more than one veteran mother for VA purposes.

(2) *A surviving child is entitled to payment of no more than one death benefit due to the death of more than one parent in the same parental line.* Except for insurance and as provided in this paragraph (c), VA cannot pay more than one death benefit to, or based on the existence of, a surviving child because of the death of more than one parent in the same parental line.

(3) *Exception: More than one death benefit is payable when the death of both parents in the same parental line occurred prior to June 9, 1960.* If both fathers or both mothers died before June 9, 1960, a child who receives DIC for one parent may receive death pension for the other parent. Unless both fathers or both mothers died before January 1, 1957, such a child may not receive DIC or death compensation for the other parent. If both parents died before January 1, 1957, there is no prohibition on concurrent receipt of death benefits.

(4) *Surviving child's right to elect or reelect.* If a surviving child is entitled to benefits because of the death of more than one parent in the same parental line, the child has the right to elect or reelect one or more times to receive benefits because of the death of either such parent.

(5) *Benefits that are awarded as a result of a surviving child's reelection are subject to an offset.* VA will award benefits to the electing child according to the child's reelection. However, VA will offset the new award by subtracting the amount of any payments for the same period which VA previously made under the prior award to or based on the existence of that child.

(6) *Effect of a surviving child's election on the beneficiaries of the other parent in the same parental line.* (i) When a surviving child elects benefits because of the death of one veteran, and a surviving spouse and/or another surviving child are eligible for benefits because of the death of another veteran in the same parental line, VA will

determine the benefit rate to the surviving spouse and/or the other surviving child as if the surviving child making the election did not exist.

(ii) *Effective date.* If VA determines that benefits payable to the surviving spouse and/or the other surviving child should be increased, reduced, or discontinued as a result of the election or reelection, such increase, reduction, or discontinuance is effective the first day of the month following the month for which VA last paid benefits.

(Authority: 38 U.S.C. 5304)

§ 5.763 Payment of multiple VA benefits to more than one child based on the service of the same veteran.

(a) *Scope.* This section applies when two or more children are eligible to receive the same type of VA benefit based on the service of a veteran, and at least one of the children is also eligible to receive a different type of VA benefit based on the service of the same veteran. The types of VA benefits referred to in this section are as follows:

- (1) Improved Pension.
- (2) Dependency and indemnity compensation (DIC).
- (3) Survivors' and Dependents' Educational Assistance (DEA).

(b) *General rule.* This paragraph (b) applies when one of the children is eligible for more than one type of VA benefit as provided in paragraph (a) of this section and that child chooses to receive a benefit that is different than the type the remaining child receives. Except as provided in paragraph (c) of this section, VA cannot—

- (1) Increase the rate of payment to the remaining child; or
- (2) Pay a rate to each remaining child that is greater than the rate payable if all children were receiving the same type of VA benefit.

(c) *Exception to general rule.* The limitation in paragraph (b) of this section does not apply if the child elects DEA. Unless the child electing DEA is under the age of 18 or helpless, VA will pay benefits to the remaining child as if the child electing DEA did not exist. See 38 CFR 21.3023(b) (pertaining to restrictions on concurrent receipt of DEA and other VA benefits).

(Authority: 38 U.S.C. 3512, 3562)

§ 5.764 Payment of Survivors' and Dependents' Educational Assistance and VA death pension or dependency and indemnity compensation for the same period.

(a) *Child who has reached age 18—*(1) *Election is required.* (i) A child who has reached the age of 18 and is not helpless may not receive VA death pension at the same time as he or she receives Survivors' and Dependents' Educational Assistance (DEA) under 38 U.S.C. chapter 35, and must elect between VA death pension and DEA.

(ii) A child who has reached the age of 18 and is not helpless may not receive dependency and indemnity compensation (DIC) at the same time as he or she receives DEA benefits, and must elect between DIC and DEA.

(2) *Effect of election on other beneficiaries when there is more than one parent in the same parental line.* In cases where a child has more than one parent in the same parental line, if the child elects to receive benefits based on one parent, VA will consider the child's entitlement for purposes of determining the entitlement and rate of other survivors of that parent. For benefits based on the other parent's service, VA will determine the entitlement and rate of the survivors of that parent as if the child did not exist.

(3) *Effective date.* VA will discontinue the electing child's VA death pension or DIC effective the day preceding the beginning date of the DEA allowance. VA will increase payments, pay a reduced rate, or discontinue VA death pension or DIC to the remaining beneficiaries effective the beginning date of the DEA award to the child.

(b) *Child who is under age 18 or helpless.* Generally, a helpless child or a child who is younger than 18 may receive VA death pension or DIC at the same time as DEA under 38 U.S.C. chapter 35.

(c) *Surviving spouse.* A surviving spouse may receive VA death pension or DIC at the same time as DEA under 38 U.S.C. chapter 35.

(d) *Additional criteria.* Provisions concerning concurrent receipt of DEA and VA death pension or DIC are set forth in § 21.3023 of this chapter.

(Authority: 38 U.S.C. 3562)

§§ 5.765–5.769 [Reserved]

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Federal Register

**Tuesday,
October 2, 2007**

Part III

Department of Housing and Urban Development

24 CFR Part 203

**Revisions to the Single Family Mortgage
Insurance Program; Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 203**

[Docket No. FR-4831-F-02]

RIN 2502-AI03

**Revisions to the Single Family
Mortgage Insurance Program**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations under the single family mortgage insurance program that govern actions by mortgagees with respect to mortgages in default to implement recent statutory changes. The rule also amends regulations under the program to make them consistent with industry practices. The Department believes that these changes will help to increase the administrative efficiency of the single family mortgage insurance program. This final rule follows a proposed rule published on November 10, 2004, and takes into consideration and adopts changes in response to the public comments received.

DATES: *Effective Date:* November 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Ivery Himes, Director, Asset Management and Disposition Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410-8000; telephone (202) 708-1672 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background—The November 10, 2004, Proposed Rule**

The Department's regulations governing the procedures, rights, and servicing responsibilities, among other things, arising out of a mortgage insured under the single family mortgage insurance program of the Federal Housing Administration (FHA) generally are codified at 24 CFR part 203. Statutory amendments enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998) (FY1999 Appropriations Act), and other changes in practices and procedures, necessitate changes to the regulations at 24 CFR 203.23, 203.24, 203.359, 203.370,

203.371, 203.389, 203.402, 203.604, and 203.605. On November 10, 2004, at 69 FR 65324, HUD published a proposed rule to implement these statutory amendments and make these provisions consistent with industry practice. Specifically, HUD's November 10, 2004, rule proposed the following changes.

*A. Proposed Changes to Provisions of
FHA Mortgage: Escrow for
Condominium and Homeowner
Association Fees*

HUD proposed to amend 24 CFR 203.23(a) to require a provision in the mortgage for the payment by the mortgagor of homeowner or condominium association fees. Toward this end, HUD proposed to amend § 203.23 to require mortgagees of FHA-insured mortgages endorsed on or after the effective date of the final rule to collect, as part of the monthly mortgage payment, an escrow of the amounts necessary for the payment of these fees when they become due. HUD also proposed amending § 203.24(a)(1) to require the mortgagor to assign that part of the monthly payment received from the mortgagor for condominium or homeowners' association fees.

*B. Proposed Changes to FHA Mortgage
Claim Procedures*

HUD also proposed to amend a number of its claims procedures. Initially, HUD proposed to revise § 203.359(b)(2) to provide that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period. HUD also proposed to amend procedures for the payment of pre-foreclosure claims to implement section 601(a) of the FY1999 HUD Appropriations Act. Specifically, HUD proposed to amend § 203.370 to provide for the payment of insurance benefits by the Secretary in a pre-foreclosure sale of the property if, among other things, "the mortgagor has received an appropriate disclosure, as determined by the Secretary." Finally, HUD proposed to amend § 203.371(b) to provide that, along with the existing requirements that must be satisfied for payment of a partial claim, the mortgagor must have made a minimum number of monthly payments, as prescribed by the Secretary. Section 203.371(d) would also be revised to provide that HUD must receive the original of the note and security instrument no later than 60 days after the date of the execution of the note and the security instrument.

*C. Proposed Changes to FHA Title
Requirements*

HUD proposed to amend § 203.389 to add "aviation easements" approved by the Secretary at the time of the mortgage origination to the list of easements in paragraph (b)(1) to which the Federal Housing Commissioner may not raise objection in taking title to property covered by an insured mortgage in default.

*D. Proposed Changes to Payment of
Insurance Benefits*

HUD proposed to revise § 203.402(a) and (j) to incorporate new items that would be included in insurance benefits paid by HUD with respect to conveyed and non-conveyed properties. Specifically, in paragraph (a), HUD proposed that an amount be included in the claim payment of a utility fee, if it is a lien prior to the mortgage. HUD also proposed language that would permit HUD to reimburse mortgagees for payments of homeowners' association and condominium fees if, because of a default of a mortgagor in making escrow payments, the mortgagee has to pay these fees. Finally, HUD proposed a revision to paragraph (j) to eliminate the need for approval by the Secretary, prior to the issuance of a mortgage, of a covenant that provides for charges and fees for the administration, operation, and maintenance of community-owned property.

*E. Proposed Changes to Mortgagee
Actions and Forbearance*

Finally, HUD proposed amending two provisions that outline responsibilities of the mortgagee. HUD proposed amending § 203.604(c)(2) to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. HUD also proposed amending § 203.605 to clarify the deadline for the mortgagee to complete its loss mitigation evaluation by requiring the mortgagee to evaluate, before the account becomes four payments due and unpaid, all of the loss mitigation techniques provided in § 203.501 to determine which, if any, is appropriate and to reevaluate monthly thereafter.

For a detailed discussion of the proposed regulations, please see the preamble to the proposed rule, at 69 FR 65324-65325.

II. This Final Rule

This final rule takes into consideration the public comments received on the November 10, 2004, proposed rule. The following highlights

the notable changes made at this final rule stage.

Initially, HUD proposed amending §§ 203.23 and 203.24 to require the payment of homeowner or condominium association fees, among the other payments that the mortgagor is required to make under the mortgage. Based on public comments received on these provisions, HUD has determined that a mandatory escrow requirement for condominium and homeowners association fees is not feasible. Therefore, HUD has removed the corresponding homeowner and condominium association fee provisions that were proposed at § 203.402(a) and (j).

Second, in response to industry comments, HUD has determined that it will be difficult in some jurisdictions to be able to receive the recorded, original security instrument from the recording authority and ensure that they are received by HUD within 60 days from execution, as contained in the proposed rule. Accordingly, HUD has revised § 203.371(d) to provide that HUD must receive the original credit instrument no later than 60 days after the date of execution and the recorded, original security instrument not later than 6 months after the date of execution. Where the mortgagee is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Third, HUD had proposed to revise § 203.604(c)(2) to eliminate the requirement of a face-to-face meeting if the mortgaged property is within 200 miles of the mortgagee or a branch office thereof. In consideration of the comments received, HUD has determined that the requirements in § 203.604 require additional consideration. As a result, HUD is planning a comprehensive revision that will revise § 203.604. Because HUD determined that the face-to-face meeting requirement should be reconsidered in a new proposed rule, this final rule does not effectuate the revisions to § 203.604(c)(2) that were contained in the proposed rule.

Although HUD proposed to amend § 203.359(b)(2) to revise the timing requirements for direct conveyance procedures, it has determined not to proceed with this change in this final rule. As proposed, the revision provided that the deed to the Secretary must be recorded within 30 days after the later of the acquisition of possession of the property by the mortgagee or the expiration of the redemption period. After further review, HUD believes that additional investigation is needed before establishing the revised time

frame. Therefore, HUD is considering further change and clarification for the timing of direct conveyancing procedures and may issue new time frames in a future rulemaking.

Finally, HUD proposed revising § 203.605 to clarify the deadline for the mortgagee to complete its loss mitigation evaluation. After publication of the proposed rule, a change to § 203.605 was promulgated in the final rule entitled, "Treble Damages for Failure to Engage in Loss Mitigation" that was published in the **Federal Register** on April 26, 2005, at 70 FR 21572. Because the proposed change to § 203.605 has already been codified, HUD will not be revising § 203.605 in this final rule.

III. Discussion of Public Comments on the November 10, 2004, Proposed Rule

The public comment period on the proposed rule closed on January 10, 2005. HUD received 32 public comments from a diverse group of commenters representing mortgage companies, condominium owners, lenders, industry groups for mortgage bankers, title insurance companies, realtors, homeowners associations, an attorney, and homeowner advocacy groups. The following provides a discussion of key issues raised by public commenters and HUD's responses to these issues.

A. Escrow for Condominium and Homeowners Association Fees

Comment: The escrow requirement should be preserved in the final rule. Two commenters offered support for the escrow requirement. These commenters wrote that the proposal would help maintain the financial viability of condominium and homeowner associations. However, one of the commenters suggested several modifications and clarifications to the escrow requirement. First, the commenter suggested that HUD clarify that full payment of fees is due at the beginning of the year (either fiscal or calendar). Second, the commenter suggested that any remaining assessments should be due upon purchase of the property and not deferred until the end of the first year of the new mortgage. This commenter also recommended that the final rule should define the term "assessment" to ensure that funds not intended to fall within the scope of the rule are not escrowed.

HUD response: HUD appreciates the feedback provided by the commenters, but has determined that a mandatory escrow requirement for condominium and homeowners association fees is not

feasible and has removed the requirement in this final rule.

Comment: The proposed escrow requirement will limit the availability of FHA financing, thereby creating an obstacle for homeowners seeking FHA financing. These commenters stated that homebuyers would be required to prepay condominium fees at the time of closing, thereby substantially increasing downpayment costs. The commenters wrote that the increased out-of-pocket costs would discourage many homebuyers from purchasing homes with FHA-insured mortgages.

HUD response: Regardless of whether the fees are paid directly by the mortgagor or through the escrow account, the mortgagors are responsible for payment of the homeowners or condominium association fees. Therefore, HUD believes that escrowing those fees would not affect the affordability of the mortgage. Notwithstanding, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: The escrow requirement would impose undue burden on condominium and homeowners associations, as well as servicers. The commenters stated that many of the condominium associations are small and would find it difficult to keep track of the various servicers to whom to send their bills.

HUD response: The Department agrees with the commenters in that the mortgagees and the condominium and homeowners associations, as well as servicers, would need to track additional information if the fees were escrowed. The mortgagees would need to maintain the identity of the condominium or homeowners association, and the condominium and homeowners association would need to maintain the identity of the mortgagee servicing the mortgage. As stated above, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible. Therefore, HUD has removed the requirement in this final rule.

Comment: The escrow requirement will increase costs and administrative burden for HUD. Several commenters wrote that HUD's costs would increase substantially when servicers are required to advance escrow funds for delinquent loans. The commenters suggested that the costs to HUD for repayment of these escrow advances would outweigh any benefit to HUD in avoiding the relatively small number of

liens or delinquencies that occur under the current system. The commenters also stated that, unlike taxes and insurance, condominium fees are often paid on a monthly or quarterly basis. The commenters wrote that the administrative costs of tracking the fees would prove prohibitive for HUD.

HUD response: HUD disagrees that escrowing for the condominium and homeowners association fees would increase costs for the Department. Currently, in priority states, HUD is already reimbursing mortgagees for the costs in discharging the liens placed upon properties for nonpayment. HUD expects its net cost to decrease, as there should be fewer situations in which the condominium or homeowners association needs to place a lien for nonpayment. Although HUD believes its costs would decrease, HUD has determined that the proposed mandatory escrow requirement is not feasible and has removed the requirement in this final rule.

Comment: The proposed escrow requirement is not necessary because condominium association liens do not present a title problem in the majority of states. One commenter wrote that the issue of unpaid or delinquent condominium fees appears to affect a small percentage of FHA loans and does not justify the imposition of the escrow requirement for the entire population of FHA loans subject to condominium fees. Another commenter stated that several states have begun efforts to resolve the public policy issues involved in homeowner association regulation. This commenter further opined that these efforts would be undermined by HUD's proposed rule.

HUD response: The Department agrees with the commenter that there are currently more non-priority states than priority states. There is a change, however, occurring within the industry for more states to provide for the condominium and homeowner associations to be able to place a priority lien for nonpayment. HUD has determined, however, that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: There is no legal basis for the proposed escrow requirement. Two commenters questioned HUD's authority to create a policy that guarantees payment of condominium fees where there is no legal obligation to do so and no actual benefit to the FHA insurance fund.

HUD response: Section 203 of the National Housing Act (12 U.S.C. 1709)

provides the Secretary with authority to insure mortgages and establish related terms by which the mortgages are insured. HUD believes that it is prudent public policy for HUD to promulgate regulations that will assist in strengthening U.S. neighborhoods. When condominium and homeowner association fees go unpaid, the neighborhood suffers because of deferred maintenance or even deferred capital improvements. It is HUD's responsibility to establish policies that help ensure the stability of neighborhoods. Notwithstanding, HUD has determined that a mandatory escrow requirement for all FHA-insured condominium and homeowners association fees is not feasible and has removed the requirement in this final rule.

Comment: HUD should consider alternatives to the proposed escrow requirement. Several commenters opposed to the escrow requirement suggested possible alternatives that might accomplish HUD's goal. For example, one commenter suggested that HUD should establish stronger qualifying criteria to ensure that a borrower can meet its obligation before being approved for FHA financing. This commenter also suggested that HUD should require disclosure of the fees and the possibility of future increases. Another commenter suggested that HUD should implement a regulation that ensures its lien is superior, thus avoiding the administrative and legal concerns raised by the escrow requirement. A third commenter recommended that before implementing the escrow requirement, HUD examine options such as appropriate forbearance language and repayment plan alternatives.

HUD response: HUD acknowledges the commenters' suggestions and appreciates the recommendations. HUD has, however, determined that the proposed escrow requirement is not feasible and has removed the proposed requirement in this final rule.

B. Claim Procedures

Comment: In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, HUD should clarify that if a third party has caused a delay, through no fault of the servicer, then HUD will consider granting an extension. One commenter, offering support for the proposed changes to § 203.359(b)(2), asked HUD to state whether it will grant extensions to the 30-day conveyance requirement.

HUD response: HUD appreciates the suggestion offered by the commenter.

Although HUD is not effectuating changes to § 203.359(b)(2) in this final rule, it is contemplating revision of the direct conveyance provisions. As stated in section II of this preamble, HUD is considering further change and clarification for the timing of direct conveyance procedures and may issue a new provision in a future rulemaking.

Comment: The final rule should state whether the proposed change to § 203.370(c)(4), which would require a disclosure statement in all pre-foreclosure sales, replaces the debt-counseling requirement for these sales.

HUD response: The revised disclosure requirement replaces the previous requirement for the mortgagor to receive homeownership counseling and to provide a counseling certification to that effect. Counseling will always be encouraged for all mortgagors considering the use of a pre-foreclosure sale (PFS) as a means of loss mitigation. This regulatory change is implemented to improve consistency between 24 CFR 203.370(c)(4) and statutory language in section 204(a)(D) of the National Housing Act.

Comment: Because the timing of submission of partial claim documents is outside the servicer's control, the proposed requirement that HUD must receive the original of the note and security instrument no later than 60 days after the date of execution is unreasonable. According to the commenters, certain jurisdictions experience extensive delays in handling the recording and mailing of documents. These commenters stated that the proposed rule provision authorizing a servicer to provide a certified copy would be insufficient to address these concerns, because it would be equally difficult to obtain such a copy from a recorder's office. To address these concerns, the commenters suggested several alternative timing requirements. For example, some of the commenters recommended that the 60-day requirement should run from the date the servicer receives the original recorded security instrument from the recorder's office. One commenter suggested that the servicer should be permitted to submit a copy of the unrecorded documents within 60 days of execution, followed by submission of the original recorded documents within 120 days of execution. Another commenter suggested the same remedy, but with time frames of 90 days for submission of the unrecorded document and 12 months for submission of the recorded instrument. One commenter urged that HUD continue to work on development of an online system to replace the manual process necessary to

request extensions for delivering partial claim documents.

HUD response: The Department agrees with several of the industry comments that it will be impossible in some jurisdictions to be able to receive the recorded security instruments from the recording authority and to ensure that they are received by HUD within 60 days from execution. However, several commenters agreed that all mortgagees should be able to provide copies of the documents filed for recordation within the initial 60-day time frame and then forward the recorded documents to HUD at a later date. The industry was varied in the timing of when it recommended that the recorded documents should be received by HUD. Those recommendations ranged from 90 days to 12 months. As such, the Department has set the time requirement for receipt of the recorded security instrument at 6 months from the date of execution. The deadline for delivery of the original note to HUD remains at 60 days after the date of execution. Where the lender is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Comment: *The penalty for failure to meet partial claim submission deadline is too severe.* Several commenters objected to the penalties for failure to provide the partial claim documents, consisting of the original note and recorded security instrument, within 60 days of execution. The proposed rule provided that if the servicer misses the submission deadline, HUD will require reimbursement of the amount of the entire partial claim payment. The commenters stated that this penalty is severe because it is based upon a third party's actions over which servicers have no control. The commenters also wrote that the penalties are not based upon the actual harm suffered by HUD. The commenters wrote that the penalties are so severe that the unintended consequences of the rule will be that servicers will view the use of partial claims as unreasonably risky and will be reluctant to offer such plans to borrowers for fear of incurring enormous, yet uncontrollable, penalties.

HUD response: HUD considered the industry comments concerning the deadline for partial claims and acknowledges the difficulty in some jurisdictions to be able to receive the recorded security instruments from the recording authority. This delay makes it difficult to ensure that the recorded documents are received by HUD within the proposed 60-day period. Therefore, HUD has set the time requirement for receipt of the original note at no later

than 60 days and the original of the security instrument not later than 6 months from the date of execution. Where the lender is experiencing a delay from the recording authority, it may request an extension of time from HUD.

Comment: *In the final rule, HUD should clarify the minimum number of payments required for payment of partial claim.* Two commenters requested additional clarification regarding the proposed amendment to § 203.371(b), which would establish the requirements for payment of a partial claim. Under the proposed rule, the mortgagor would have made a "minimum number of monthly payments as prescribed by the Secretary" to be eligible for payment of a partial claim. The commenters requested that the final rule provide greater specificity regarding how many payments would constitute a "minimum number." One of the commenters suggested that the final rule establish a requirement of four monthly payments.

HUD response: Numerous factors that affect the financial situation of the mortgagor must be considered in making payment determinations. HUD believes it is in the best interests of all parties to make the minimum number of payments determinations on a case-by-case basis. Thus, HUD has not revised the provision in this final rule and has clarified that determinations are made on a case-by-case basis.

C. Face-To-Face Interview Requirement

Comment: *The face-to-face meeting requirement is obsolete and unnecessary and should be removed in the final rule.* Several commenters stated that the meeting requirement was adopted nearly 30 years ago, before the current collection, delinquency assistance, and loss mitigation measures were in place. The commenters also stated that under HUD's current regulations and guidelines, as well as self-imposed guidelines, servicers have multiple contacts with delinquent borrowers. These communication efforts include notices and monthly statements indicating that a borrower's payment is past due, loss mitigation letters commencing on the 60th day of delinquency, a "how to avoid foreclosure" pamphlet, and (should matters reach that far) a foreclosure notice.

HUD response: HUD agrees with the commenters and has determined that amending the existing requirement is appropriate. As the Department has already relieved the industry from a requirement to conduct a face-to-face meeting as a requirement for loan

origination, it may also be time to make a similar change with respect to FHA's servicing requirements. However, the Department strongly believes that there must be a minimum standard for mortgagees to attempt to contact a delinquent mortgagor. The earlier the mortgagee reaches a delinquent mortgagor to discuss options for bringing the mortgage current, the greater are its chances in resolving the delinquency. Therefore, the Department will propose a comprehensive revision of § 203.604 in a subsequent rulemaking that will invite industry comments. As a result, HUD has determined not to pursue changes to the face-to-face requirement and has removed its proposal in this final rule. The current § 203.604 will remain effective.

Comment: *The face-to-face meeting requirement may violate the Fair Debt Collection Practices Act.* Two commenters suggested that a face-to-face meeting in a borrower's home might cast the servicer as a "debt collector" acting in violation of the Fair Debt Collection Practices Act.

HUD response: As explained in response to the previous comment, HUD is not pursuing the change to § 203.604(c)(2) at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements.

Comment: *Face-to-face meetings are economically burdensome, give preferential treatment to borrowers fortunate to live within the 200-mile limitation over other borrowers, and place the employees of mortgagees at risk of bodily harm.* One commenter explained that servicers would be required to incur exorbitant travel and training expenses in order to comply with this requirement, since servicers are expected to use trained personnel who are familiar with the borrower's account and loss mitigation procedures. Another commenter suggested that borrowers who are facing the potential loss of their home are likely to be uncooperative, frustrated, and angry. Other commenters recommended that, for the safety of a servicer's employees and to ensure compliance with loss mitigation requirements, personal visits should take place at the servicer's office or at a HUD counseling agency, and not at the mortgagor's home.

HUD response: HUD agrees that amending the existing requirement is appropriate. As discussed, HUD is developing a proposed rule that will comprehensively revise § 203.604 and will invite industry comment. Accordingly, this final rule does not

adopt any changes to the current § 203.604.

Comment: HUD should clarify which "branches" or "offices are subject to the face-to-face meeting requirement." One commenter stated that many large servicers have numerous servicing sites, only some of which may service FHA loans. The commenter asked HUD to clarify whether servicing sites that do not service FHA loans are subject to the face-to-face requirement. The commenter wrote that employees at such sites are not trained on FHA loss mitigations and other loan requirements. Another commenter wrote that the proposed rule might be misinterpreted to apply to origination offices. According to this commenter, this would conflict with HUD's long-standing position that the face-to-face requirement refers to servicing offices and not to origination offices of the lender.

HUD response: As explained above, HUD is not pursuing the change to § 203.604(c)(2) at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements.

Comment: The final rule should provide for the use of investigators to locate "no contact" borrowers. One commenter suggested that the final rule should provide for the use of third-party investigative companies to locate delinquent borrowers that lenders are unable to locate and contact.

HUD response: As explained above, HUD is not making a change at this time, but is considering a new proposed rule that would invite industry comments about improving the face-to-face meeting requirements. Because HUD is still considering the comments received on this requirement and because HUD plans to issue a proposed rule that would revise the section, HUD is not making any change to the current regulations at § 203.604.

D. Mortgagee Action and Forbearance

Comment: In the final rule, HUD should clarify whether the accelerated claim disposition (ACD) demonstration criteria for the transfer for ACD loans will be affected by the rule.

HUD response: In the November 10, 2004, proposed rule, HUD sought to clarify § 203.605 regarding the deadline for the mortgagee to complete its loss mitigation evaluation. The proposed revision would make clear that before the account becomes four payments due and unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided in § 203.501 to

determine which, if any, is appropriate, and shall reevaluate monthly thereafter.

Subsequent to publication of the November 10, 2004, proposed rule, a change to § 203.605 was promulgated in the final rule for treble damages that was published in the **Federal Register** on April 26, 2005, at 70 FR 21572. Because the proposed change to § 203.605 was addressed in that final rule, HUD will not be further updating this regulation at this time. HUD also has no plans to change the existing criteria for selection of cases for possible participation in the Accelerated Claim Disposition (ACD) program.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0404. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). A supplemental FONSI was made for this final rule. Both are available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free telephone number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private

sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. The rule revises certain regulations under the Single Family Mortgage Insurance program to improve the efficiency of the program. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.117.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

■ 2. Revise § 203.370(c)(4) to read as follows:

§ 203.370 Pre-foreclosure sales.

* * * *

(c) * * *

(4) Must have received an appropriate disclosure, as prescribed by the Secretary.

■ 3. Revise § 203.371(b)(4), (b)(5), add a new paragraph (b)(6), and revise paragraph (d), to read as follows:

§ 203.371 Partial claim.

* * * *

(b) * * *

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time frame specified by HUD;

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included; and

(6) The mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary on a case-by-case basis.

* * * *

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall provide HUD with the original credit instrument no later than 60 days after execution. The mortgagee shall provide HUD with the original security instrument, required by paragraph (c) of this section, no later than 6 months following the date of execution. If the mortgagee experiences a delay from the recording authority, it may request an extension of time, in writing, from HUD. If the mortgagee does not provide the original of the note and security instrument within the prescribed deadlines, the mortgagee shall be required to reimburse the amount of the claim paid, including the incentive.

■ 4. Revise § 203.389(b)(1) to read as follows:

§ 203.389 Waived title objections.

* * * *

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

* * * *

■ 5. Revise § 203.402(a) and (j) to read as follows:

§ 203.402 Items included in payment—conveyed and nonconveyed properties.

* * * *

(a) Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage.

* * * *

(j) Charges for the administration, operation, maintenance, or repair of community-owned property or the maintenance or repair of the mortgaged property, paid by the mortgagee for the purpose of discharging an obligation arising out of a covenant filed for record prior to the issuance of the mortgage; and charges for the repair or maintenance of the mortgaged property required by, and in an amount approved by, the Secretary under § 203.379 of this part.

* * * *

Dated: September 24, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7-19459 Filed 10-1-07; 8:45 am]

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Federal Register

**Tuesday,
October 2, 2007**

Part IV

The President

**Executive Order 13445—Strengthening
Adult Education**

Presidential Documents

Title 3—**Executive Order 13445 of September 27, 2007****The President****Strengthening Adult Education**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to use existing Federal programs that serve adults, including new Americans, to strengthen literacy skills, improve opportunities for postsecondary education and employment, and facilitate participation in American life.

Sec. 2. *Definitions.* As used in this order:

- (a) “agency” means an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and
- (b) “adult education” means teaching or instruction below the postsecondary level, for individuals who are 16 years of age or older, designed to provide:
 - (i) mastery of basic education skills needed to function effectively in society;
 - (ii) a secondary school diploma or its equivalent; or
 - (iii) the ability to speak, read, or write the English language.

Sec. 3. *Establishment of Interagency Adult Education Working Group.* The Secretary of Education shall establish within the Department of Education for administrative purposes only, an Interagency Adult Education Working Group (Working Group), consistent with this order.

Sec. 4. *Membership and Operation of the Working Group.*

- (a) The Working Group shall consist exclusively of:
 - (i) the Secretary of Education, who shall serve as Chair;
 - (ii) the Secretary of the Treasury, the Attorney General, and the Secretaries of the Interior, Labor, Health and Human Services, Housing and Urban Development, and Veterans Affairs; and
 - (iii) other officers or full-time or permanent part-time employees of the United States, as determined by the Chair, with the concurrence of the head of the agency concerned.
- (b) The Chair, or the Chair’s designee under subsection (c) of this section, in implementing section 5 of this order, shall convene and preside at the meetings of the Working Group, determine its agenda, direct its work, and establish and direct subgroups of the Working Group, as appropriate to deal with particular subject matters, that shall consist exclusively of members of the Working Group or their designees under subsection (c) of this section.
- (c) A member of the Working Group may designate, to perform the Working Group or Working Group subgroup functions of the member, any person who is a part of the member’s agency and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

Sec. 5. *Functions of the Working Group.* Consistent with the policy set forth in section 1 of this order, the Working Group shall:

- (a) identify Federal programs that:

- (i) focus primarily on improving the basic education skills of adults;
- (ii) have the goal of transitioning adults from basic literacy to postsecondary education, training, or employment; or
- (iii) constitute programs of adult education;
- (b) as appropriate, review the programs identified under subsection (a) of this section and submit to the heads of the agencies administering those programs recommendations to:
 - (i) promote the transition of adults from such programs to postsecondary education, training, or employment;
 - (ii) increase the effectiveness, efficiency, and availability of such programs;
 - (iii) minimize unnecessary duplication among such programs;
 - (iv) measure and evaluate the performance of such programs; and
 - (v) undertake and disseminate the results of research related to such programs;
- (c) identify gaps in the research about effective ways to teach adult education for postsecondary readiness, recommend areas for further research to improve adult education programs and services, and identify promising practices in disseminating valid existing and future research findings; and
- (d) obtain information and advice as appropriate, in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation, concerning adult education from:
 - (i) State, local, territorial, and tribal officials; and
 - (ii) representatives of entities or other individuals;
- (e) at the request of the head of an agency, unless the Chair declines the request, promptly review and provide advice on a proposed action by that agency relating to adult education; and
- (f) report to the President, through the Assistant to the President for Domestic Policy, on its work, and on the implementation of any recommendations arising from its work, at such times and in such formats as the Chair may specify, with the first such report to be submitted no later than 9 months after the date of this order.

Sec. 6. *Administration of the Working Group.* (a) To the extent permitted by law, the Department of Education shall provide the funding and administrative support the Working Group needs, as determined by the Chair, to implement this order.

- (b) The heads of agencies shall provide, as appropriate, such assistance and information as the Chair may request to implement this order.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "George W. Bush", is positioned to the right of the text block.

THE WHITE HOUSE,
September 27, 2007.



Federal Register

**Tuesday,
October 2, 2007**

Part V

The President

Proclamation 8180—To Provide for Duty Elimination for Certain Goods of Mexico Under the North American Free Trade Agreement

Executive Order 13446—Continuance of Certain Federal Advisory Committees and Amendments to and Revocation of Other Executive Orders

Executive Order 13447—Further 2007 Amendments to the Manual for Courts-Martial, United States

Presidential Documents

Title 3—

Proclamation 8180 of September 28, 2007

The President

To Provide for Duty Elimination for Certain Goods of Mexico Under the North American Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On December 17, 1992, the Governments of Canada, Mexico, and the United States of America entered into the North American Free Trade Agreement (NAFTA). The NAFTA was approved by the Congress in section 101(a) of the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the “NAFTA Implementation Act”) (19 U.S.C. 3311(a)) and was implemented with respect to the United States by Presidential Proclamation 6641 of December 15, 1993.

2. Section 201(b) of the NAFTA Implementation Act (19 U.S.C. 3331(b)) authorizes the President, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)), to proclaim accelerated schedules of duty elimination that the United States may agree to with Mexico or Canada. Consistent with Article 302(3) of the NAFTA, I, through my duly empowered representative, have entered into an agreement with the Government of Mexico providing for an accelerated schedule of duty elimination for specific goods of Mexico. The consultation and layover requirements of section 103(a) of the NAFTA Implementation Act with respect to such schedule of duty elimination have been satisfied.

3. Pursuant to section 201(b) of the NAFTA Implementation Act, I have determined that the modifications herein proclaimed of duties on goods originating in the territory of Mexico are necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Mexico provided for by the NAFTA, and to carry out the agreement with Mexico providing an accelerated schedule of duty elimination for specific goods.

4. Section 604 of the Trade Act of 1974, as amended (the “1974 Act”) (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201(b) of the NAFTA Implementation Act and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide an accelerated schedule of duty elimination for specific goods of Mexico under the terms of general note 12 to the HTS, the tariff treatment set forth in the HTS is modified as provided in the Annex to this proclamation.

(2) The amendments made to the HTS by the Annex to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2007.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

Annex

Modifications to the Harmonized Tariff Schedule of the United States (HTS)

Effective with respect to goods of Mexico, under the terms of general note 12 to the tariff schedule, that are entered, or withdrawn from warehouse for consumption, on or after October 1, 2007, subchapter VI of chapter 99 of the HTS is modified as follows, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 Special", respectively:

	:	[Goods of Mexico,...:]	:	:	:
"9906.17.20	:	Sugar or sugar-containing products, if entered	:	:	:
	:	in an aggregate quantity not to exceed 175,000	:	:	:
	:	metric tons during the period from October 1,	:	:	:
	:	2007, through December 31, 2007, inclusive	:	:	:
	:	(provided for in subheadings 1701.11.50,	:	:	:
	:	1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20:	:	:	:
	:	and 2106.90.46).....	:	:	Free (MX)":

Presidential Documents

Executive Order 13446 of September 28, 2007

Continuance of Certain Federal Advisory Committees and Amendments to and Revocation of Other Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2009.

- (a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).
- (b) National Infrastructure Advisory Council; section 3 of Executive Order 13231, as amended (Department of Homeland Security).
- (c) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196, as amended (Department of Labor).
- (d) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 13256 (Department of Education).
- (e) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13270 (Department of Education).
- (f) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).
- (g) President's Committee for People with Intellectual Disabilities; Executive Order 12994, as amended (Department of Health and Human Services).
- (h) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).
- (i) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).
- (j) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).
- (k) President's Council of Advisors on Science and Technology; Executive Order 13226, as amended (Office of Science and Technology Policy).
- (l) President's Council on Bioethics; Executive Order 13237 (Department of Health and Human Services).
- (m) President's Council on Physical Fitness and Sports; Executive Order 13265 (Department of Health and Human Services).
- (n) President's Export Council; Executive Order 12131, as amended (Department of Commerce).
- (o) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Homeland Security).
- (p) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after

each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive Order, which established a committee whose work has been completed, is revoked: Executive Order 13369, as amended by Executive Orders 13379 and 13386, establishing the President's Advisory Panel on Federal Tax Reform.

Sec. 4. Sections 1 and 2 of Executive Order 13385 are superseded by sections 1 and 2 of this order.

Sec. 5. Executive Order 12994, as amended (President's Committee for People with Intellectual Disabilities) is further amended to read as follows:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote full participation of people with intellectual disabilities in their communities, it is hereby ordered as follows:

"Section 1. *Committee Continued and Responsibilities Expanded.* The President's Committee on Mental Retardation, with expanded membership and expanded responsibilities, and renamed the President's Committee for People with Intellectual Disabilities (Committee), is hereby continued in operation.

"Sec. 2. *Composition of Committee.* (a) The Committee shall be composed of the following members:

- (1) The Attorney General;
- (2) The Secretary of the Interior;
- (3) The Secretary of Commerce;
- (4) The Secretary of Labor;
- (5) The Secretary of Health and Human Services;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Education;
- (9) The Secretary of Homeland Security;
- (10) The Chief Executive Officer of the Corporation for National and Community Service;
- (11) The Commissioner of Social Security;
- (12) The Chairman of the Equal Employment Opportunity Commission;
- (13) The Chairperson of the National Council on Disability; and
- (14) No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on intellectual disabilities; persons with intellectual disabilities and members of families with a child or adult with intellectual disabilities; and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall serve for two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

"(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall preside over meetings of the Committee and represent the Committee on appropriate occasions.

"Sec. 3. *Functions of the Committee.* (a) Consistent with subsection (c) of this section, the Committee shall:

- (1) provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and
- (2) provide advice to the President concerning the following for people with intellectual disabilities:
 - (A) expansion of educational opportunities;
 - (B) promotion of homeownership;
 - (C) assurance of workplace integration;
 - (D) improvement of transportation options;

(E) expansion of full access to community living; and
(F) increasing access to assistive and universally designed technologies.

“(b) The Committee shall provide an annual report to the President through the Secretary of Health and Human Services. Such additional reports may be made as the President may direct or as the Committee may deem appropriate.

“(c) The members shall advise the President and carry out their advisory role consistent with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

“**Sec. 4. Cooperation by Agencies.** The heads of Federal departments and agencies shall:

“(a) designate, when requested by the Secretary of Health and Human Services, an officer or employee of such department or agency to serve as a liaison with the Committee; and

“(b) furnish such information and assistance to the Committee, to the extent permitted by law, as the Secretary of Health and Human Services may request to assist the Committee in performing its functions under this order.

“**Sec. 5. Administration.** (a) The Department of Health and Human Services shall provide the Committee with necessary staff support, administrative services and facilities, and funding, to the extent permitted by law.

“(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701–5707), for persons employed intermittently in the Government service. Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

“(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress.

“**Sec. 6. General.** (a) Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

“(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.”.

Sec. 6. This order shall be effective September 30, 2007.

A handwritten signature in black ink, appearing to read "George W. Bush", is positioned to the right of the text of Section 6.

THE WHITE HOUSE,
September 28, 2007.

Presidential Documents

Executive Order 13447 of September 28, 2007

Further 2007 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. The second subparagraph of paragraph 4, of Part I, of the Manual for Courts-Martial, United States, as amended by section 2 of Executive Order 13262 of April 11, 2002, is amended by striking the third sentence.

Sec. 2. Parts II, III, and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached and made a part of this order.

Sec. 3. These amendments shall take effect on October 1, 2007.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to October 1, 2007, that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any non-judicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to October 1, 2007, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.



THE WHITE HOUSE,
September 28, 2007.

ANNEX

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 916(b) is amended to read as follows:

"(b) Burden of proof.

(1) *General rule.* Except as listed below in paragraphs (2), (3), and (4), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) *Lack of mental responsibility.* The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Part IV, para. 45a(o)(2) in a prosecution of a sexual offense with a child under Article 120, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence. After the accused meets his or her burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(4) *Mistake of fact as to consent.* In the defense of mistake of fact as to consent in Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact, the accused has the burden of proving mistake of fact as to consent by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(b) R.C.M. 916(j)(2) is amended to read as follows:

"(2) *Child Sexual Offenses.* It is a defense to a prosecution for Article 120(d), aggravated sexual assault of a child, Article 120(f), aggravated sexual abuse of a child, Article 120(i), abusive sexual contact with a child, or Article 120(j), indecent liberty with a child that, at the

time of the offense, the child was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence."

(c) R.C.M. 916(j) is amended by inserting new paragraph R.C.M. 916(j)(3) after the Discussion section to R.C.M. 916(j)(2) as follows:

"(j)(3) *Sexual offenses.* It is an affirmative defense to a prosecution for Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense."

(d) R.C.M. 920(e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense

of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) or (j)(3) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]"

(e) R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(f) R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(g) R.C.M. 1102(b)(2) is amended to read as follows:

"(2) *Article 39(a) sessions.* An Article 39(a) session under this rule may be called, upon motion of either party or

sua sponte by the military judge, for the purpose of inquiring into, and, when appropriate, resolving any matter that arises after trial and that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or *sua sponte*, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may, *sua sponte*, at any time prior to authentication of the record of trial, enter a finding of not guilty of one or more offenses charged, or may enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session."

(h) R.C.M. 1102(d) is amended by deleting the last phrase of the second sentence, which reads:

", except that no proceeding in revision may be held when any part of the sentence has been ordered executed".

(i) R.C.M. 1102(e) (2) is amended by inserting the following sentence after the last sentence in R.C.M. 1102(e) (2):

"Prior to the military judge *sua sponte* entering a finding of not guilty of one or more offenses charged or entering a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification, the military judge shall give each party an opportunity to be heard on the matter."

(j) R.C.M. 1204(c) (2) is amended to read as follows:

"(2) *Sentence requiring approval of the President.* (A) If the Court of Appeals for the Armed Forces has affirmed a sentence

that must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned.

(B) If the Secretary concerned is the Secretary of a military department, the Secretary concerned shall forward the material received under paragraph (A) to the Secretary of Defense, together with the recommendation of the Secretary concerned. The Secretary of Defense shall forward the material, with the recommendation of the Secretary concerned and the recommendation of the Secretary of Defense, to the President for the action of the President.

(C) If the Secretary concerned is the Secretary of Homeland Security, the Secretary concerned shall forward the material received under paragraph (A) to the President, together with the recommendation of the Secretary concerned, for the action of the President."

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 412 is amended to read as follows:

"Rule 412. Sex offense cases; relevance of alleged victim's sexual behavior or sexual predisposition

(a) *Evidence generally inadmissible.* The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) *Exceptions.*

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the accused.

(c) *Procedure to determine admissibility.*

(1) A party intending to offer evidence under subsection (b) must --

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. In a case before a court-martial composed of a military judge and

members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subsection that the evidence that the accused seeks to offer is relevant for a purpose under subsection (b) and that the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined. Such evidence is still subject to challenge under Mil. R. Evid. 403.

(d) For purposes of this rule, the term "sexual offense" includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law, or state law. "Sexual behavior" includes any sexual behavior not encompassed by the alleged offense. The term "sexual predisposition" refers to an alleged victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder."

(b) Mil. R. Evid. 503(b) is amended by renumbering the existing subsection (2) as subsection (3) and inserting the following new subsection (2) after current Mil. R. Evid. 503(b) (1) to read as follows:

"(2) A "clergyman's assistant" is a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor."

(c) Mil. R. Evid. 504 is amended by inserting new subsection (d) after Mil. R. Evid. 504(c) to read as follows:

"(d) *Definitions.* As used in this rule:

(1) The term "a child of either" includes not only a biological child, adopted child, or ward of one of the spouses but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is: (i) an individual under the age of 18; or (ii) an individual with a mental handicap who functions under the age of 18.

(2) The term "temporary physical custody" includes instances where a parent entrusts his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody nor must there be a written agreement. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments."

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 43, Article 118, Murder, paragraph a.(4) is amended to read as follows:

"(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct."

(b) Paragraph 43, Article 118, Murder, paragraph b.(4)(d) is amended to read as follows:

"(d) That, at the time of the killing, the accused was engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(c) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

"(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(d) Paragraph 45, Rape and Carnal Knowledge is amended to read as follows:

"45. Article 120 -- Rape, sexual assault, and other sexual misconduct

a. Text.

"(a) Rape. Any person subject to this chapter who causes another person of any age to engage in a sexual act by --

(1) using force against that other person;

(2) causing grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) rendering another person unconscious; or

(5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) *Rape of a child.* Any person subject to this chapter who --

(1) engages in a sexual act with a child who has not attained the age of 12 years; or

(2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(c) *Aggravated sexual assault.* Any person subject to this chapter who -- (1) causes another person of any age to engage in a sexual act by --

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of --

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act; is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) *Aggravated sexual assault of a child.* Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) *Aggravated sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) *Aggravated sexual abuse of a child.* Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) *Aggravated sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) *Abusive sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) *Abusive sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with

or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) *Indecent liberty with a child.* Any person subject to this chapter who engages in indecent liberty in the physical presence of a child --

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person;

is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) *Indecent act.* Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) *Forcible pandering.* Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) *Wrongful sexual contact.* Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) *Indecent exposure.* Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household,

the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(o) *Age of child.* (1) *Twelve years.* In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) *Sixteen years.* In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) *Proof of threat.* In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) *Marriage.*

(1) *In general.* In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure),

it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct were married to each other.

(2) *Definition.* For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) *Exception.* Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) *Consent and mistake of fact as to consent.* Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) *Other affirmative defenses not precluded.* The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) *Definitions.* In this section:

(1) *Sexual act.* The term "sexual act" means --

(A) contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to

abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) *Sexual contact.* The term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Grievous bodily harm.* The term "grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) *Dangerous weapon or object.* The term "dangerous weapon or object" means --

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) *Force.* The term "force" means action to compel submission of another or to overcome or prevent another's resistance by --

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) *Threatening or placing that other person in fear.* The term "threatening or placing that other person in fear" under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) *Threatening or placing that other person in fear.*

(A) *In general.* The term "threatening or placing that other person in fear" under paragraph (1) (A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) *Inclusions.* Such lesser degree of harm includes --

(i) physical injury to another person or to another person's property; or

(ii) a threat --

(I) to accuse any person of a crime;

(II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) *Bodily harm*. The term "bodily harm" means any offensive touching of another, however slight.

(9) *Child*. The term "child" means any person who has not attained the age of 16 years.

(10) *Lewd act*. The term "lewd act" means --

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) *Indecent liberty*. The term "indecent liberty" means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) *Indecent conduct*. The term "indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making

a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of --

(A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125) of this chapter), or sexual contact.

(13) *Act of prostitution.* The term "act of prostitution" means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) *Consent.* The term "consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if --

(A) under 16 years of age; or

(B) substantially incapable of --

(i) appraising the nature of the sexual conduct at issue due to --

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect that renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating unwillingness to engage in the sexual conduct at issue.

(15) *Mistake of fact as to consent.* The term "mistake of fact as to consent" means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) *Affirmative defense.* The term "affirmative defense" means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving

beyond a reasonable doubt that the affirmative defense did not exist."

b. *Elements.*

(1) Rape.

(a) Rape by using force.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by using force against that other person.

(b) Rape by causing grievous bodily harm.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by causing grievous bodily harm to any person.

(c) Rape by using threats or placing in fear.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Rape by rendering another unconscious.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by rendering that other person unconscious.

(e) Rape by administration of drug, intoxicant, or other similar substance.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by administering to that other person a drug, intoxicant, or other similar substance;

(ii) That the accused administered the drug, intoxicant or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(iii) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(2) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12 years.*

(i) That the accused engaged in a sexual act with a child;

and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(f) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii)(a) That the accused did so by administering to that child a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child; and

(c) That, as a result, that child's ability to appraise or control conduct was substantially impaired.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Aggravated sexual assault by causing bodily harm.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by causing bodily harm to another person.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i) That the accused engaged in a sexual act with another person, who is of any age; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual act;

(iv) That the other person was substantially incapable of declining participation in the sexual act; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual act.

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

(a) That the accused engaged in a sexual act with a child; and

(b) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by using force against that other person.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing grievous bodily harm to any person.

(c) *Aggravated sexual contact by using threats or placing in fear.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) *Aggravated sexual contact by rendering another unconscious.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by rendering that other person unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

(i) (a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) (a) That the accused did so by administering to that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(c) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(6) *Aggravated sexual abuse of a child.*

(a) That the accused engaged in a lewd act; and

(b) That the act was committed with a child who has not attained the age of 16 years.

(7) *Aggravated Sexual Contact with a Child.*

(a) *Aggravated sexual contact with a child who has not attained the age of 12 years.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had not attained the age of 12 years.

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child or that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering another or that child unconscious.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child or that other person unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i) (a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) (a) That the accused did so by administering to that child or that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child or that other person; and

(c) That, as a result, that child's or that other person's ability to appraise or control conduct was substantially impaired.

(8) *Abusive sexual contact.*

(a) Abusive sexual contact by using threats or placing in fear.

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) *Abusive sexual contact by causing bodily harm.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing bodily harm to another person.

(c) *Abusive sexual contact upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual contact;

(iv) That the other person was substantially incapable of declining participation in the sexual contact; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual contact.

(9) *Abusive sexual contact with a child.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years.

(10) *Indecent liberty with a child.*

(a) That the accused committed a certain act or communication;

(b) That the act or communication was indecent;

(c) That the accused committed the act or communication in the physical presence of a certain child;

(d) That the child was under 16 years of age; and

(e) That the accused committed the act or communication with the intent to:

(i) arouse, appeal to, or gratify the sexual desires of any person; or

(ii) abuse, humiliate, or degrade any person.

(11) *Indecent act.*

(a) That the accused engaged in certain conduct; and

(b) That the conduct was indecent conduct.

(12) *Forcible pandering.*

(a) That the accused compelled a certain person to engage in an act of prostitution; and

(b) That the accused directed another person to said person, who then engaged in an act of prostitution.

(13) *Wrongful sexual contact.*

(a) That the accused had sexual contact with another person;

(b) That the accused did so without that other person's permission; and

(c) That the accused had no legal justification or lawful authorization for that sexual contact.

(14) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the accused's exposure was in an indecent manner;

(c) That the exposure occurred in a place where the conduct involved could reasonably be expected to be viewed by people other than the accused's family or household; and

(d) That the exposure was intentional.

c. *Explanation.*

(1) *Definitions.* The terms are defined in Paragraph 45a.(t), *supra*.

(2) *Character of victim.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense.

(3) *Indecent.* In conduct cases, "indecent" generally signifies that form of immorality relating to sexual impurity that is not only grossly vulgar, obscene, and repugnant to common propriety, but also tends to excite lust and deprave the morals with respect to sexual relations. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

d. *Lesser included offenses.* The following lesser included offenses are based on internal cross-references provided in the statutory text of Article 120. See subsection (e) for a further listing of possible lesser included offenses.

(1) *Rape.*

(a) Article 120 -- Aggravated sexual contact

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault, Assault, Assault

consummated by a battery

(d) Article 80 -- Attempts

(2) *Rape of a child.*

(a) Article 120 -- Aggravated sexual contact with a child;

Indecent act

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault; Assault; Assault

consummated by a battery; Assault consummated by a battery upon a child under 16

(d) Article 80 -- Attempts

(3) *Aggravated sexual assault.*

(a) Article 120 -- Abusive sexual contact

(b) Article 128 -- Aggravated assault, Assault, Assault

consummated by a battery

(c) Article 80 -- Attempts

(4) *Aggravated sexual assault of a child.*

(a) Article 120 -- Abusive sexual contact with a child;

Indecent act

(b) Article 128 -- Aggravated assault; assault; Assault

consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(5) *Aggravated sexual contact.*

(a) Article 128 -- Aggravated assault; Assault; Assault consummated by a battery

(b) Article 80 -- Attempts

(6) *Aggravated sexual abuse of a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(7) *Aggravated sexual contact with a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(8) *Abusive sexual contact.*

(a) Article 128 -- Assault; Assault consummated by a battery

(b) Article 80 -- Attempts

(9) *Abusive sexual contact with a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(10) *Indecent liberty with a child.*

(a) Article 120 -- Indecent act

(b) Article 80 -- Attempts

(11) *Indecent act.* Article 80 -- Attempts

(12) *Forcible pandering.* Article 80 -- Attempts

(13) *Wrongful sexual contact.* Article 80 -- Attempts

(14) *Indecent exposure.* Article 80 -- Attempts

e. *Additional lesser included offenses.* Depending on the factual circumstances in each case, to include the type of act

and level of force involved, the following offenses may be considered lesser included in addition to those offenses listed in subsection d. (See subsection (d) for a listing of the offenses that are specifically cross-referenced within the statutory text of Article 120.) The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. See Appendix 23 for further explanation of lesser included offenses.

(1) (a) *Rape by using force.* Article 120 -- Indecent act; Wrongful sexual contact

(1) (b) *Rape by causing grievous bodily harm.* Article 120 -- Aggravated sexual assault by causing bodily harm; Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(1) (c) *Rape by using threats or placing in fear.* Article 120 -- Aggravated sexual assault by using threats or placing in fear; Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(1) (d) *Rape by rendering another unconscious.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(1) (e) *Rape by administration of drug, intoxicant, or other similar substance.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(2) (a) -- (f) *Rape of a child who has not attained 12 years; rape of a child who has attained the age of 12 years but has not attained the age of 16 years.* Article 120 -- Aggravated sexual

assault of a child; Aggravated sexual abuse of a child; Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(3) *Aggravated sexual assault.* Article 120 -- Wrongful sexual contact; Indecent act

(4) *Aggravated sexual assault of a child.* Article 120 -- Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(5) (a) *Aggravated sexual contact by force.* Article 120 -- Indecent act; Wrongful sexual contact

(5) (b) *Aggravated sexual contact by causing grievous bodily harm.* Article 120 -- Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(5) (c) *Aggravated sexual contact by using threats or placing in fear.* Article 120 -- Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(5) (d) *Aggravated sexual contact by rendering another unconscious.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(5) (e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(6) *Aggravated sexual abuse of a child.* Article 120 -- Aggravated sexual contact with a child; Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(7) *Aggravated sexual contact with a child.* Article 120 -- Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(8) *Abusive sexual contact.* Article 120 -- Wrongful sexual contact; Indecent act

(9) *Abusive sexual contact with a child.* Article 120 --
Indecent liberty with a child; Wrongful sexual contact

(10) *Indecent liberty with a child.* Article 120 -- Wrongful
sexual contact

f. *Maximum punishment.*

(1) *Rape and rape of a child.* Death or such other punishment
as a court martial may direct.

(2) *Aggravated sexual assault.* Dishonorable discharge,
forfeiture of all pay and allowances, and confinement for 30 years.

(3) *Aggravated sexual assault of a child who has attained
the age of 12 years but has not attained the age of 16 years,
aggravated sexual abuse of a child, aggravated sexual contact,
and aggravated sexual contact with a child.* Dishonorable
discharge, forfeiture of all pay and allowances, and confinement
for 20 years.

(4) *Abusive sexual contact with a child and indecent liberty
with a child.* Dishonorable discharge, forfeiture of all pay and
allowances, and confinement for 15 years.

(5) *Abusive sexual contact.* Dishonorable discharge,
forfeiture of all pay and allowances, and confinement for 7 years.

(6) *Indecent act or forcible pandering.* Dishonorable
discharge, forfeiture of all pay and allowances, and confinement
for 5 years.

(7) *Wrongful sexual contact or indecent exposure.*
Dishonorable discharge, forfeiture of all pay and allowances,
and confinement for 1 year.

g. *Sample specifications.*

(1) *Rape.*

(a) *Rape by using force.*

(i) *Rape by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by (using a dangerous weapon or object, to wit: _____ against (him)(her)) (displaying a dangerous weapon or object, to wit: _____ to (him)(her)).

(ii) *Rape by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her) to believe it was a dangerous weapon or object.

(iii) *Rape by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by using (physical violence) (strength) (power) (restraint applied to _____), sufficient that (he)(she) could not avoid or escape the sexual conduct.

(b) *Rape by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing grievous bodily harm upon (him)(her) (_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(c) *Rape by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing (him) (her) in fear] that (he) (she) (_____) will be subjected to (death) (grievous bodily harm) (kidnapping) by _____.

(d) *Rape by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by rendering (him) (her) unconscious.

(e) *Rape by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by administering to (him) (her) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his) (her) knowledge or permission), and thereby substantially impaired (his) (her) ability to [(appraise) (control)][(his) (her)] conduct.

(2) *Rape of a child.*

(a) *Rape of a child who has not attained the age of 12 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, a child who had not attained the age of 12 years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ , with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by (using a dangerous weapon or object, to wit: _____ against (him) (her)) (displaying a dangerous weapon or object, to wit: _____ to (him) (her)).

(ii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ , with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) to believe it was a dangerous weapon or object.

(iii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he) (she) could not avoid or escape the sexual conduct.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by causing grievous bodily harm upon (him) (her) (_____), to wit: a (broken leg) (deep cut) (fractured skull) (_____).

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by [threatening] [placing (him) (her) in fear] that (he) (she) (_____) would be subjected to (death) (grievous bodily harm) (kidnapping) by _____.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by rendering (him) (her) unconscious.

(f) *Rape of a child who has attained the age of 12 years*

but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by administering to (him) (her) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his) (her) knowledge or permission), and thereby substantially impaired (his) (her) ability to [(appraise) (control)] (his) (her)] conduct.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing (him) (her) in fear of] [(physical injury to _____) (injury to _____'s property) (accusation of crime) (exposition of secret) (abuse of military position) (_____)].

(b) *Aggravated sexual assault by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing bodily harm upon (him) (her) (_____), to wit: _____.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, who was (substantially incapacitated) [substantially incapable of (appraising the nature of the sexual act) (declining participation in the sexual act) (communicating unwillingness to engage in the sexual act)].

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, who had attained the age of 12 years, but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i) *Aggravated sexual contact by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him) (her)) (displaying a dangerous weapon or object, to wit: _____ to (him) (her)).

(ii) *Aggravated sexual contact by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit:

____ with ____) (cause ____ to engage in sexual contact, to wit: ____ , with ____) (cause sexual contact with or by ____ , to wit: ____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) (____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact by using physical violence, strength, power, or restraint to any person.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____) (cause ____ to engage in sexual contact, to wit: ____ , with ____) (cause sexual contact with or by ____ , to wit: ____)] by using (physical violence) (strength) (power) (restraint applied to ____), sufficient that (he) (she) (____) could not avoid or escape the sexual conduct.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____) (cause ____ to engage in sexual contact, to wit: ____ , with ____) (cause sexual contact with or by ____ , to wit: ____)] by causing grievous bodily harm upon (him) (her) (____), to wit: a (broken leg) (deep cut) (fractured skull) (____).

(c) *Aggravated sexual contact by using threats or placing in fear.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____ with ____) (cause ____ to engage in sexual contact, to wit: ____ ,

with _____) (cause sexual contact with or by _____, to wit: _____)] by [(threatening (him) (her) (_____) [(placing (him) (her) (_____) in fear] that (he) (she) (_____) will be subjected to (death) (grievous bodily harm) (kidnapping) by _____.

(d) *Aggravated sexual contact by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by rendering (him) (her) (_____) unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: (_____)] by administering to (him) (her) (_____) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his) (her) (_____) knowledge or permission), and thereby substantially impaired (his) (her) (_____) ability to [(appraise) (control)] [(his) (her)] conduct.

(6) *Aggravated sexual abuse of a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a lewd act, to wit: _____ with _____, a child who had not attained the age of 16 years.

(7) *Aggravated sexual contact with a child.*

(a) *Aggravated sexual contact with a child who has not attained the -- age of 12 years.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, to wit: _____)]].

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him) (her) (_____) (displaying a dangerous weapon or object, to wit: _____ to (him) (her) (_____)).

(ii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him) (her) (_____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he) (she) (_____) could not avoid or escape the sexual conduct.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by causing grievous bodily harm upon (him) (her) (_____), to wit: a (broken leg) (deep cut) (fractured skull) (_____).

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by [threatening] [placing (him) (her) (_____) in fear] that (he) (she) (_____) will be subjected to (death) (grievous bodily harm) (kidnapping) by _____.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child or another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by rendering (him) (her) (_____) unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years but had not attained the age of 16 years, to wit: _____)] by administering to (him) (her) (_____) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his) (her) (_____) knowledge or permission), and thereby substantially impaired (his) (her) (_____) ability to [(appraise) (control)] [(his) (her)] conduct.

(8) *Abusive sexual contact.*

(a) *Abusive sexual contact by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by [(threatening) (placing (him) (her) (_____) in fear of)] [(physical injury to _____) (injury to _____'s property) (accusation of crime) (exposition of secret) (abuse of military position) (_____)].

(b) *Abusive sexual contact by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by causing bodily harm upon (him) (her) (_____), to wit: (_____).

(c) *Abusive sexual contact by engaging in a sexual act with a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or substantially incapable of communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] while (he) (she) (_____) was [substantially incapacitated] [substantially incapable of (appraising the nature of the sexual contact) (declining participation in the sexual contact) (communicating unwillingness to engage in the sexual contact)].

(9) *Abusive sexual contact with a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years but had not attained the age of 16 years, to wit: _____)].

(10) *Indecent liberties with a child.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, (take indecent liberties) (engage in indecent conduct) in the physical presence of _____, a (female) (male) under 16 years of age, by (communicating the words: to wit: _____) (exposing one's private parts, to wit: _____) (_____), with the intent to [(arouse) (appeal to) (gratify) the (sexual desire) of the _____ (or _____)] [(abuse) (humiliate) (degrade) _____].

(11) *Indecent act.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, wrongfully commit indecent conduct, to wit _____.

(12) *Forcible pandering.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, compel _____ to engage in [(a sexual

act) (sexual contact) (lewd act), to wit: _____] for the purpose of receiving money or other compensation with _____ (a) person(s) to be directed to (him) (her) by the said _____.

(13) *Wrongful sexual contact.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in sexual contact with _____, to wit: _____, and such sexual contact was without legal justification or lawful authorization and without the permission of _____.

(14) *Indecent exposure.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, intentionally (expose in an indecent manner (his) (her) (_____) (_____) while (at the barracks window) (in a public place) (_____)).

(e) Paragraph 50, Article 124 -- Maiming, paragraph e. is amended to read as follows:

"e. *Maximum Punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years."

(f) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by deleting the following lesser included offenses under paragraphs d.(1)(b); d.(2)(c); and d.(3)(a), and replacing them, respectively, with the following:

"(b) Article 134 -- indecent liberty with a child"

"(c) Article 134 -- indecent assault"

"(a) Article 134 -- indecent acts with another"

(g) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by adding at the end of paragraph d. the following note:

"(Note: Consider lesser included offenses under Art. 120 depending on the factual circumstances in each case.)"

(h) Paragraph 54, Article 128 -- Assault, paragraph b.(4)(a) is amended to read as follows:

"(a) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the weapon was a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(i) Paragraph 54, Article 128 -- Assault, paragraph b.(4)(b) is amended to read as follows:

"(b) *Assault in which grievous bodily harm is intentionally inflicted.*

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

(iii) That the grievous bodily harm was done with unlawful force or violence; and

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the injury was inflicted with a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(j) Paragraph 54, Article 128 -- Assault, paragraph c.(4)(a) is amended by adding new paragraph c.(4)(a)(v) after c.(4)(a)(iv),

to read as follows:

"(v) *When committed upon a child under 16 years of age.*

The maximum punishment is increased when aggravated assault with a dangerous weapon or means likely to produce death or grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(k) Paragraph 54, Article 128 -- Assault, paragraph c.(4)(b) is amended by adding new paragraph c.(4)(b)(iv), to read as follows:

"(iv) *When committed upon a child under 16 years of age.*

The maximum punishment is increased when aggravated assault with intentional infliction of grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(l) Paragraph 54, Article 128 -- Assault, paragraph (d)(6) is amended to read as follows:

"(6) *Assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm.*

Article 128 -- simple assault; assault consummated by a battery; (when committed upon a child under the age of 16 years; assault consummated by a battery upon a child under the age of 16 years)."

(m) Paragraph 54, Article 128 -- Assault, paragraph d.(7) is amended to read as follows:

"(7) *Assault in which grievous bodily harm is intentionally inflicted.* Article 128 -- simple assault; assault consummated by a battery; assault with a dangerous weapon; (when committed upon a child under the age of 16 years -- assault consummated by a battery upon a child under the age of 16 years)."

(n) Paragraph 54, Article 128 -- Assault, paragraph e.(8) is amended to read as follows:

"(8) *Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm.*"

After current paragraph (a), insert paragraph (b) as follows below, and redesignate (b) as paragraph (c):

"(b) *Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 5 years.*"

(c) Paragraph 54, Article 128 -- Assault, paragraph (e) (9) is amended to read as follows:

"(9) *Aggravated assault in which grievous bodily harm is intentionally inflicted.*"

After current paragraph (a), insert paragraph (b) as follows below, and redesignate paragraph (b) as paragraph (c):

"(b) *Aggravated assault in which grievous bodily harm is intentionally inflicted when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 8 years.*"

(p) Paragraph 54, Article 128 -- Assault, paragraph (f) (8) is amended to read as follows:

"(8) *Assault, aggravated—with a dangerous weapon, means or force.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about _____ 20_____, commit an assault upon _____ (a child under the age of 16 years) by (shooting) (pointing) (striking) (cutting) (_____) (at him/her) (him/her) (in) (on) (the _____) with (a dangerous weapon) (a (means) (force) likely to produce death or grievous bodily harm), to wit: a (loaded firearm) (pickax) (bayonet) (club) (_____) ."

(q) Paragraph 54, Article 128 -- Assault, paragraph (f) (9) is amended to read as follows:

"(9) *Assault, aggravated-inflicting grievous bodily harm.*
In that _____ (personal jurisdiction data), did, (at/on board-
location) (subject matter jurisdiction data, if required), on or
about _____ 20_____, commit an assault upon _____ (a child under
the age of 16 years) by (shooting) (striking) (cutting) (_____)
(him/her) (on) the _____ with a (loaded firearm) (club) (rock)
(brick) (_____) and did thereby intentionally inflict grievous
bodily harm upon him/her, to wit: a (broken leg) (deep
cut) (fractured skull) (_____) ."

(r) Paragraph 64, Article 134 -- (Assault -- with intent
to commit murder, voluntary manslaughter, rape, robbery, sodomy,
arson, burglary, or housebreaking), paragraph c.(4), first
sentence, is amended to read as follows:

"In assault with intent to commit rape, the accused must
have intended to complete the offense."

(s) Paragraph 64, Article 134 -- (Assault -- with intent to
commit murder, voluntary manslaughter, rape, robbery, sodomy,
arson, burglary, or housebreaking), is amended by deleting the
following lesser included offense under paragraph d.(3)(b):

"(b) Article 134 -- indecent assault"

(t) New paragraph 68a, Article 134 -- (Child endangerment)
is inserted:

"68a. Article 134 -- (Child endangerment)

a. *Text.* See paragraph 60.

b. *Elements.*

(1) That the accused had a duty for the care of a certain
child;

(2) That the child was under the age of 16 years;

(3) That the accused endangered the child's mental or
physical health, safety, or welfare through design or culpable
negligence; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense is intended to prohibit and therefore deter child endangerment through design or culpable negligence.

(2) *Design.* Design means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(3) *Culpable negligence.* Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child, even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard, the age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(4) *Harm.* Actual physical or mental harm to the child is not required. The offense requires that the accused's actions reasonably could have caused physical or mental harm or

suffering. However, if the accused's conduct does cause actual physical or mental harm, the potential maximum punishment increases. See Paragraph 54(c)(4)(a)(iii) for an explanation of "grievous bodily harm".

(5) *Endanger*. "Endanger" means to subject one to a reasonable probability of harm.

(6) *Age of victim as a factor*. While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(7) *Duty required*. The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual/neighbor not charged with the care of a child does not prevent the child from running and playing in the street.

d. *Lesser included offenses*.

(1) *Child Endangerment by Design*. Article 134 -- Child endangerment by culpable negligence

(2) Article 80 -- Attempts

e. *Maximum punishment*.

(1) *Endangerment by design resulting in grievous bodily*

harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(2) *Endangerment by design resulting in harm.*

Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Other cases by design.* Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

(4) *Endangerment by culpable negligence resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(5) *Endangerment by culpable negligence resulting in harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(6) *Other cases by culpable negligence.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

(1) *Resulting in grievous bodily harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20____, had a duty for the care of _____, a child under the age of 16 years and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in grievous bodily harm, to wit:) (broken leg) (deep cut) (fractured skull) (_____).

(2) *Resulting in harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, had a duty for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in (harm, to wit:) (a black eye) (bloody nose) (minor cut) (_____).

(3) *Other cases.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, was responsible for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence)."

(u) Paragraph 63, Article 134 -- (Assault-indecent) is deleted.

(v) Paragraph 87, Article 134 -- (Indecent acts or liberties with a child) is deleted.

(w) Paragraph 88, Article 134 -- (Indecent exposure) is deleted.

(x) Paragraph 90, Article 134 -- (Indecent acts with another) is deleted.

(y) Paragraph 89, Article 134 -- (Indecent language), paragraph c. is amended to read as follows:

"c. *Explanation.* "Indecent" language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 45 if the communication was made in the physical presence of a child."

(z) Paragraph 97, Article 134 -- (Pandering and prostitution) is amended to read as follows:

"(3) *Pandering by inducing, enticing, or procuring act of prostitution.*

(a) That the accused induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces."

(aa) Paragraph 97, Article 134 -- (Pandering and prostitution), subsection (f) (3) is amended to read as follows:

"(3) *Inducing, enticing, or procuring act of prostitution.*

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, wrongfully (induce) (entice) (procure)

_____ to engage in (an act) (acts) of (sexual intercourse for
hire and reward) with persons to be directed to him/her by the
said _____."

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H.R. 954/P.L. 110-87

To designate the facility of the United States Postal Service located at 365 West 125th Street in New York, New York, as the "Percy Sutton Post Office Building". (Sept. 28, 2007; 121 Stat. 980)

H.R. 3218/P.L. 110-88

To designate a portion of Interstate Route 395 located in Baltimore, Maryland, as "Cal Ripken Way". (Sept. 28, 2007; 121 Stat. 981)

H.R. 3375/P.L. 110-89

To extend the trade adjustment assistance program under the Trade Act of 1974 for 3 months. (Sept. 28, 2007; 121 Stat. 982)

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