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Rules and Regulations

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

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

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1830

Privacy Act of 1974; Implementation

AGENCY: Office of Special Counsel.

ACTION: Final rule.

SUMMARY: The U.S. Office of Special Counsel (OSC) is publishing notice of the final rule revising its regulations dealing with the agency's implementation of the Privacy Act, at 5 U.S.C. 552a. The regulation, as revised, provides additional information about access to OSC records under the Privacy Act.

DATES: This rule is effective on October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, General Law Counsel, in writing at: U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W., Suite 218, Washington, DC 20036–4505; by telephone at (202) 254–3690; or by facsimile at (202) 653–5151.

SUPPLEMENTARY INFORMATION: OSC published notice of proposed revisions to its regulations at 5 C.F.R. Part 1830, dealing with the agency's implementation of the Privacy Act, at 5 U.S.C. 552a, with a request for comments and a description of the proposed revisions, in the Federal Register on August 14, 2007 (72 FR 45388). The regulation, as revised: (1) modifies and updates contact information for requests and appeals to OSC, adding fax delivery as a means by which they may be sent, and specifies the OSC point of receipt for such matters; (2) modifies the description of information needed for effective processing of requests and appeals; (3) revises the description of proof of identity information needed by OSC (including by deletion of the requirement that all requests must include a date and place of birth and a Social Security number, while retaining the option for OSC to request some or all of that data if needed to confirm a requester's identity); (4) clarifies that Privacy Act requests for records may also be processed under the Freedom of Information Act; (5) extends the appeal period for requests and revises the description of the response time for appeals; (6) clarifies that exempt material in OSC case files includes all matters within OSC's jurisdiction (including alleged violations of the Uniformed Services Employment and Reemployment Rights Act) and information included in background investigations conducted for OSC employees and others; (7) adds two new sections (on general provisions and other rights and services), moves updated information about fees to a new section, and revises section headings throughout the regulation. OSC is submitting a report on this final rule to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

Procedural determinations were published in the notice of proposed rulemaking for the Congressional Review Act, Regulatory Flexibility Act, Unfunded Mandates Reform Act, Paperwork Reduction Act, Executive Order 12866 (Regulatory Planning and Review), Executive Order 13132 (Federalism), and Executive Order 12988 (Civil Justice Reform). There have been no changes in these procedural determinations.

List of Subjects in 5 CFR Part 1830

Administrative practice and procedure, Government employees, Privacy.

■ For the reasons stated in the preamble, OSC is revising 5 CFR Part 1830 to read as follows:

PART 1830--PRIVACY

Sec.
1830.1 General provisions.
1830.2 Requirements for making Privacy Act requests.
1830.3 Medical records.
1830.4 Requirements for requesting amendment of records.
1830.5 Appeals.
1830.6 Exemptions.
1830.7 Fees.
1830.8 Other rights and services.

Authority: 5 U.S.C. 552a(f), 1212(e).

§ 1830.1 General provisions.

This part contains rules and procedures followed by the Office of Special Counsel (OSC) in processing requests for records under the Privacy Act (PA), at 5 U.S.C. 552a. Further information about access to OSC records generally is available on the agency's web site (http://www.osc.gov/foia.htm).

§ 1830.2 Requirements for making Privacy Act requests.

(a) *How made and addressed.* A request for OSC records under the Privacy Act should be made by writing to the agency. The request should be sent by regular mail addressed to: Privacy Act Officer, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. Such requests may also be faxed to the Privacy Act Officer at the number provided on the FOIA/PA page of OSC's web site (see 1830.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked ''Privacy Act Request.'' A Privacy Act request may also be delivered in person at OSC's headquarters office in Washington, DC. Whether sent by mail or by fax, or delivered in person, a Privacy Act request will not be considered to have been received by OSC until it reaches the Privacy Act Officer.

(b) *Description of records sought.* Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

(c) *Proof of identity.* Requests received by mail, fax, or personal delivery should contain sufficient information to enable OSC to determine that the requester and the subject of the record are one and the same. To assist in this process, an individual should submit his or her name and home address, business title and address, and any other known identifying information such as an agency file number or identification number, a description of the circumstances under which the records were compiled, and any other information deemed necessary by OSC to properly process the request. An individual delivering a request in person may be required to present proof of identity, preferably a government-

issued document bearing the individual's photograph.

(d) *Freedom of Information Act processing.* OSC also processes all Privacy Act requests for access to records under the Freedom of Information Act, 5 U.S.C. 552, following the rules contained in part 1820 of this chapter, which gives requesters the benefit of both statutes.

§ 1830.3 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, the requesting individual may be advised, if it is deemed necessary by OSC, that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1830.4 Requirements for requesting amendment of records.

(a) *How made and addressed.* Individuals may request amendment of records pertaining to them that are subject to amendment under the Privacy Act and this part. The request should be sent by regular mail addressed to: Privacy Act Officer, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. Such requests may also be faxed to the Privacy Act Officer at the number provided on the FOIA/PA page of OSC's web site (see 1830.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked ''Privacy Act Amendment Request.'' Whether sent by mail or by fax, a Privacy Act amendment request will not be considered to have been received by OSC until it reaches the Privacy Act Officer. A Privacy Act amendment request may also be delivered by person at OSC's headquarters office in Washington, DC.

(b) *Description of amendment sought.* Requests for amendment should include identification of records together with a statement of the basis for the requested amendment and all available supporting documents and materials. Requesters must describe the amendment sought in enough detail for the request to be evaluated.

(c) *Proof of identity.* Rules and procedures set forth in 1830.2(c) apply to requests made under this section.

(d) *Acknowledgement and response.* Requests for amendment shall be acknowledged by OSC not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by the Privacy Act Officer and a determination on the request shall be made promptly.

§ 1830.5 Appeals.

(a) *Appeals of adverse determinations.* A requester may appeal a denial of a Privacy Act request for access to or amendment of records to the Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. The appeal must be in writing, and sent by regular mail or by fax. The appeal must be received by the Legal Counsel and Policy Division within 45 days of the date of the letter denying the request. For the quickest possible handling, the appeal letter and envelope or any fax cover sheet should be clearly marked ''Privacy Act Appeal.'' An appeal will not be considered to have been received by OSC until it reaches the Legal Counsel and Policy Division. The appeal letter may include as much or as little related information as the requester wishes, as long as it clearly identifies the OSC determination (including the assigned request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* The agency decision on an appeal will be made in writing. A final determination will be issued within 30 days (excluding Saturdays, Sundays, and legal holidays), unless, for good cause shown, OSC extends the 30–day period.

§ 1830.6 Exemptions.

OSC will claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the act that fall within the category of investigatory material described in paragraphs (2) and (5) and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations in prohibited personnel practice, unlawful political activity, whistleblower disclosure, Uniformed Services Employment and Reemployment Rights Act, and other matters under OSC's jurisdiction, and to protect identities of confidential sources of information, including in background investigations of OSC employees, contractors, and other individuals conducted by or for OSC. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. OSC may also refuse access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1830.7 Fees.

Requests for copies of records shall be subject to duplication fees set forth in part 1820 of this chapter.

§ 1830.8 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Dated: September 28, 2007

James Byrne,

Deputy Special Counsel.

[FR Doc. E7–19571 Filed 10–3–07; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27955; Directorate Identifier 2007–NE–15–AD; Amendment 39–15201; AD 2007–19–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 500 Series Turbofan Engines; Correction

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2007–19–10. That AD applies to Rolls-Royce plc RB211 Trent 500 series turbofan engines. We published that AD in the **Federal Register** on September 18, 2007 (72 FR 53108). The compliance limit of 2,190 cycles-since-new is incorrect in two places. This document corrects that compliance limit to 2,910 cycles-since-new. In all other respects, the original document remains the same.

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

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov*; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On September 18, 2007 (72 FR 53108), we published a final rule AD, FR Doc. E7–18324, in the **Federal Register**. That AD applies to Rolls-Royce plc RB211 Trent 500 series turbofan engines. We need to make the following corrections:

§ 39.13 [Corrected]

■ On page 53109, in the second column, in the FAA's Determination and Requirements of This AD paragraph, in the 22nd line, ''2,190 cycles-since-new'' is corrected to read ''2,910 cycles-since-new''.

■ On page 53110, in the second column, in paragraph (e)(1), in the 7th line, ''2,190 cycles-since-new'' is corrected to read ''2,910 cycles-since-new''.

Issued in Burlington, Massachusetts, on September 28, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–19610 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9355]

RIN 1545–BF66

Clarification of Section 6411 Regulations; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations that were published in the **Federal Register** on Monday, August 27, 2007 (72 FR 48933) clarifying that for purposes of allowing a tentative adjustment, the IRS may credit or reduce the tentative adjustment by an assessed tax liability.

DATES: This correction is effective October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia McGreevy at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9355) that are the subject of these corrections are under section 6411 of the Internal Revenue Code.

Need for Correction

As published, these final and temporary regulations (TD 9355) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAXES

Correction of Publication

■ Accordingly, the final and temporary regulations (TD 9355) that are the subject of FR. Doc. E7–16878 are corrected as follows:

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

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

§ 1.6411–2 [Corrected]

■ **Par. 2.** Section § 1.6411–2(b), fourth sentence is amended by removing the language ''District director'' in the second column of the chart and adding the language ''district director'' in its place.

§ 1.6411–3 [Corrected]

■ **Par. 3.** Section § 1.6411–3(b), first sentence is amended by removing the language ''Deemed'' in the third column of the chart and adding the language ''deemed'' in its place.

■ **Par. 4.** Section § 1.6411–3(b), second sentence is amended by removing the language ''he'' in the second column of the chart and adding the language ''He'' in its place.

■ **Par. 5.** Section § 1.6411–3(b), fifth sentence is amended by removing the language ''May'' in the third column of the chart and adding the language ''may'' in its place.

■ **Par. 6.** Section § 1.6411–3(d)(2), fifth sentence is amended by removing the language ''The Commissioner'' in the third column of the chart and adding the language ''the Commissioner'' in its place.

La Nita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Office of Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–19572 Filed 10–3–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–149–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment adds new section 25 Pennsylvania Code (PA Code) 86.6 which provides for the exemption from the permitting requirements of 25 PA Code Chapters 87 and 88, relating to surface mining of coal, when extraction of coal is incidental to government-financed construction or government-financed reclamation projects and specified requirements are met.

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

FOR FURTHER INFORMATION CONTACT: George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of

approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated December 18, 2006, the Pennsylvania Department of Environmental Protection (PADEP) sent us an amendment to revise its program regulations at 25 Pennsylvania Code (Administrative Record No. PA 891.00) under SMCRA (30 U.S.C. 1201 *et seq.*). The revisions that Pennsylvania proposed at its own initiative concern program changes to address the exemption of permitting requirements when the extraction of coal is incidental to government-financed construction or government-financed reclamation projects.

We announced receipt of the proposed amendment in the February 6, 2007, **Federal Register** (72 FR 5380). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. PA 891.03). The public comment period ended on March 8, 2007. We did not hold a public hearing or meeting because no one requested one. We did not receive any public comments. We received written comments from three Federal agencies: Mine Safety and Health Administration, District 1 (Administrative Record No. 891.04); Mine Safety and Health Administration, District 2 (Administrative Record No. 891.02); and Environmental Protection Agency (Administrative Record No. 891.05).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment which amends Chapter 86 of the Pennsylvania Code by adding the subsection 86.6, Extraction of coal incidental to government-financed construction or government-financed reclamation. Any revisions that we do not specifically discuss below concern nonsubstantive wording, editorial, or re-numbering of section changes and are approved here without discussion.

The Federal regulations regarding government-financed construction contracts are found at: (1) 30 CFR part 707, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction. This part establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from permitting requirements because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction and meets specified criteria that ensure that the construction is government-financed and that the extraction of coal is incidental to it; and (2) 30 CFR 874.17, Abandoned Mine Land agency procedures for reclamation projects receiving less than 50% government financing. This section sets forth the requirements for the AML agency when considering an abandoned mine land reclamation project as government-financed construction under 30 CFR part 707. This section only applies if the level of funding for the construction will be less than 50% of the total cost because of planned coal extraction. Pennsylvania had previously adopted the provisions of 30 CFR part 874 in prior rulemaking. This amendment concerns the provisions of 30 CFR part 707.

This amendment concerns the exemption from the permitting requirements of 25 Pa Code Chapters 87 and 88 when the extraction of coal is incidental to government-financed construction contracts or government-financed abandoned mine land reclamation projects. Pennsylvania has added a new section, 25 Pa Code 86.6, to address the definitions, eligibility requirements (applicability) for exemption, and information to be maintained on-site. With a few exceptions, this new section contains language that mirrors the Federal definitions, eligibility requirements, etc. provided at 30 CFR part 707. The specific sections and findings are provided below.

25 Pa Code 86.6(a)(1) provides that the PADEP be provided an opportunity to provide comments to the government entity financing the construction or reclamation during the site selection process and prior to development of final construction plans regarding the potential environmental impacts of the project. There is no Federal counterpart to this requirement. However, this change requires additional coordination to assure that environmental impacts are considered. Therefore, we find that the addition of 25 Pa Code 86.6(a)(1) does not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations and can be approved.

25 Pa Code 86.6(a)(2) provides for the eligibility limits of the extraction of coal as it pertains to the right-of-way for roads, utility lines, or other similar construction. This is consistent with the Federal regulations at 707.5, Definitions. However, there is no mention that any extraction outside of the right-of-way or boundary of the area is subject to the requirements of the Act as mentioned in the Federal regulations at 707.5. One can deduce that once it is determined that the exemption criteria cannot be met, the exemption does not apply and the applicability of this chapter does not exist. Therefore, we find that the addition of 25 Pa Code 86.6(a)(2) is no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

25 Pa Code 86.6(a)(3) and (a)(4) provide the cost sharing requirements necessary for the construction project or reclamation to be eligible for consideration under this subchapter.

The language provides that the construction or reclamation be funded by a unit of government and it be funded 50% or more by funds appropriated from the government unit's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as a Department-approved reclamation contract or project.

There is no mention of the requirement for the project to meet the eligibility requirements of Title IV of SMCRA. However, the Pennsylvania statute [PA SMCRA Section 4.8(c)(1)] makes specific reference to abandoned mine land reclamation eligibility as a condition to secure special authorization under this section and the regulations must be read in the context of the authorizing statute, as it serves to limit the application of 86.6(a)(4) to abandoned mine land reclamation. Furthermore, the AML plan as amended in 1999 includes provisions requiring coordination between the AML and Title V Agency and an authorization which includes the requirement that the project be an abandoned mine land reclamation project. Because the AML eligibility requirement is provided in the statute and in the AML plan, we find that the addition of 25 Pa Code 86.6(a)(3) and (4) is no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

25 Pa Code 86.6(a)(5) and (a)(6) provide that the construction be performed under a bond, contract and specifications that substantially provide for and require protection of the environment, reclamation of the affected area, and handling of excavated materials in a manner consistent with the acts and regulations implementing the acts. In addition, it provides that the Department approve the standards and specifications for protection of the environment that will apply to the project when potential adverse

environmental impacts have been identified. There is no Federal counterpart to this requirement. However, these requirements provide additional assurance that reclamation will be performed in a satisfactory manner. Therefore, we find that the addition of 25 Pa Code 86.6(a)(5) and (a)(6) do not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations and can be approved.

25 Pa Code 86.6(b) provides that construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments does not qualify as government-financed construction. This is consistent with the Federal regulations at 30 CFR 707.5, Definitions. We find that the addition of 25 Pa Code 86.6(b) is no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

25 Pa Code 86.6(c) provides that documentation must be available for inspection on-site when a person extracting coal incidental to government-financed construction or government-financed reclamation extracts more than 250 tons of coal or affects more than 2 acres. The required documentation is provided in subsections 86.6(c)(1) through (c)(4). Subsections 86.6(c)(1) through (c)(3) are consistent with the Federal regulations at 30 CFR 707.12(a), (b), and (c). Therefore, we find that addition of 25 Pa Code 86.6(c)(1) through (c)(3) is no less stringent than SMCRA and no less effective than the Federal regulations and can be approved.

There is no Federal counterpart for subsection 86.6(c)(4), which requires that when an area is wholly or partially within an area designated unsuitable for mining by the Environmental Quality Board under 86.130, a copy of the detailed report required by subsection 86.124(e) relating to procedures (initial processing, recordkeeping and notification requirements) must be maintained on the site and made available for inspection. The change reflects an additional information requirement and therefore, we find that the addition of 25 Pa Code 86.6(c)(4) does not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations and can be approved.

25 Pa Code 86.6(d) provides that government-financed construction projects and government-financed reclamation must comply with Chapters 91–96, 102 and 105. The reference requires that the project and reclamation comply with the State regulations pertaining to water quality, National Pollutant Discharge Elimination System, sediment control, waste management, and dam safety. There is no Federal counterpart for subsection 86.6(d). The Pennsylvania regulations require compliance with other environmental standards and, therefore, we find that the addition of 25 Pa Code 86.6(d) does not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment through the **Federal Register** Notice dated February 6, 2007, (72 FR 5380) (Administrative Record No. PA 891.03). We did not receive any comments from the public.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 891.01). The Mine Safety and Health Administration (MSHA), District 1, responded (Administrative Record No. PA 891.04) and stated that it did not have any comments or concerns regarding this request. The Mine Safety and Health Administration (MSHA), District 2, responded (Administrative Record No. PA 891.02) and stated that in the case of government-financed construction or other government-financed reclamation projects, MSHA reserves the right to assess each project where the extraction of coal is incidental to the project, to determine jurisdictional standing.

Environmental Protection Agency (EPA) Concurrence and Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On December 20, 2006, we requested comments on the amendment from EPA (Administrative Record No. PA 891.01). The EPA, Region III, responded (Administrative Record No. 891.05) and stated that it did not identify any inconsistencies with the Clean Water Act or any other statutes or regulations under its jurisdiction.

V. OSM's Decision

Based on the above findings, we approve the amendment Pennsylvania sent to us on December 18, 2006. We are approving the changes to the Pennsylvania program at 25 Pa. Code 86.6.

To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State amendment that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 30, 2007.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

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

■ 2. Section 938.15 is amended by adding a new entry in the table in chronological order by ''Date of final publication'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	*
December 18, 2006	October 4, 2007	25 Pa. Code 86.6 [add].

[FR Doc. E7–19661 Filed 10–3–07; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0835–200740(a); FRL–8475–4]

Approval of Implementation Plans of Kentucky: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Kentucky State Implementation Plan (SIP) submitted on July 19, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006, and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Kentucky. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (FIPs) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for Kentucky. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO_2 and NO_X that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving, Kentucky would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

DATES: This direct final rule is effective December 3, 2007 without further notice, unless EPA receives adverse comment by November 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0835, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: Lesane.Heidi@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0835'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Heidi Lesane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2007–0835''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's action, please contact Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Mrs. LeSane can also be reached via electronic mail at *LeSane.Heidi@epa.gov.*

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I. What Action Is EPA Taking?

EPA is approving a revision to Kentucky's SIP, submitted on July 19, 2007. In its SIP revision, Kentucky meets CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. EPA has determined that the SIP as revised meets the applicable requirements of CAIR. As a consequence of this SIP approval, EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Kentucky. This action will delete and reserve 40 CFR 52.940 and 40 CFR 52.941. The withdrawal of the CAIR FIPs for Kentucky is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Kentucky. Once the SIP is fully approved, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particulates ($PM_{2.5}$) and /or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the

NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator of the EPA or the Administrator's duly authorized representative (Administrator), and using a methodology chosen by the State;

3. Provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

V. Analysis of Kentucky's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

In this action, EPA is approving Kentucky's SIP revision that adopts the budgets established for the Commonwealth in CAIR, i.e., 83,205 (2009–2014) and 69,337 (2015–thereafter) tons for NO_X annual emissions, 36,109 (2009–2014) and 30,651 (2015–thereafter) tons for NO_X ozone season emissions, and 188,773 (2010–2014) and 132,141 (2015–thereafter) tons for SO_2 emissions. Kentucky's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, Kentucky chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Kentucky has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. Applicability Provisions for Non-EGU NO_X SIP Call Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less)

that the State currently requires to be in the NO_X SIP Call trading program.

Kentucky has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program. Kentucky has committed to revising the applicability section in its CAIR NO_X ozone season rule in order to clarify that, as intended by the State, units subject to its NO_X SIP Call program and brought into its CAIR program through the allowed expansion of the CAIR NO_X ozone season applicability provisions are to be treated as CAIR NO_X ozone season units and certain definitions from 401 KAR 51:001 apply to the provisions that bring these units into the CAIR program. EPA determined after review of Kentucky's final rules, and after Kentucky had adopted other necessary revisions to its CAIR rules, that these provisions needed clarification. However, while the clarifications are needed, EPA interprets Kentucky's current rule to provide that the NO_X SIP Call units are subject to the requirements for CAIR NO_X ozone season units and that the NO_X SIP Call definitions are used in applying the applicability provisions that bring in NO_X SIP Call units. In addition, Kentucky has committed to correct two citation references in its CAIR NO_X ozone season allowance allocation methodology needed in order to reference correctly its applicability section. EPA interprets Kentucky's current rule as applying the correct references.

Kentucky has also committed to revising the definitions of ''commence commercial operation'' and ''commence operation'' in its CAIR NO_X ozone season rule in order to clarify the deadlines, for meeting monitoring and reporting requirements, that apply to the NO_X SIP Call units that are brought into the CAIR program but do not serve generators producing electricity for sale, as intended by the State. EPA determined after review of Kentucky's final rules, and after Kentucky had adopted other necessary revisions to its CAIR rules, that these provisions needed clarification.

EPA has outlined these necessary revisions in a technical support document. EPA received a letter from Kentucky dated September 11, 2007, that provides a commitment to make these rule revisions in its CAIR rules in 2008. Specifically, in the September 11, 2007, letter, Kentucky commits to make the revisions discussed above to its CAIR NO_X Ozone Season trading rule, 401 KAR 51:220.

D. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;

2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Kentucky has chosen to replace the provisions of the CAIR NO_X annual and CAIR NO_X ozone season model trading rules concerning the allocation of NO_X annual and ozone season allowances with its own methodology. Kentucky has chosen to distribute 98% of its NO_X annual allowances based upon adjusted heat input. In Kentucky's final CAIR SIP submittal, Kentucky already made initial allocations for the control periods spanning from 2009 to 2014. In 2009, Kentucky will submit one-year allocations for the 2015 control period, and for every control period thereafter Kentucky will continue to submit allocations six years in advance. For example, in 2010, one-year allocations will be made for the 2016 control period; in 2011, one-year allocations will be made for the 2017 control period, etc. The remaining 2% of Kentucky's allowances will be held and sold as needed by the Commonwealth of Kentucky, with the proceeds to be deposited into Kentucky's general fund.

E. Allocation of NO_X Allowances From the Compliance Supplement Pool

The CAIR establishes a compliance supplement pool (CSP) to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Kentucky has chosen to modify the provisions of the CAIR NO_x annual model trading rule concerning the allocation of allowances from the CSP. Kentucky has chosen to distribute CSP allowances using an allocation methodology that continues to reward early reductions, but hinges on heat input data. Initially, the portion of the CSP that is available to a given source is determined by the following formula:

$$ERC_U = \frac{(BHI_U)}{BHI_T}(CSP_T)$$

Where: ERC_U is the Early Reduction Credit available to the unit, BHI_U is the Baseline Heat Input of the unit, BHI_T is the Baseline Heat Input from all sources within Kentucky, and CSP_T is 14,935 tons, the Early Reduction Credits available pursuant to 40 CFR 96.143(a).

Kentucky also makes available portions of the CSP for units that are able to demonstrate need, in a manner that is identical to 40 CFR 96.143(c). Remaining credits are then distributed on a pro rata basis, up to the total early reduction credits requested pursuant to 40 CFR 96.143(b), to those CAIR NO_X units with early reduction credits that exceeded the amount of credits made available by the previous calculation.

F. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the

applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Kentucky has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO_X annual trading program, including both of the opt-in allocation methods in the model rule.

Kentucky has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR NO_X ozone season trading program, including both of the opt-in allocation methods in the model rule.

Kentucky has chosen to allow certain non-EGUs to opt into the CAIR SO_2 trading program, including both of the opt-in allocation methods in the model rule.

VI. Final Action

EPA is approving Kentucky's full CAIR SIP revision submitted on July 19, 2007. Under this SIP revision, Kentucky is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. The SIP revision (interpreted and clarified as discussed above) meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. Further, Kentucky has agreed to make the technical corrections to certain provisions as discussed above. Therefore, EPA has determined that the SIP as revised will meet the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Kentucky. This action will delete and reserve 40 CFR 52.940 and 40 CFR 52.941.

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 3, 2007 without further notice unless the Agency receives adverse comments by November 5, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 3, 2007 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. In § 52.920(c) Table 1 is amended under Chapter 51 by adding in numerical order the entries for ''401 KAR 51.210,'' ''401 KAR 51.220,'' and ''401 KAR 51.230'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * *	*	*	*
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
*	* * *	*	*	*
401 KAR 51.210	CAIR NO_X Annual Trading Program	2/2/2007	10/4/2007 [Insert citation of publication].	
401 KAR 51.220	CAIR NO_X Ozone Season Trading Program	6/13/2007	10/4/2007 [Insert citation of publication].	
401 KAR 51.230	CAIR SO_2 Trading Program	2/2/2007	10/4/2007 [Insert citation of publication].	
*	* * *	*	*	*

[FR Doc. E7–19327 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0118; FRL–8477–7]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 22 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination of acceptability.

SUMMARY: This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The determinations concern new substitutes for use in the refrigeration and air conditioning sector.

DATES: This action is effective on October 4, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Air Docket (No. A–91–42), EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 343–9163, by facsimile at (202) 343–2362, by e-mail at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 10th floor, Washington, DC 20005.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/*.

SUPPLEMENTARY INFORMATION:

I. Listing of New Acceptable Substitutes
A. Refrigeration and Air Conditioning
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History

Appendix A—Summary of Decisions for New Acceptable Substitutes

I. Listing of New Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and air conditioning sector. For copies of the full list of ODS substitutes in all industrial sectors, visit EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/lists/index.html*.

The sections below discuss each substitute listing in detail. Appendix A contains a table summarizing today's listing decisions for new substitutes. The statements in the ''Further Information'' column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the ''further information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''further information'' column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

You can find submissions to EPA for the use of the substitutes listed in this document and other materials supporting the decisions in this action in docket EPA–HQ–OAR–2003–0118 at *http://www.regulations.gov*.

A. Refrigeration and Air Conditioning

1. RS–45

EPA's decision:

RS–45[R–125/143a/134a/600a (63.2/18.0/16.0/2.8)] is acceptable for use in new and retrofit equipment as a substitute for hydrochlorofluorocarbon (HCFC)–22 in:

- Chillers (centrifugal, screw, reciprocating).
- Industrial process refrigeration.
- Industrial process air conditioning.
- Retail food refrigeration.
- Cold storage warehouses.
- Refrigerated transport.
- Commercial ice machines.
- Ice skating rinks.
- Household refrigerators and freezers.
- Water coolers.
- Residential dehumidifiers.
- Household and light commercial air conditioning and heat pumps.

RS–45 is a blend of 18.0% by weight hydrofluorocarbon (HFC)–143a (1,1,1-trifluoroethane, CAS ID #420–46–2), 63.2% by weight HFC–125 (pentafluoroethane, CAS ID #354–33–6), 16.0% by weight HFC–134a (1,1,1,2-tetrafluoroethane, CAS ID #811–97–2, and 2.8% by weight R–600a (isobutane, 2-methyl propane, CAS ID #75–28–5). The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) has assigned this blend the designation R–434A. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0162 at *www.regulations.gov*.

Environmental information: The ozone depletion potential (ODP) of R–421A is zero. The global warming potentials (GWPs) of HFC–143a, HFC–125, HFC–134a, and isobutane are 3800, 3450, 1320, and less than 10, respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) *Scientific Assessment of Ozone Depletion: 2002*)). The atmospheric lifetimes of these constituents are 48.3, 29, and 14 years, and less than one year, respectively.

The contribution of this blend to greenhouse gas emissions will be minimized through the implementation of the venting prohibition under section 608 (c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I or class II ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

HFC–143a, HFC–125 and HFC–134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations (see 40 CFR 51.100(s)) addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. Isobutane is a VOC under Clean Air Act regulations.

Flammability information: While two of the blend components, isobutane and HFC–143a, are flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

Toxicity and exposure data: HFC–143a has an 8 hour/day, 40 hour/week recommended acceptable exposure limit for the workplace from the manufacturer of 1000 ppm. HFC–125 and HFC–134a have 8 hour/day, 40 hour/week workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). Isobutane has an 8 hour/day, 40 hour/week threshold limit value (TLV) established by the American Conference of Governmental Industrial Hygienists (ACGIH) of 1000 ppm. EPA recommends that users follow all requirements and recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of RS–45 adhere to the AIHA's WEELs and the ACGIH's TLV.

Comparison to other refrigerants: RS–45 is not an ozone depleter in contrast to HCFC–22, the ozone-depleting substance which it replaces. RS–45 is comparable to other substitutes for HCFC–22 in its lack of risk for ozone depletion. RS–45 has a GWP of about 3200, comparable to or lower than that of other substitutes for HCFC–22. For example, the GWP of R–407C is about 1700, the GWP of R–410A is about 2000, and the GWPs of R–404A and R–507 are about 3900. Flammability and toxicity risks are low, as discussed above. Thus, we find that RS–45 is acceptable because it does not pose a greater overall risk to public health and the environment than the other substitutes acceptable in the end uses listed above.

2. KDD5

EPA's decision:

KDD5 is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in:

- Chillers (centrifugal, screw, reciprocating).
- Industrial process refrigeration.
- Industrial process air conditioning.
- Retail food refrigeration.
- Cold storage warehouses.
- Refrigerated transport.
- Commercial ice machines.
- Ice skating rinks.
- Household refrigerators and freezers.
- Vending machines.
- Water coolers.
- Residential dehumidifiers.
- Household and light commercial air conditioning and heat pumps.
- Motor vehicle air conditioning (buses and passenger trains only).
- Non-mechanical heat transfer.

The submitter of KDD5 has claimed its composition as confidential business information. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0157 at *www.regulations.gov*.

Environmental information: The ODP of KDD5 is zero. The average 100-year integrated GWP of this blend is in the

range of the GWPs for R–407C and R–410A. Some components of the blend are VOCs under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

The contribution of this blend to greenhouse gas emissions will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I or class II ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

Flammability information: As formulated and under worst-case fractionated formulation scenarios, this blend is not flammable.

Toxicity and exposure data: The manufacturer's recommended 8-hr TWA workplace exposure limit for the blend is 995 ppm. A number of components of the blend have workplace exposure limits of 1000 ppm set by the manufacturer, the AIHA, or the ACGIH.

Comparison to other refrigerants: KDD5 is not an ozone depleter; thus, it poses a lower risk for ozone depletion than the ODSs it replaces. KDD5 has comparable or lower risk for ozone depletion than other substitutes for HCFC–22. KDD5 has a GWP comparable to or lower than that of other substitutes for HCFC–22. For example, the GWP of R–407C is about 1700, the GWP of R–410A is about 2000, and the GWPs of R–404A and R–507 are about 3900. Flammability and toxicity risks are low, as discussed above. We find that KDD5 is acceptable because it does not pose a greater overall risk to public health and the environment than the other substitutes acceptable in the end uses listed above.

3. R–428A

EPA's decisions:

R–428A is acceptable for use in new and retrofit equipment as a substitute for R–502, HCFC–22, and refrigerant blends containing HCFC–22, including R–402A, R–408A, R–403B, and R–411B in:

- Retail food refrigeration.
- Cold storage warehouses.
- Refrigerated transport.
- Commercial ice machines.
- Household refrigerators and freezers.

R–428A is acceptable for use in new equipment as a substitute for R–403B in:

- Industrial process refrigeration.

R–428A is acceptable for use in new and retrofit equipment as a substitute for R–502 and HCFC–22 in:

- Ice skating rinks.

R–428A is a blend of 77.5% by weight HFC–125 (pentafluoroethane, CAS ID #354–33–6), 20.0% by weight HFC–143a (1,1,1,-trifluoroethane, CAS ID #420–46–2), 0.6% by weight R–290 (propane, CAS ID #74–98–6), and 1.9% by weight R–600a (isobutane, 2-methyl propane, CAS ID #75–28–5). A common trade name for this refrigerant is RS–52. You may find the submission under Docket item EPA–HQ–OAR–2003–0118–0155 at *www.regulations.gov*.

Environmental information: The ODP of R–428A is zero. For environmental information on HFC–125, HFC–143a and isobutane, see the section on environmental information above for RS–45. The 100-year integrated GWP of propane is generally considered to be less than 10, relative to CO_2. The atmospheric lifetime of propane is less than one year.

The contribution of this blend to greenhouse gas emissions will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (see 40 CFR part 82, subpart F). This section and EPA's implementing regulations prohibit venting or release of substitutes for class I or class II ODSs used in refrigeration and air conditioning and require proper handling, such as recycling or recovery, and disposal of these substances.

Isobutane and propane are VOCs under Clean Air Act regulations concerning the development of SIPs to attain and maintain the national ambient air quality standards. HFC–125 and HFC–143a are exempt from the definition of VOC under these regulations. 40 CFR 51.100(s).

Flammability information: While three components of the blend, HFC–143a, isobutane and propane, are flammable, the blend as formulated and under worst-case fractionated formulation scenarios, is not flammable.

Toxicity and exposure data: For information on the workplace exposure limits for HFC–125 and HFC–143a, see the section on toxicity and exposure data above for RS–45. Isobutane has an 8 hour/day, 40 hour/week threshold limit value (TLV) established by the American Conference of Governmental Industrial Hygienists (ACGIH) of 1000 ppm. Propane has an 8 hour/day, 40 hour/week TLV of 800 ppm established by the ACGIH. EPA recommends that users follow all requirements and recommendations specified in the MSDS for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. EPA also recommends that users of R–428A adhere to the ACGIH's TLVs.

Comparison to other refrigerants: R–428A is not an ozone depleter in contrast to the ozone depleting substances which it replaces. R–428A has comparable or lower risk for ozone depletion than other substitutes for R–502. R–428A has a GWP of about 3500, comparable to or lower than that of other substitutes for HCFC–22 and R–502. For example, the GWP of R–407C is about 1700, the GWP of R–410A is about 2000, and the GWPs of R–404A and R–507 are about 3900. The flammability and toxicity risks are low, as discussed above. Thus, we find that R–428A is acceptable because it does not pose a greater overall risk to public health and the environment than the other substitutes acceptable in the end uses listed above.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. We must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who

produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the final rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued our first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

• Refrigeration and air conditioning;
• Foam blowing;
• Solvents cleaning;
• Fire suppression and explosion protection;
• Sterilants;
• Aerosols;
• Adhesives, coatings and inks; and
• Tobacco expansion.

These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register.**

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who plans to market or produces a substitute for an ODS in one of the eight major industrial use sectors must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/snap/chron.html.* This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 7, 2007.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

Appendix A: Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information
Centrifugal chillers (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Screw chillers (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Reciprocating chillers (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Industrial process refrigeration (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Industrial process refrigeration (new only)	R–428A as a substitute for R–403B	Acceptable.	
Industrial process air conditioning (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Retail food refrigeration (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
	R–428A as a substitute for R–502, HCFC–22 and refrigerant blends containing HCFC–22, including R–402A, R–403B, R–408A, and R–411B.	Acceptable.	
Cold storage warehouses (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
	R–428A as a substitute for R–502, HCFC–22 and refrigerant blends containing HCFC–22, including R–402A, R–403B, R–408A, and R–411B.	Acceptable.	
Refrigerated transport (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
	R–428A as a substitute for R–502, HCFC–22 and refrigerant blends containing HCFC–22, including R–402A, R–403B, R–408A, and R–411B.	Acceptable.	
Commercial ice machines (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information
	R–428A as a substitute for R–502, HCFC–22 and refrigerant blends containing HCFC–22, including R–402A, R–403B, R–408A, and R–411B.	Acceptable.	
Ice skating rinks (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
	R–428A as a substitute for R–502 and HCFC–22	Acceptable.	
Household refrigerators and freezers (retrofit and new).	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
	R–428A as a substitute for R–502, HCFC–22 and refrigerant blends containing HCFC–22, including R–402A, R–403B, R–408A, and R–411B.	Acceptable.	
Vending machines (retrofit and new)	KDD5 as a substitute for HCFC–22	Acceptable.	
Water coolers (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Residential dehumidifiers (retrofit and new)	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Household and light commercial air conditioning and heat pumps (retrofit and new).	RS–45 as a substitute for HCFC–22	Acceptable.	
	KDD5 as a substitute for HCFC–22	Acceptable.	
Motor vehicle air conditioning for buses and passenger trains.	KDD5 as a substitute for HCFC–22	Acceptable.	
Non-mechanical heat transfer	KDD5 as a substitute for HCFC–22	Acceptable.	

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Part 1001

Medicare and State Health Care Programs: Fraud and Abuse; Safe Harbor for Federally Qualified Health Centers Arrangements Under the Anti-Kickback Statute

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: In accordance with section 431 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), this final rule sets forth a safe harbor under the anti-kickback statute to protect certain arrangements involving goods, items, services, donations, and loans provided by individuals and entities to certain health centers funded under section 330 of the Public Health Service Act. The goods, items, services, donations, or loans must contribute to the health center's ability to maintain or increase the availability, or enhance the quality, of services available to a medically underserved population.

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

FOR FURTHER INFORMATION CONTACT: Spencer Turnbull, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

Overview—Establishing New Safe Harbor for Arrangements Involving Federally Qualified Health Centers

This final regulation establishes safe harbor protection under the anti-kickback statute for certain arrangements involving Federally qualified health centers. Section I of this preamble contains a brief background discussion addressing the anti-kickback statute and safe harbors; a discussion of section 330-funded health centers; a summary of the relevant MMA provisions; a summary of the proposed safe harbor; and a summary of the final safe harbor. Section II of this preamble sets forth a summary of the public comments and our responses to those comments.

A. The Anti-Kickback Statute and Safe Harbors

The anti-kickback statute provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to five years. Violations of the anti-kickback statute may also result in the imposition of civil money penalties (CMPs) under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act, (31 U.S.C. 3729–33).

The types of remuneration prohibited specifically include, without limitation, kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. Prohibited conduct includes not only the payment of remuneration intended to induce or reward referrals of patients, but also the payment of remuneration intended to induce or reward the purchasing, leasing, or ordering of, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item reimbursable by any Federal health care program.

Because of the broad reach of the statute, concern was expressed that some relatively innocuous commercial arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (section 1128B(b)(3)(E) of the Act), which specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, which would specify various payment and business practices that would not be treated as criminal offenses under the anti-kickback statute, even though they may potentially be

capable of inducing referrals of business under the Federal health care programs. Since July 29, 1991, OIG has published in the **Federal Register** a series of final regulations establishing ''safe harbors'' in various areas.[1] These OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements.'' (56 FR 35952, 35958; July 21, 1991).

Health care providers and others may voluntarily seek to comply with safe harbors so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute, the CMP provision for anti-kickback violations, or the program exclusion authority related to kickbacks. In giving the Department the authority to protect certain arrangements and payment practices from penalties under the anti-kickback statute, Congress intended the safe harbor regulations to be evolving rules that would be updated periodically to reflect changing business practices and technologies in the health care industry.

B. Section 330—Funded Health Centers

Beginning in the 1960s, Congress enacted various health center programs to assist the large number of individuals living in medically underserved areas, as well as the growing number of special populations with limited access to preventive and primary health care services. In the Health Centers Consolidation Act of 1996, Public Law 104–299, Congress consolidated the four then-existing Federal health center grant programs (the Migrant Health Center Program, the Community Health Center Program, the Health Care for the Homeless Program, and the Health Services for Residents of Public Housing Program) into a single program under section 330 of the Public Health Service (PHS) Act. *See* S. Rep. 104–186 (December 15, 1995). In the Health Care Safety Net Amendments of 2002, Public Law 107–251, Congress reauthorized and strengthened the health centers program. In 2005, the Federal health center programs supported 954 organizations that provided care to over 14 million patients at 3,745 health care service delivery sites.[2]

Section 330 grant recipients play a vital role in the health care safety net, providing cost effective care for communities with limited access to health care resources. All recipients of grants under section 330 are public, nonprofit, or tax-exempt entities. The health centers must serve ''a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing.'' 42 U.S.C. 254b(a)(1). Health centers must be community based; to this end, a majority of a health center's governing board must be users of the center and must, as a group, represent the individuals being served by the center.[3] 42 U.S.C. 254b(k)(3)(H)(i). Health centers receiving section 330 grant funding must provide, either directly or through contracts or cooperative arrangements, a broad range of required primary health care services, including clinical services by physicians, and, where appropriate, physician assistants, nurse practitioners, and nurse midwives; diagnostic laboratory and radiological services; preventive health services; emergency medical services; certain pharmaceutical services; referrals to other providers (including substance abuse and mental health services); patient case management; services that enable individuals to use the services of the health center (*e.g.*, outreach, transportation, and translation services); and patient and community education services. 42 U.S.C. 254b(b)(1). They may also provide certain additional health services that are appropriate to serve the health needs of the population served by the health center. 42 U.S.C. 254b(b)(2). These additional health services may include mental health and substance abuse services; recuperative care services; environmental health services; special occupation-related health services for migratory and seasonal agricultural workers; programs to control infectious disease; and injury prevention programs.

Consistent with their mission and the terms of their PHS grants, section 330 grant recipients serve predominantly low-income individuals, including some beneficiaries of the Medicare and Medicaid programs. In 2005, 36 percent of patients treated by section 330 grant recipients were beneficiaries of a Medicaid program, 7.5 percent were beneficiaries of the Medicare program, and 2.3 percent were beneficiaries of another public insurance program.[4] Section 330 grant recipients also treat a substantial and growing number of uninsured patients. In 1996, section 330 grant recipients provided services to 3.2 million uninsured patients, and by 2005, this number had increased to 5.6 million, representing nearly 40 percent of patients treated at those centers during that year.[5]

Section 330 grant recipients must serve all residents of their ''catchment'' area regardless of the patient's ability to pay and must establish a fee schedule with discounts to adjust fees on the basis of ability to pay. 42 U.S.C. 254b(a)(1)(B) and 254b(k)(3)(G)(i). Section 330 grant recipients must also make and continue ''every reasonable effort to establish and maintain collaborative relationships with other health care providers in the catchment area of the center'' (42 U.S.C. 254b(k)(3)(B)), and must ''develop an ongoing referral relationship'' with at least one hospital in the area. 42 U.S.C. 254b(k)(3)(L).

Section 330 grant funds are intended to defray the costs of serving uninsured patients. Grant recipients are required to seek reimbursement from those patients who are able to pay all or a portion of the charges for their care (applying a schedule of fees and a corresponding schedule of discounts adjusted on the basis of the patient's ability to pay) or who have private insurance or public coverage, such as Medicare or Medicaid. The amount of a section 330 grant may not exceed the amount by which the costs of operation of the health center in such fiscal year exceed the total of: (i) State, local, and other operational funding provided to the health center; and (ii) the fees, premiums, and third-party reimbursements that the center may reasonably be expected to receive for its operations in such fiscal year. By statute, nongrant funds must be used to further the objectives of the recipient's section 330 grant.

Section 330 grant funding accounts for approximately 20 percent of revenue for health centers receiving such grants. The majority of health center funding derives from charges for patient services. On average, the largest source

[1] 56 FR 35952 (July 29, 1991); 61 FR 2122 (January 25, 1996); 64 FR 63518 (November 19, 1999); 64 FR 63504 (November 19, 1999); 66 FR 62979 (December 4, 2001); and 71 FR 45110 (August 8, 2006).

[2] HRSA Bureau of Primary Health Care, Uniform Data System: Calendar Year 2005 Data (available upon request at *http://www.bphc.hrsa.gov/uds/default.htm*).

[3] Health centers receiving grant funding to serve migratory and seasonal agricultural workers, homeless people, or residents of public housing may, upon a showing of good cause, obtain a waiver of this requirement. 42 U.S.C. 254b(k)(3)(H).

[4] HRSA Bureau of Primary Health Care, Uniform Data System: Calendar Year 2005 Data—Table 4: Users by Socioeconomic Characteristics (available upon request at *http://www.bphc.hrsa.gov/uds/default.htm*).

[5] HRSA Bureau of Primary Health Care, Uniform Data System: Calendar Year 2005 Data—UDS Trend Data for Years 1996 through 2005 (available upon request at *http://www.bphc.hrsa.gov/uds/default.htm*).

of revenue, 37 percent comes from Medicaid payments, 6.5 percent of health center revenues come from private third-party reimbursement, 6 percent from Medicare payments, and 6.5 percent from self-payments from patients. Remaining revenue comes from a mix of other Federal, State, local, and philanthropic sources.[6]

Frequently, health centers are provided with, or seek out, opportunities to enter into arrangements with hospitals or other providers or suppliers to further the health centers' patient care mission.[7] For example, providers or suppliers may agree to provide health centers with capital development grants, low cost (or no cost) loans, reduced price services, or in-kind donations of supplies, equipment, or space.

Some providers and suppliers expressed concern that remuneration offered to health centers might be viewed as suspect under the anti-kickback statute, because the health centers are frequently in a position to refer Federal health care program beneficiaries to the provider or supplier. Accordingly, Congress enacted section 431 of MMA to enable some health centers to conserve section 330 and other monies by accepting needed goods, items, services, donations, or loans for free or at reduced rates from willing providers and suppliers.

C. Section 431 of MMA

Section 431 of MMA amended the anti-kickback statute to create a new safe harbor for certain agreements involving health centers. Specifically, section 431(a) of MMA excludes from the reach of the anti-kickback statute any remuneration between: (i) A health center described under section 1905(l)(2)(B)(i) or 1905(l)(2)(B)(ii) of the Act; and (ii) an individual or entity providing goods, items, services, donations, loans, or a combination of these to the health center pursuant to a contract, lease, grant, loan, or other agreement, provided that such agreement contributes to the health center's ability to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center.

In other words, Congress intended to permit health centers to accept certain remuneration that would otherwise implicate the anti-kickback statute when the remuneration furthers a core purpose of the Federal health centers program: ensuring the availability and quality of safety net health care services to otherwise underserved populations. As discussed in greater detail below, Congress limited the scope of the safe harbor to certain health centers engaged in arrangements involving specific types of identifiable remuneration.

In establishing regulatory standards relating to the safe harbor, Congress directed the Department to consider the following factors:

- Whether the arrangement results in savings of Federal grant funds or increased revenues to the health center. We believe this factor evidences Congress' intent that a protected arrangement directly benefit the health center economically and that the benefits of the arrangement primarily inure to the health center, rather than the individual or entity providing the remuneration.
- Whether the arrangement restricts or limits patient freedom of choice. We believe this factor evidences Congress' intent that protected arrangements not result in inappropriate steering of patients. Under the safe harbor, patients remain free to obtain services from any provider or supplier willing to furnish them.
- Whether the arrangement protects the independent medical judgment of health care professionals regarding medically appropriate treatment for patients. We believe this factor evidences Congress' intent to safeguard the integrity of medical decision-making and ensure it is untainted by direct or indirect financial interests. In all cases, the best interests of the patient should guide the medical decision-making of health centers and their affiliated health care professionals.

Section 431(b)(1)(B) of MMA provides that these three factors are ''among'' the factors the Department may consider in establishing the safe harbor standards. The statute authorizes the Department to include ''other standards and criteria that are consistent with the intent of Congress in enacting'' the health center safe harbor. Accordingly, we interpret the statute to permit us to consider other relevant factors and to establish other relevant safe harbor standards consistent with the anti-kickback statute and the health center safe harbor. Among the factors we have considered is whether arrangements would pose a risk of fraud or abuse to any Federal health care programs or their beneficiaries. We believe Congress intended to protect arrangements that foster an important goal of the section 330 grant program—assuring the availability and quality of needed health care services for medically underserved populations—without adversely impacting other Federal programs or their beneficiaries.

D. Summary of Proposed Safe Harbor

On July 1, 2005, we issued a notice of proposed rulemaking (70 FR 38081) to set forth standards related to the safe harbor described in section 431 of MMA, in which we proposed: (1) To protect remuneration in the form of goods, items, services, donations, loans, or a combination thereof provided by an individual or entity (hereinafter in this preamble ''Donor'') to a qualifying health center; (2) that remuneration must be medical or clinical in nature or relate directly to patient services provided by the health center as part of the scope of the health center's section 330 grant; and (3) importantly, that a protected arrangement must contribute to the ability of the health center to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population.

The proposed regulation proposed that protected arrangements must be pursuant to a comprehensive contract, lease, grant, loan, or other agreement that is written and signed by the parties, and the amount of the protected remuneration must not be conditioned on the volume or value of Federal health care program business generated between the parties. As we said in the notice of proposed rulemaking:

''In the unique and limited context of arrangements described in the proposed safe harbor, we would extend safe harbor protection to arrangements where only the methodology, and not the absolute value of the remuneration, is predetermined. For example, a health center might agree to pay a supplier a set hourly or per visit fee that is below fair market value for services furnished by the supplier to the health center, provided that the formula for

[6] HRSA Bureau of Primary Health Care, Uniform Data System: Calendar Year 2005 Data—Exhibit A: Total Revenue Received by BPHC Grantees (available upon request at *http://www.bphc.hrsa.gov/uds/default.htm*).

[7] Congress has previously recognized the importance of health center affiliations with hospitals and other health care service providers in promoting efficiency and quality of care. The Health Centers Consolidation Act expressly requires health centers to maintain collaborative relationships with other providers. With respect to integrated delivery systems, the Report states:

''The committee believes, based on expert testimony given at the May 14, 1995, hearing, that the development of integrated health care provider networks is key to preserving and strengthening access to community-based health care services in rural areas. Provider networks offer a number of advantages: They can work to ensure that a continuum of health care services is available, reduce the duplication of services, produce savings in administrative and other costs through shared services and an enhanced ability to negotiate in the health care market place, and recruit and utilize health professionals more effectively and efficiently.''

S. Rep. 104–186 at p. 11.

calculating the compensation (*e.g.*, $ × per hour or $ × per service) is fixed in advance and not conditioned on referrals to the supplier.'' 70 FR 38084.

We proposed that health centers must reasonably determine before entering into an agreement that the arrangement is likely to contribute to the health center's ability to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population. We also proposed that health centers would have to periodically re-evaluate agreements to ensure ongoing compliance with this benefit standard and terminate as expeditiously as possible any arrangements that are not reasonably expected to continue to meet the standard. We proposed that the initial determination and any re-evaluations should be contemporaneously documented.

Our proposed rule stated that health centers must not be required to refer patients to a particular provider or supplier. In addition, we proposed that Donors that offer to provide goods, items, or services must accept all referrals of patients from the health center who clinically qualify for the goods, items, or services, regardless of payor status or ability to pay. We proposed that protected arrangements could not be exclusive. The proposed rule also required health centers to provide effective notification to patients of their freedom to choose any willing provider or supplier and to disclose the existence and nature of protected arrangements.

We proposed to give health centers the option of requiring that a Donor that enters into a protected arrangement charge a referred health center patient the same rate it charges other similarly situated persons not referred by the health center or that the items or services be furnished to health center patients at a reduced rate or free of charge.

Finally, we proposed that an arrangement could not be protected under the safe harbor unless it complied with the requirements of the health center's section 330 grant funding.

E. Summary of Final Safe Harbor

1. Major Changes

We have modified the proposed rule in a number of areas in response to public comments. The substantial changes and clarifications being made in the final regulations include:

- Clarifying the definition of the term ''remuneration'' for purposes of the safe harbor;
- Eliminating the requirement that arrangements that do not comply with the safe harbor be terminated;
- Eliminating the requirement that arrangements must comply with all relevant requirements of the health center's section 330 grant funding;
- Consolidating and clarifying the documentation requirements;
- Clarifying that health centers do not need to develop set standards for determining whether an arrangement is expected to contribute meaningfully to services for underserved patients;
- Simplifying the safe harbor requirement pertaining to disclosures to patients;
- Clarifying health centers' freedom to refer patients; and
- Clarifying the conditions under which individuals and entities furnish separately billable goods, items, or services to health centers.

2. Final Safe Harbor Conditions

As discussed more fully in this preamble and regulations, the health center safe harbor protects remuneration in the form of goods, items, services, donations or loans (whether the donation or loan is in cash or in-kind), or a combination thereof provided by a Donor to a qualifying health center. Qualifying health centers are health centers described under section 1905(l)(2)(B)(i) or 1905(l)(2)(B)(ii) of the Act. Remuneration must be medical or clinical in nature or relate directly to services provided by the health center as part of the scope of the health center's section 330 grant. A protected arrangement must contribute to the ability of the health center to maintain or increase the availability of, or enhance the quality of, services provided to a medically underserved population.

Protected arrangements must be pursuant to a contract, lease, grant, loan, or other agreement that is written, signed by the parties, and covers all of the remuneration to be provided. The amount of the remuneration must be specified and not be conditioned on the volume or value of Federal health care program business generated between the parties.

Health centers must reasonably expect before entering into an agreement that the arrangement is likely to contribute to the health center's ability to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population as defined at 42 U.S.C. 254b(b)(3). Health centers must document the basis for their determination that the arrangement will yield such a benefit. Health centers must periodically re-evaluate agreements to ensure ongoing compliance with the benefit standard. These determinations must be contemporaneously documented.

Health centers must not be required to refer patients to a particular provider or supplier under the arrangement, and must be free to refer patients to any provider or supplier. In addition, Donors that offer to furnish goods, items, or services for health center patients must furnish those goods, items, or services to all health center patients who clinically qualify for them, regardless of payor status or ability to pay.

Health centers are required to provide effective notification to patients of their freedom to choose any willing provider or supplier and to disclose to patients, upon request, the existence and nature of the arrangement with the Donor.

The safe harbor makes clear that a health center may, at its option, require a Donor that enters into a protected arrangement to charge a referred health center patient the same rate it charges other similarly situated persons not referred by the health center or furnish items or services to health center patients at a reduced rate (where the discount applies to the total charge and not just the cost-sharing portion owed by an insured patient).

II. Summary of Public Comments and OIG Responses

In response to our proposed rulemaking, OIG received a total of nine timely filed comments from trade associations, hospitals, health centers, and other interested parties. We have divided the summaries of the public comments and our responses into three parts: general comments; comments on statutory elements; and comments on additional regulatory standards.

A. General Comments

All the commenters supported the establishment of a safe harbor for arrangements involving Federally Qualified Health Centers. While some commenters expressed their support for all of the regulatory standards in the proposed rule, other commenters took issue with one or more specific aspects of the proposal.

Comment: A trade association objected to the number of standards in the proposed regulation. The commenter suggested that the number of standards is too high and might dissuade parties from participating in safe harbored arrangements.

Response: As discussed in detail elsewhere in this preamble, we have reduced the number of standards from eleven in the proposed rule to nine in

the final rule. We do not believe that the regulatory standards should create an undue burden or otherwise chill participation in arrangements under the safe harbor.

Comment: Several commenters responded to the statement in the preamble to the proposed rule that OIG intended to monitor participants in safe harbored arrangements for compliance with billing rules, in order to guard against improper billing of Federal health care programs or inappropriate transfers of governmental funds. *See* 70 FR 38086. Two trade associations requested that we remove any mention of such monitoring, lest it discourage parties from participating in arrangements under this safe harbor. Another trade association suggested that, in return for safe harbor protection, it would be appropriate that health centers be monitored closely for compliance with the requirements of section 330 funding to determine whether the funding is used for its intended purpose. In particular, the commenter stated that it is important to ensure that any government benefits provided to health centers to serve uninsured patients are used to provide services to those patients and not diverted to subsidizing unrelated service lines.

Response: Our use of the term ''monitor'' may have inadvertently created the misimpression that parties to arrangements under this safe harbor would be subject to a higher level of scrutiny than parties to other arrangements. We clarify that we were referring simply to our usual and customary oversight authorities and practices. Participation in a safe harbored arrangement would not necessarily make parties a target of OIG attention or subject parties to heightened scrutiny; however, as providers who receive funding from Federal health care programs, health centers remain subject to our general oversight tools, including monitoring for proper billing and appropriate transfers of governmental funds. With that clarification, we do not believe that referencing our longstanding oversight authority should discourage participation in safe harbored arrangements. We agree with the last commenter and affirm our continued commitment to ensuring that Government funding is used for its intended purposes.

Comment: A trade association requested that we remove the proposed requirement at § 1001.952(w)(11), which would have required any safe harbored agreement to comply with all relevant requirements of the health center's section 330 grant funding. The commenter suggested that the requirement is unnecessary, because health centers already operate under an obligation to comply with all requirements of their section 330 grant funding. Moreover, the commenter observed that including this provision in the safe harbor regulations might chill a Donor's willingness to participate in safe harbored arrangements, if that Donor also becomes obligated to ensure that the arrangements comply with the terms of a health center's section 330 grant funding.

Response: We agree with this commenter and are eliminating the standard in the final rule. The remaining safe harbor conditions, in combination with health centers' existing obligations to comply with the requirements of their section 330 grant funding, should be sufficient to minimize any risk of fraud and abuse.

Comment: We received a comment from a health center network noting that the safe harbor only offers protection under the anti-kickback statute and does not offer protection under the physician self-referral law, section 1877 of the Act (commonly known as the ''physician self-referral law'' or ''Stark'' law). The commenter expressed concern that the need to comply with both statutes may prove burdensome for health centers, and suggested that the requirements of the two laws be consolidated.

Response: The commenter correctly notes that the safe harbor only protects arrangements under the anti-kickback statute, and, where applicable, parties would also need to comply with the physician self-referral law. An exception under the physician self-referral law is beyond the scope of this rulemaking. The anti-kickback statute and the physician self-referral law, while similar in that they both address abuses of the Medicare and Medicaid programs, are different in scope and application. Congress has made clear that the physician self-referral law and the anti-kickback statute are separate legal authorities, and compliance with one does not necessarily ensure compliance with the other. *See, e.g.*, H.R. Conf. Rep. No. 386, 101st Cong., 1st session 856 (1989).

B. Comments on Statutory Elements

1. Protected Health Centers

Comment: A trade association suggested we broaden the scope of the safe harbor to apply to arrangements involving other types of health centers that are similar to the health centers described in sections 1905(l)(2)(B)(i) and 1905(l)(2)(B)(ii) of the Act, except for the fact that they lack section 330 funding. These other facilities are often called ''look-alike'' facilities.

Response: We decline to adopt this suggestion. Congress specifically provided that the safe harbor should apply to the facilities described in sections 1905(l)(2)(B)(i) and 1905(l)(2)(B)(ii) of the Act and not to other types of facilities. Moreover, we believe the lack of section 330 funding, which entails a higher level of Government oversight, constitutes a significant distinction between section 330-funded health centers and look-alike facilities. Extending safe harbor protection to entities without such Government funding and such a level of oversight would pose a greater risk of fraud and abuse. We recognize that many look-alike facilities play important roles in the health care safety net, and we note that just because arrangements with look-alike facilities do not fall within the safe harbor does not mean they are necessarily illegal. The fact that the safe harbor does not apply simply means that such arrangements must be analyzed on a case-by-case basis to determine whether they violate the anti-kickback statute.

Comment: A trade association asked us to commit to considering the issuance of a regulatory safe harbor protecting arrangements involving look-alike facilities.

Response: We may consider this option in the future, depending on our experience with this safe harbor in practice.

2. Protected Remuneration

Comment: Several commenters sought clarification as to whether community benefit grants and other types of cash donations qualify as protected remuneration under this safe harbor. A trade association asked that we add language in § 1001.952(w)(2) that clarifies that donations and loans could include cash donations, such as community benefit grants, and are not limited to in-kind donations and loans. One commenter noted that some community benefit grants entail reconciliation provisions, which allow the donor (i) to augment the grant if grant funds fall short of actual health center expenditures or (ii) to determine the use of excess funds where grant funds exceed actual health center spending. Two trade associations requested clarification of the definition of ''remuneration'' and assurance that the definition includes community benefit grants or similar payments to health centers by public hospitals and health systems, even if the amount of

the payments are subject to reconciliation.

Response: The definition of ''remuneration'' at § 1001.952(w) would generally extend to community benefit grants or similar payments, even where such grants or payments are subject to a reconciliation provision. So long as the reconciliation methodology is fixed in advance and does not hinge on the volume or value of referrals from the health center to the Donor, funding subject to reconciliation could comply with the condition at § 1001.952(w)(1) and be protected remuneration under this safe harbor (provided all other safe harbor conditions are satisfied). Donations and loans need not be limited to in-kind goods or services, and indeed may be in monetary form. We have clarified the scope of § 1001.952(w) to make this point more explicit: ''As used in section 1128B of the Act, 'remuneration' does not include the transfer of any goods, items, services, donations or loans (*whether the donation or loan is in cash or in-kind*), or combination thereof from an individual or entity to a health center * * *'' (emphasis added).

Comment: A trade association suggested we expand the scope of the safe harbor to cover arrangements whereby the remuneration is provided not *to* the health center, but *from* the health center to an individual or entity related to the health center. The commenter said there are arrangements not covered by other safe harbors where a health center could provide payments or other forms of support to a provider that would result in improving the overall health outcomes of patients.

Response: Section 431 of MMA does not protect remuneration from a health center to an individual or entity. We believe it is clear that Congress intended the safe harbor to enhance the resources available to health centers in order to help them achieve their community benefit mission, and we decline to adopt the commenter's recommendation. We recognize that there may be beneficial arrangements where remuneration flows away from the health center that may not fit within a safe harbor; such arrangements would be evaluated on a case-by-case basis to ensure compliance with the anti-kickback statute. We note that some arrangements pursuant to which a health center provides remuneration to an individual or entity may qualify for other safe harbors, including, for example, the safe harbors for personal services, employees, practitioner recruitment, and electronic health records items a nd services. *See* §§ 1001.952(d), (i), (n), and (y).

Comment: A trade association noted that our proposed rule stated that section 431 ''only protects remuneration provided to a health center and does not protect remuneration provided to individuals affiliated with a health center * * *.'' 70 FR 38084. The commenter asked whether, for purposes of this safe harbor, remuneration to the health center could include funds provided by a hospital, if such funds were used to help recruit a physician to the health center.

Response: The donation described by the commenter raises the possibility of two scenarios: one in which the donation could be used to recruit a physician to the health center primarily for the benefit of health center patients, and one where it could be used to recruit a physician primarily for the benefit of the donor hospital. If the hospital made the donation of funds to the health center primarily for the benefit of health center patients, then its donation of funds for the purpose of supporting general physician recruitment by the health center could qualify for protection under this safe harbor, if all safe harbor conditions are satisfied. Conversely, we believe Congress did not intend the safe harbor to protect arrangements where the donation primarily creates a benefit to the Donor instead of to the health center. Likewise, this safe harbor would not protect an arrangement where a Donor used the health center as a conduit to transfer remuneration to a particular recruited physician; to transfer remuneration specifically for the purpose of recruiting a physician to join the Donor's medical staff, or to practice in the Donor's service area; or to transfer remuneration to existing group practices. The safe harbor does not protect remuneration provided by Donors to individuals affiliated with the health center. Section 431 evidences Congress' intent to protect the provision of certain remuneration ''to'' a health center. It does not protect remuneration transferred to an individual affiliated with a health center, nor does it protect remuneration transferred from a health center to an individual or entity. We note that, depending on the circumstances, such a recruitment arrangement between a health center and a physician may be eligible for protection under another safe harbor, such as the safe harbor for practitioner recruitment at § 1001.952(n). When evaluating arrangements with potential Donors for funds to support physician recruitment, health centers should consider whether the remuneration would be used for expenses commonly or typically borne by the health center, such that the arrangement results in measurable savings that will benefit a medically underserved population, or would be used to recruit a health care professional needed by the health center to serve a medically underserved population. If a recruited physician were to join the health center's medical staff, it would be some evidence that the benefit primarily runs to medically underserved populations served by the health center as opposed to the Donor.

Comment: We received several comments regarding the proposed regulatory text for § 1001.952(w)(2), which provides examples of ''patient services furnished by the health center as part of its section 330 grant'' in the parenthetical portion of the text, but does not similarly list examples of ''goods, items, donations, or loans.'' The commenters expressed concern that this suggested that only services could constitute protected remuneration. These commenters requested that the regulatory text also supply examples of protected goods, items, donations, and loans.

Response: The commenters misread proposed § 1001.952(w)(2). Goods, items, donations, and loans—and services—can indeed constitute protected remuneration under this safe harbor. In the interest of clarifying § 1001.952(w)(2) so that health centers and Donors do not interpret the scope of protected remuneration to be narrower than it actually is, we have deleted the term ''patient services furnished'' and replaced it with the term ''services provided.'' Section 1001.952(w)(2) now requires that goods, items, services, donations, or loans (or combination thereof) must either (i) Be medical or clinical in nature or (ii) relate directly to services provided by the health center in furtherance of its section 330 grant. The parenthetical list offers illustrative examples of the kind of services that meet the latter test and makes clear that such services need not be medical or clinical in nature. For example, goods, items, services, donations, or loans directly related to a health center's billing, administrative, social services, and health information functions can qualify. We note that the term ''medical or clinical in nature'' broadly covers all medical or clinical services (*e.g.*, physician services, nurse practitioner and physician assistant services, diagnostic services, therapeutic services, etc.); medical or clinical goods and items (*e.g.*, pharmaceuticals, knee braces, stethoscopes, x-ray machines, etc.); donations of money or other forms of remuneration that the health center can use to furnish medical or clinical

services or to acquire goods, items, or services that are medical or clinical in nature; and loans of money or other forms of remuneration that the health center can use to furnish medical or clinical services or to acquire goods, items, or services that are medical or clinical in nature.

Comment: A non-profit organization and several health centers submitted comments seeking clarification that the definition of remuneration at § 1001.952(w) would include pharmaceutical manufacturers' donations of pharmaceutical products to health centers with the intent that these products be used to treat patients of the health center. They requested that we amend § 1001.952(w) specifically to include donations of pharmaceutical products from pharmaceutical manufacturers, citing concerns that absent such an explicit acknowledgement, pharmaceutical manufacturers would refuse to donate to health centers.

Response: Nothing in § 1001.952(w) excludes donations of pharmaceuticals by pharmaceutical companies from protection by the safe harbor. To the contrary, as discussed in the preceding response, such donations are clearly within the meaning of the language ''goods * * * [that] are medical or clinical in nature'' in § 1001.952(w)(2). Pharmaceutical donations can play an important role in ensuring a health center safety net for vulnerable patients, and many arrangements between health centers and pharmaceutical companies may be eligible for protection. That said, we are not enumerating in the regulatory text any particular types of Donors. Whether something fits in the definition of protected ''remuneration'' at § 1001.952(w) turns on the nature of the remuneration, not on its source. By listing some Donors and not others, we might create a misimpression regarding the scope of the safe harbor.

Comment: A non-profit organization sought clarification that a health center's practice of purchasing discounted drugs by means of participation in the 340B Drug Pricing Program would not preclude that health center from receiving free drugs pursuant to a donation protected under this safe harbor.

Response: We confirm that this safe harbor could protect arrangements involving the donation of pharmaceuticals to health centers, including to health centers that participate in the 340B Drug Pricing Program.

3. Documentation Requirements

Comment: Several commenters supported our documentation requirements at proposed §§ 1001.952(w)(1) and (3) (consolidated at § 1001.952(w)(1) of the final rule). A trade association commented that the documentation requirements at proposed §§ 1001.952(w)(1) and (3) are inconsistent with statements in the preamble. According to the commenter, the use of the term ''written agreement'' in the proposed regulatory language implies that all arrangements between a health center and a Donor must be included in a single writing, while the preamble says that all such arrangements should be memorialized ''by one comprehensive writing or by means of multiple writings that cross-reference and otherwise incorporate the agreements between the parties.''

Response: For clarity and ease of application, we have combined the documentation requirements at proposed §§ 1001.952(w)(1) and (3) of the proposed rule into one requirement at § 1001.952(w)(1) in the final rule. We confirm that it may be satisfied by one comprehensive writing or by multiple writings that cross-reference and otherwise incorporate the agreements between the parties. We have revised the safe harbor to reflect this. We have also revised the safe harbor to provide the option of using a centralized master list in lieu of cross-referencing and incorporation of multiple agreements. The master list must be maintained centrally and in a manner that preserves the historical record of arrangements, kept up to date, and made available for review by the Secretary upon request. This flexibility should enhance the ability of Donors and health centers to use the safe harbor. The safe harbor does not require that all arrangements between a health center and a Donor be included in a single agreement that would qualify under the safe harbor.

Comment: A trade association sought clarification that the documentation requirements at proposed §§ 1001.952(w)(1) and (3) (§ 1001.952(w)(1) of the final rule) apply only to arrangements related to a safe harbored arrangement, and not to other interactions between the health center and the Donor that truly are unrelated to a safe harbored arrangement. The commenter believed that the documentation requirements imply that all arrangements between a health center and a Donor must be included in a single arrangement that would qualify under the safe harbor. The commenter suggested that only arrangements that ''require safe harbor protection'' should require documentation.

Response: The safe harbor does not require that all arrangements between a health center and a Donor be included in a single arrangement that would qualify under the safe harbor. The documentation standards at § 1001.952(w)(1) (§§ 1001.952(w)(1) and (3) in our proposed rule) require that the written documentation ''cover all goods, items, services, donations, or loans to be provided to the health center.'' In the interest of providing bright-line guidance with respect to what must be documented under § 1001.952(w)(1), we clarify that this paragraph requires the documentation of all arrangements for the transfer of goods, items, services, donations, or loans from a Donor to a health center. With respect to the commenter's assertion that certain arrangements ''require safe harbor protection,'' we note that, like all safe harbors, compliance with this safe harbor is voluntary and no arrangement requires safe harbor protection. Rather, arrangements must comply with the anti-kickback statute. Compliance with a safe harbor is one option for ensuring compliance with the anti-kickback statute.

4. Benefit to a Medically Underserved Population

Comment: A trade association asked us to clarify § 1001.952(w)(4) of the proposed rule (§ 1001.952(w)(3) of the final rule), which requires that arrangements protected under the safe harbor be reasonably expected to contribute meaningfully to the health center's ability to maintain or increase the availability, or enhance the quality of, services provided to a medically underserved population. Specifically, the commenter sought confirmation that, in order to contribute meaningfully, the arrangement need not result in a financial gain for the health center. The commenter asked us to consider the case of a health center that does not offer a particular service for its patients, but enters into an arrangement with a Donor for that service for free. The commenter observed that since the health center had not previously incurred expenses for the service, the new arrangement would not offer a financial gain to the health center. Another trade association requested confirmation that proposed § 1001.952(w)(4) would not necessarily require direct savings of section 330 funding and could be satisfied without a monetary benefit to the health center.

Response: We confirm that proposed § 1001.952(w)(4) (§ 1001.952(w)(3) of the final rule) does not require a

financial gain to the health center and does not require the direct savings of section 330 funding. Whether the condition is satisfied will depend on the specific facts and circumstances. As noted in the preamble to the proposed rule at 70 FR 38085, we believe health centers are well-situated in the first instance to make a reasonable determination whether an arrangement contributes meaningfully to the health center's ability to maintain or increase the availability, or enhance the quality of, services provided to a medically underserved population, and we believe health centers should have flexibility in making these determinations. In the preamble to the proposed rule at 70 FR 38085, we listed factors that are exemplars of the type that should be considered in making these determinations:

- Does the arrangement directly benefit a medically underserved population?
- Does the arrangement involve goods, items, or services of a type that are commonly or typically purchased by the health center, such that the arrangement results in measurable savings that will benefit a medically underserved population?
- If the arrangement involves a donation to the health center, would the donation result in the increased availability of an item, good, device, service, technology, or treatment needed by a medically underserved population but not previously available in sufficient quantities due to financial limitations?
- Does the health center need the donated items, goods, or services, or the loaned funds to satisfy the scope of its section 330 grant?

The arrangement described in the first commenter's example could contribute meaningfully, if it increased the availability of the service for the health center's medically underserved population. With respect to the second commenter, we observe that while an arrangement that conserves a health center's section 330 funding means the health center has more money available to provide or enhance services for a medically underserved population, there are many other ways that remuneration could maintain, increase, or enhance services for a medically underserved population without the direct savings of section 330 funding. For example, if an arrangement allowed a health center to begin delivering an important new clinical service, which the health center was not previously able to provide, a meaningful benefit to a medically underserved population would likely be achieved without a direct monetary gain to the health center.

Comment: A trade association had a concern regarding the significance of the list of factors in the preamble that we wrote ''should be considered'' in determining whether an arrangement would result in a meaningful benefit to a medically underserved population. *See* 70 FR 38085. The commenter asked for confirmation that the factors in the list are only examples, and that it is not necessary to satisfy all of the factors to demonstrate a meaningful benefit under proposed § 1001.952(w)(4) (§ 1001.952(w)(3) of the final rule).

Response: The factors listed in the proposed rule and noted in the preceding response are examples of ways to analyze the existence of a meaningful benefit, and the commenter correctly understood that it is not necessary to satisfy each exemplary factor to establish the existence of a meaningful benefit to a medically underserved population under § 1001.952(w)(3) of the final rule.

Comment: A trade association commented that our requirement at proposed § 1001.952(w)(4) that health centers apply ''reasonable, consistent, and uniform standards'' when determining whether an arrangement bestows a meaningful benefit for services provided to a medically underserved population provides insufficient guidance to health centers for structuring arrangements. The commenter also objected to the proposed requirement that health centers document evaluation of such standards. It expressed concern that these requirements would have a chilling effect on parties' participation in safe harbored arrangements, as parties would be unsure whether their standards would satisfy the requirements of the safe harbor. The commenter requested that we provide examples of acceptable standards and how to document them, or eliminate the requirement all together.

Response: We intended the language ''reasonable, consistent and uniform standards'' to give health centers flexibility in assessing benefits to a medically underserved population, while at the same time requiring accountability and providing safeguards against abuse. Upon further consideration and consistent with our original intent, we have determined that proposed § 1001.952(w)(4) (now § 1001.952(w)(3)) can be simplified. Under § 1001.952(w)(3) of the final rule, parties need not develop or apply any separate ''standards,'' nor document that they have applied them. They must, however, document the basis for the reasonable expectation of benefits to a medically underserved population prior to entering the arrangement. Parties may, as a matter of prudent business practice, develop standards that are reasonable, uniform, and consistently applied as part of the methodology they use in assessing the expected benefit to a medically underserved population. We have similarly changed the corresponding language in § 1001.952(w)(4) of the final rule, which concerns the reevaluation of arrangements. With respect to the commenter's concern that proposed § 1001.952(w)(4) (§ 1001.952(w)(3) in the final rule) will chill participation in the safe harbor, we note that our approach here is consistent with several existing safe harbors that provide parties with flexibility to determine how to satisfy key conditions (*e.g.*, how to determine fair market value). A health center can document its determination of a meaningful benefit to a medically underserved population, for example, by maintaining written or electronic records of the data and methodology used to assess the expected maintenance of, increase in, or enhanced quality of services to a medically underserved population and the outcome of such assessment. We believe that the documentation necessary to satisfy this requirement is consistent with that generally kept in the usual and customary course of a health center's business. For example, in many cases a health center's section 330 grant documents, in combination with the agreement required under § 1001.952(w)(1), may serve as the documentation of a sufficient benefit to a medically underserved population, to the extent they transparently document that a volume of items or services specified by the section 330 grant requirements will be provided under the agreement. Parties with concerns about their specific practices can avail themselves of OIG's advisory opinion process.

5. Periodic Re-Evaluation of Arrangements

Comment: A health network supported the requirement at proposed § 1001.952(w)(5) (§ 1001.952(w)(4) of the final rule) that parties periodically re-evaluate arrangements. The commenter stated that it seems reasonable and useful for health centers participating in these arrangements to re-evaluate agreements periodically and document such factors as fair market value of equipment or costs of providing services. A trade association requested that we eliminate the requirement that an arrangement that, upon reevaluation,

fails to meet the benefit standard be terminated. This commenter also asked us to clarify that continuation of such an arrangement would not automatically constitute a violation of the anti-kickback statute.

Response: We agree with these commenters. We have adopted the trade association's recommendation to eliminate the language in § 1001.952(w)(5) of the proposed rule that required noncompliant arrangements to be promptly terminated. We also confirm that a decision by a health center to continue participating in an arrangement that no longer satisfies the requirements of § 1001.952(w)(3) of the final rule will not necessarily give rise to a violation of the anti-kickback statute. Rather, the continuation of such an arrangement would fall outside of the safe harbor, and its legality under the anti-kickback statute would be determined on a case-by-case basis, based on all the facts and circumstances, including the intent of the parties. Finally, we agree with the commenter that, depending on the arrangement, it would be reasonable and useful for health centers participating in these arrangements to re-evaluate agreements periodically and document such factors as fair market value of equipment or costs of providing services.

C. Comments on Additional Regulatory Standards

1. General Comments

Comment: A trade association asserted that the regulatory standards OIG proposed in accordance with section 431 of MMA should be limited to the factors set forth in section 431 and should not include additional requirements. As discussed in our preamble to the proposed rule at 70 FR 38083, in addition to the standards established by Congress, section 431 of MMA authorizes OIG to add other standards or criteria consistent with Congress' intent in creating this safe harbor. The commenter stated that establishing additional safe harbor standards consistent with the anti-kickback statute contravenes the plain language of the statute and Congress' intent. The commenter asked that the regulatory standards created in accordance with section 431 not include additional requirements that health centers and their partners would have to meet to be consistent with the anti-kickback statute. Finally, the commenter contended that these standards wrongly ''reconsider'' whether the arrangements pose a risk of fraud and abuse. According to the commenter, by definition, all the arrangements described in the safe harbor pose a risk of fraud and abuse, which is why they require safe harbor protection in the first place.

Response: We agree with the commenter's view that the regulatory standards we create in accordance with section 431 must be consistent with the language of section 431, and we believe that our regulations meet that test. Section 431 explicitly requires us to consider health center resources, patient freedom of choice, and independent medical judgment; however, it further states that these factors are ''among'' those to be considered and that ''the Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.'' Every safe harbor is established to protect arrangements that otherwise implicate the anti-kickback statute. Therefore, we believe Congress charged the Secretary with promulgating regulations implementing the health center safe harbor in a manner that furthers beneficial health center arrangements without posing an undue risk of fraud and abuse under the anti-kickback statute. This approach is consistent with our longstanding approach to safe harbor rulemaking. For instance, in our preamble to the proposed rule for the first ten safe harbors we stated that: ''[w]e have attempted in these proposed regulations to permit physicians to freely engage in business practices and arrangements that encourage competition, innovation and economy. However, we have added criteria to each 'safe harbor' in order to reduce the potential for abuse.'' (50 FR 3088; January 23, 1989) Congress enacted section 431 in the context of this regulatory history. Moreover, we do not believe Congress intended to protect arrangements that pose significant risk to Federal health care programs or their beneficiaries. We believe our regulations directly and reasonably derive from the guidelines specifically enacted in section 431 and Congress' invitation to include other standards consistent with the establishment of the safe harbor. With respect to the commenter's final comment, historically, regulatory safe harbors were initiated in response to concerns that the anti-kickback statute covered some relatively innocuous commercial arrangements. (*See* 50 FR 3088; January 23, 1989 and 56 FR 35952; July 29, 1991) These safe harbors are meant to protect arrangements that do not pose undue risk for Federal health care programs or beneficiaries; they are not meant to protect arrangements that pose high risks to Federal health care programs.

2. Patient Freedom of Choice and Independent Medical Judgment

Comment: A trade association sought clarification that proposed §§ 1001.952(w)(6) and (8) (§§ 1001.952(w)(5) and (7) of the final rule) would permit a health center to select a single supplier of particular goods or services if the health center followed the procurement rules applicable to health centers set forth at 45 CFR 74.40 through 74.48. The commenter presented the scenario of a health center purchasing laboratory services where the health center has a choice of suppliers, which are equal in all respects except that one prospective supplier will offer free laboratory services for uninsured patients while the other will not. The commenter suggested that it may be appropriate for the health center to enter into an exclusive contract with the supplier that offers free services.

Response: Where a health center purchases or receives a particular good or service from a supplier, the health center may limit the number of suppliers with which it contracts, in keeping with health center procurement rules. Nothing in this safe harbor is to the contrary. We agree that in some circumstances it would be appropriate for a health center to contract with one supplier (*e.g.*, a single supplier of laboratory services), and that such an arrangement would not be likely to impinge unduly or significantly on the freedom of choice of patients seeking care at a section 330 health center. We have made clarifying revisions to § 1001.952(w)(5) of the final rule to reflect that a Donor may not require a health center to refer patients to a particular individual or entity. Nothing in this provision limits a health center's ability to contract with one supplier consistent with the procurement rules.

Similarly, proposed § 1001.952(w)(8) (§ 1001.952(w)(7) of the final rule) prohibits a Donor from requiring the health center to forego arrangements with other prospective Donors, but does not prohibit the health center from entering into an exclusive arrangement with a provider or supplier when the health center so chooses, and when it can do so in compliance with relevant procurement rules. In the commenter's example, a health center can accept the offer of free laboratory services for uninsured patients under the safe harbor, provided all other safe harbor conditions are met. We emphasize that this safe harbor is unique to Federally Qualified Health Centers. In general,

arrangements where a provider or supplier offers free or discounted items or services to a potential referral source that would otherwise incur out-of-pocket costs for such items or services pose a substantial risk of fraud under the anti-kickback statute. Nevertheless, Congress enacted a law that protects such arrangements in the health center context, where the remuneration inures to the benefit of a section 330 health center and its medically underserved patients, and where other appropriate safeguards are in place. Other similar arrangements outside the health center context are fundamentally different and pose substantial risk under the anti-kickback statute.

Comment: A trade association offered mixed reactions to proposed § 1001.952(w)(7) (§ 1001.952(w)(6) in the final rule), which provides that Donors who offer to provide goods, items, or services to health center patients cannot limit their acceptance of health center patient referrals based on a patient's insurance status. The commenter stated that asking Donors to accept all health center patients without regard to insurance status is a laudable goal, but expressed concern that this requirement would put prospective Donors at significant financial risk and could have a chilling effect on parties' willingness to participate in safe harbored arrangements. The commenter also stated that allowing Donors to ''impose reasonable limits on the aggregate volume or value of referrals it will accept'' might cause risk averse Donors to commit to serving a smaller number of health center patients than they otherwise would.

Response: We are mindful of the commenter's concerns and we believe that the regulations strike an appropriate balance between preserving health center patients' access to care, allowing prospective Donors to limit their risk, and reducing the risk of parties abusing the safe harbor by ''cherry picking'' lucrative patients from the health centers. We believe a requirement that Donors that offer to furnish goods, items, or services to health center patients should do so for all health center patients without regard to insurance status is essential to effectuating Congress' intent that the safe harbor promote arrangements that provide a benefit to the health centers and the medically underserved populations they serve. We are mindful that this requirement could discourage prospective Donors from participating in safe harbored arrangements absent a way for them to limit their risk, which is why we have provided a mechanism for Donors to set a reasonable cap on the volume or value of items or services they will provide. Furthermore, nothing in § 1001.952(w)(6) of the final rule precludes Donors from billing for such goods, items, or services in accordance with the Donor's usual billing practice (absent an agreement between the parties as provided for in § 1001.952(w)(9)). The safe harbor does not protect arrangements through which Donors limit their financial risk by cherry picking which health center patients will receive their goods or services based on the patient's insurance status. For example, if a physician were to offer physician services to a health center, he or she could not condition the offer on treating only patients who are Federal healthcare program beneficiaries. However, the physician could cap the number of hours he or she would work at the health center. Similarly, an end stage renal disease facility cannot offer to provide free dialysis for one uninsured health center patient for every four insured patients the health center refers to the facility. However, the facility could offer to provide a fixed number of dialysis treatments to the health center. Finally, we clarified that § 1001.952(w)(6) concerns goods, items, or services furnished by Donors to the health center, and not donations or loans.

Comment: A health system commenter asked if the requirements of proposed § 1001.952(w)(7) (§ 1001.952(w)(6) of the final rule) would apply to Donors providing remuneration in the form of loans or donations, since a patient cannot ''clinically qualify'' for a loan or donation.

Response: Proposed § 1001.952(w)(7) (§ 1001.952(w)(6) of the final rule) does not apply to Donors providing donations or loans to a health center. For clarity and consistency of meaning, we have replaced the term ''provide'' with the term ''furnish'' in § 1001.952(w)(6) of the final rule. As defined at 42 CFR 1000.10, ''[f]urnished refers to items or services provided or supplied, directly or indirectly, by any individual or entity.'' We have further clarified the subsequent language in this paragraph by conforming it to reflect that the term ''furnish'' refers to items or services provided or supplied, not referrals accepted. We believe these changes better distinguish between (i) Donors who furnish items or services for health centers patients (and may bill insurers separately for some of these items or services), who must comply with § 1001.952(w)(6) of the final rule if they want safe harbor protection, and (ii) Donors who provide health centers with donations or loans. We note that safe harbored donations or loans may not take into account the volume or value of Federal health care program referrals, in accordance with § 1001.952(w)(1).

3. Patient Notification

Comment: Two trade associations asked that we eliminate the patient notification requirement at proposed § 1001.952(w)(9) (§ 1001.952(w)(8) of the final rule). One commenter suggested that, if the requirement is retained, we distinguish providers of health care services from suppliers of goods and services since, in the commenter's opinion, it is less important to preserve patients' freedom of choice to select suppliers of health care goods and services. This commenter also questioned why this safe harbor requires patient notification when other safe harbors do not. Another trade association asserted that any patient notification requirement would be unworkable and would not significantly enhance patient freedom of choice.

Response: We disagree with the commenters and decline to eliminate the notification requirement. We will not draw a distinction between providers and suppliers for purposes of this subparagraph because preserving patient freedom of choice is important for both providers and suppliers of health care items and services (we note that physicians are ''suppliers'' for Medicare Part B purposes. 42 CFR 400.202. We believe a patient notification requirement is consistent with our specific charge from Congress to protect patient freedom of choice. Moreover, this is not the only safe harbor that requires patient notification. *See, e.g.*, 42 U.S.C. 1001.952(v). As we noted in the preamble to the proposed rule, transparency will help protect the informed decision-making of patients, enhancing their ability to act as prudent consumers of health care services and preserving freedom of choice. (70 FR 38086; July 1, 2005) That said, we have simplified the requirements. Under the final rule, health centers must notify patients of their freedom of choice and provide information regarding the existence and nature of arrangements under this safe harbor to patients upon request.

Comment: A trade association asked that we specify how to satisfy the patient notification requirement at proposed § 1001.952(w)(9) (§ 1001.952(w)(8) of the final rule). The commenter asked us to confirm that health centers would be allowed to notify patients strictly through broad

disclosures and that an acceptable notification method would be to direct patients to a posted written disclosure notice.

Response: We confirm that health centers can satisfy the notification requirement through broad disclosures. For example, directing patients to a written disclosure notice posted in a conspicuous place in the health center would be an acceptable disclosure method, provided that the written notice is reasonably calculated to provide effective notice and to be understood by the parties. However, since the most appropriate notification method is likely to vary from health center to health center, depending on the particular facts and circumstances, we believe it would be inappropriate for us to dictate a one-size-fits-all notification method to be used by all health centers. Accordingly, we further note that broad disclosures are not required. To further improve clarity, we replaced the general reference to arrangements under ''this paragraph'' with a specific cite to § 1001.952(w)(1).

4. Rates Charged to Health Center Referrals

Comment: We received several comments concerning proposed § 1001.952(w)(10) (§ 1001.952(w)(9) of the final rule), which gives health centers the option of requiring a Donor to charge a patient referred from the health center the same rate it charges other patients or a reduced rate. A trade association requested that the entire proposed provision be deleted from the safe harbor or, if retained, clarified as optional. The same trade association sought clarification that the provision would not preclude providers or suppliers from waiving or reducing cost sharing obligations for health center patients under the safe harbor at 42 CFR 1001.952(k).

Response: We emphasize that proposed § 1001.952(w)(10) (§ 1001.952(w)(9) of the final rule) describes an optional standard. We have revised § 1001.952(w)(9) of the final rule to make this elective clear. Health centers are not required to exercise this option, but they may choose to do so to ensure that Donors giving remuneration to a health center do not simply recoup the remuneration by overcharging health center patients. Our intent is to allow health centers to protect their patients from price gouging. (We note that a similar provision is included in the safe harbor for referral services at § 1001.952(f).) We added this provision to ensure that health centers can protect their patients from being charged prices higher than they would be charged in the absence of the health center's participation in the safe harbored arrangement. We are concerned, for example, that Donors might otherwise seek to recoup part of the cost of remuneration offered to a health center by charging health center patients inflated rates. We confirm that nothing in the provision would preclude hospitals and health centers from offering health center patients waivers or reductions of cost sharing obligations, as permitted in the safe harbor for waiver of beneficiary coinsurance and deductible amounts at § 1001.952(k). Moreover, health centers and other providers and suppliers can waive or reduce patients' cost sharing amounts based on individualized, good faith assessments of financial need. Section 1128A(i)(6)(A)(iii) of the Act.

Comment: A health system asked whether the regulatory language ''the same rate it charges other patients'' at proposed § 1001.952(w)(10) (§ 1001.952(w)(9) of the final rule) means the entity's customary charges (as defined at 42 CFR 413.13(a)) or the discounted rate the provider or supplier actually charges similarly situated patients.

Response: We clarify that ''the same rate it charges other patients'' refers to the rate the provider or supplier actually charges a patient similarly situated to a patient referred from a health center. We have changed the regulatory text at § 1001.952(w)(9) to reflect this clarification by inserting the words ''similarly situated'' after the word ''other.''

III. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impact of this rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act (RFA) of 1980, and Executive Order 13132.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects (*i.e.*, $100 million or more in any given year).

This is not a major rule, as defined at 5 U.S.C. 804(2), and it is not economically significant since the overall economic effect of the rule is less than $100 million annually. This safe harbor is designed to allow health centers to enter into certain beneficial arrangements with individuals or entities providing goods, items, services, donations, loans, or a combination thereof to the health center. In doing so, this regulation would impose no requirements on any party. Health centers may voluntarily seek to comply with this provision so that they have assurance that participating in covered agreements will not subject them to liability under the anti-kickback statute. The safe harbor facilitates health centers' ability to provide important health care services to communities in need and helps these centers fulfill their mission as integral components of the health care safety net. We believe that the aggregate economic impact of this rule will be minimal and will have no effect on the economy or on Federal or State expenditures. To the extent that there is any economic impact, that impact will likely result in savings of Federal grant dollars.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. Since compliance with safe harbor requirements is voluntary, we believe that there are no significant costs associated with this safe harbor that will impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of $110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, certain nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. In accordance with the RFA, some of the health centers that may avail themselves of the protections of the safe harbor are considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. While this safe harbor may have an impact on small rural hospitals, we believe that the aggregate economic impact of this rule will be minimal, since it is the nature of the violation and not the size or type of the entity that would result in a violation of the anti-kickback statute. Moreover, the safe harbor should benefit small rural hospitals (and their patients) that have relationships with health centers by increasing their flexibility to engage in transactions involving goods, items, services, donations, and loans that result in conservation of Federal grant dollars and other funding without any risk under the anti-kickback statute. The safe harbor should effectively expand opportunities for health centers to engage in arrangements beneficial for fulfilling their mission. For these reasons, and because the vast majority of entities potentially affected by this rule do not engage in prohibited arrangements, schemes, or practices in violation of the law, we have concluded that this rule should not have a significant impact on a substantial number of small rural hospitals, and that a regulatory flexibility analysis is not required for this rulemaking.

Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this rule would not significantly limit the rights, roles, and responsibilities of State or local governments. We have determined, therefore, that a full analysis under Executive Order 13132 is not necessary.

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866.

B. Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking.

In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected;
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

On July 1, 2005, we solicited comment under this section upon publication of the 60-day notice of proposed rulemaking (70 FR 38081). We will publish the 30-day **Federal Register** notice soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements following publication of this final rule.

For an arrangement to fall within the safe harbor it will have to fulfill the following documentation requirements: (1) It must be set out in writing (§ 1001.952(w)(1)(i)(A)); (2) the written agreement must be signed by the parties (§ 1001.952(w)(1)(i)(B)); (3) the written agreement must cover, and specify the amount of, all goods, items, services, donations, or loans provided by the individual or entity to the health center § 1001.952(w)(1)(i)(C)); (4) the health center must document its basis for its reasonable expectation that the arrangement will benefit a medically underserved population (§ 1001.952(w)(3)); and (5) the health center, at reasonable intervals, must re-evaluate the arrangement to ensure that it is expected to continue to benefit a medically underserved population, and must document the re-evaluation contemporaneously (§ 1001.952(w)(4)).

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we will submit a copy of this document to OMB for its review and approval of these information collection requirements.

We believe that the documentation requirements necessary to enjoy safe harbor protection do not qualify as an added paperwork burden, because the requirements deviate minimally, if at all, from the information these entities would routinely collect in their normal course of business. The statute applies only to the health centers' receipt of goods, items, services, donations, or loans pursuant to a contract, lease, grant, loan, or other agreement. We believe it is usual and customary for health centers to memorialize contracts, leases, grants, loans, and other similar agreements in writing. Ensuring that such writings are comprehensive and that the actual business activities are accurately reflected by documentation are standard prudent business practices. The only documentation requirement of the safe harbor that potentially imposes an additional recordkeeping burden is the requirement that health centers document the statutorily mandated expected benefit to a medically underserved population. Since serving a medically underserved population is central to the underlying mission of the health centers and the section 330 grant program (and all health centers serve at least one such population), documentation of such benefit would seem to be a prudent business practice to ensure continued compliance, not only with the safe harbor, but also with the section 330 grant program.

We note that although we require health centers to provide effective notification to patients reminding patients of their freedom to choose any willing provider or supplier and to provide information about safe harbored arrangements to patients who inquire, these disclosures need not be in writing. Instead, we require that health centers provide patient disclosures in a manner reasonably calculated to provide effective notice and to be understood by the patient. The type of notice provided may vary depending on the health center and its patients. We believe the notification requirement will achieve the goal of protecting patients without imposing an added paperwork burden because the notice need not be written. Moreover, we believe the notification requirement will be consistent with health centers' existing interest in protecting their vulnerable patient populations.

It should be noted that compliance with a safe harbor under the Federal anti-kickback statute is voluntary, and no party is ever required to comply with a safe harbor. Instead, safe harbors merely offer an optional framework regarding how to structure business arrangements to ensure compliance with the anti-kickback statute. All parties remain free to enter into arrangements without regard to a safe harbor, so long as the arrangements do not involve unlawful payments for referrals under the anti-kickback statute.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare.

■ Accordingly, 42 CFR part 1001 would be amended as set forth below:

PART 1001—[AMENDED]

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

■ 2. Section 1001.952 is amended by republishing the introductory paragraph for this section and by adding a new paragraph (w) to read as follows:

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(w) *Health centers.* As used in section 1128B of the Act, ''remuneration'' does not include the transfer of any goods, items, services, donations or loans (whether the donation or loan is in cash or in-kind), or combination thereof from an individual or entity to a health center (as defined in this paragraph), as long as the following nine standards are met—

(1) (i) The transfer is made pursuant to a contract, lease, grant, loan, or other agreement that—

(A) Is set out in writing;

(B) Is signed by the parties; and

(C) Covers, and specifies the amount of, all goods, items, services, donations, or loans to be provided by the individual or entity to the health center.

(ii) The amount of goods, items, services, donations, or loans specified in the agreement in accordance with paragraph (w)(1)(i)(C) of this section may be a fixed sum, fixed percentage, or set forth by a fixed methodology. The amount may not be conditioned on the volume or value of Federal health care program business generated between the parties. The written agreement will be deemed to cover all goods, items, services, donations, or loans provided by the individual or entity to the health center as required by paragraph (w)(1)(i)(C) of this section if all separate agreements between the individual or entity and the health center incorporate each other by reference or if they cross-reference a master list of agreements that is maintained centrally, is kept up to date, and is available for review by the Secretary upon request. The master list should be maintained in a manner that preserves the historical record of arrangements.

(2) The goods, items, services, donations, or loans are medical or clinical in nature or relate directly to services provided by the health center as part of the scope of the health center's section 330 grant (including, by way of example, billing services, administrative support services, technology support, and enabling services, such as case management, transportation, and translation services, that are within the scope of the grant).

(3) The health center reasonably expects the arrangement to contribute meaningfully to the health center's ability to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, and the health center documents the basis for the reasonable expectation prior to entering the arrangement. The documentation must be made available to the Secretary upon request.

(4) At reasonable intervals, but at least annually, the health center must re-evaluate the arrangement to ensure that the arrangement is expected to continue to satisfy the standard set forth in paragraph (w)(3) of this section, and must document the re-evaluation contemporaneously. The documentation must be made available to the Secretary upon request. Arrangements must not be renewed or renegotiated unless the health center reasonably expects the standard set forth in paragraph (w)(3) of this section to be satisfied in the next agreement term. Renewed or renegotiated agreements must comply with the requirements of paragraph (w)(3) of this section.

(5) The individual or entity does not (i) Require the health center (or its affiliated health care professionals) to refer patients to a particular individual or entity, or (ii) restrict the health center (or its affiliated health care professionals) from referring patients to any individual or entity.

(6) Individuals and entities that offer to furnish goods, items, or services without charge or at a reduced charge to the health center must furnish such goods, items, or services to all patients from the health center who clinically qualify for the goods, items, or services, regardless of the patient's payor status or ability to pay. The individual or entity may impose reasonable limits on the aggregate volume or value of the goods, items, or services furnished under the arrangement with the health center, provided such limits do not take into account a patient's payor status or ability to pay.

(7) The agreement must not restrict the health center's ability, if it chooses, to enter into agreements with other providers or suppliers of comparable goods, items, or services, or with other lenders or donors. Where a health center has multiple individuals or entities willing to offer comparable remuneration, the health center must employ a reasonable methodology to determine which individuals or entities to select and must document its determination. In making these determinations, health centers should look to the procurement standards for recipients of Federal grants set forth in 45 CFR 74.40 through 74.48.

(8) The health center must provide effective notification to patients of their freedom to choose any willing provider or supplier. In addition, the health center must disclose the existence and nature of an agreement under paragraph (w)(1) of this section to any patient who inquires. The health center must provide such notification or disclosure in a timely fashion and in a manner reasonably calculated to be effective and understood by the patient.

(9) The health center may, at its option, elect to require that an individual or entity charge a referred health center patient the same rate it charges other similarly situated patients not referred by the health center or that the individual or entity charge a referred health center patient a reduced rate (where the discount applies to the total charge and not just to the cost-sharing portion owed by an insured patient).

For purposes of this paragraph, the term ''health center'' means a Federally Qualified Health Center under section 1905(l)(2)(B)(i) or 1905(l)(2)(B)(ii) of the Act, and ''medically underserved population'' means a medically underserved population as defined in regulations at 42 CFR 51c.102(e).

* * * * *

Dated: May 8, 2007.

Daniel R. Levinson,

Inspector General.

Approved: June 27, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7–19636 Filed 10–3–07; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–29; FCC 07–169]

Implementation of the Cable Television Consumer Protection and Competition Act of 1992 and Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission retains for five years the prohibition on exclusive contracts for satellite cable programming and satellite broadcast programming between vertically integrated programming vendors and cable operators and modifies the procedures for resolving program access disputes.

DATES: Effective October 4, 2007, except for the amendments to § 76.1003(e)(1) and (j) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov;* David Konczal, *David.Konczal@fcc.gov;* or Katie Costello, *Katie.Costello@fcc.gov;* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (''*Order*''), FCC 07–169, adopted on September 11, 2007, and released on October 1, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet at *PRA@fcc.gov.*

Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission will send the requirements for OMB review at a later date. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we sought specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We have assessed the effects of the information collection requirements resulting from the modifications to the Commission's procedures for resolving program access disputes adopted herein, and find that those requirements will benefit companies with fewer than 25 employees by facilitating the resolution of program access complaints and that these requirements will not burden those companies.

Summary of the Report and Order

I. Introduction and Executive Summary

1. In areas served by a cable operator, Section 628(c)(2)(D) of the Communications Act of 1934, as amended (''Communications Act'') generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators (the ''exclusive contract prohibition''). *See* 47 U.S.C. 548(c)(2)(D). In this *Order,* we find that the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming, and accordingly, retain it again for five years, until October 5, 2012. In the *Order,* we decline to narrow the scope of the exclusive contract prohibition based on the popularity of the programming network, based on the competitive circumstances in individual geographic areas served by a cable operator, or by precluding certain competitive multichannel video programming distributors (''MVPDs'') from benefiting from the prohibition. We also decline to expand the exclusive contract prohibition to apply to non-cable-affiliated programming, and we again conclude that terrestrially delivered programming is beyond the scope of the exclusive contract prohibition in Section 628(c)(2)(D).

2. Further, we modify our procedures for resolving program access disputes by (i) codifying the requirements that a respondent in a program access complaint proceeding that expressly relies upon a document in asserting a defense include the document as part of its answer; (ii) finding that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute; (iii) codifying the Commission's authority to issue default orders granting a complaint if the respondent fails to comply with discovery requests; and (iv) allowing parties to a program access complaint proceeding to voluntarily engage in alternative dispute resolution, including commercial arbitration, during which time Commission action on the complaint will be suspended. We also retain our goals of resolving program access complaints within five months from the submission of a complaint for denial of programming cases, and within nine months for all other program access complaints, such as price discrimination cases. We decline to (i) mandate electronic filings of pleadings at this time (but we note that parties currently may voluntarily submit electronic copies of their pleadings to staff via e-mail); (ii) adopt a more expedited pleading cycle for program access complaints; (iii) mandate weekly status conferences; (iv) shift resolution of program access complaints to the Enforcement Bureau; or (v) adopt mandatory arbitration.

II. Background

A. Exclusive Contract Prohibition

3. In enacting the program access provisions, adopted as part of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''), Congress intended to encourage

entry into the MVPD market by existing or potential competitors to traditional cable systems by making available to those entities the programming necessary to enable them to become viable competitors. The 1992 Cable Act and its legislative history reflect Congressional findings that increased horizontal concentration of cable operators, combined with extensive vertical integration (which means the combined ownership of cable systems and suppliers of cable programming), created an imbalance of power, both between cable operators and program vendors and between incumbent cable operators and their multichannel competitors. Congress concluded at that time that vertically integrated program suppliers had the incentive and ability to favor their affiliated cable operators over other MVPDs, such as other cable systems, home satellite dish (''HSD'') distributors, direct broadcast satellite (''DBS'') providers, satellite master antenna television (''SMATV'') systems, and wireless cable operators.

4. When the Commission promulgated regulations implementing the program access provisions of Section 628, it recognized that Congress placed a higher value on new competitive entry into the MVPD marketplace than on the continuation of exclusive distribution practices when such practices impede this entry. Congress absolutely prohibited exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators in areas unserved by cable, and generally prohibited exclusive contracts within areas served by cable:

> With respect to distribution to persons in areas served by a cable operator, [the Commission shall] prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines * * * that such contract is in the public interest. 47 U.S.C. 548(c)(2)(D); *see also* 47 CFR 76.1002(c)(2).

Congress recognized that, in areas served by cable, some exclusive contracts may serve the public interest by providing offsetting benefits to the video programming market or assisting in the development of competition among MVPDs. *See* 47 U.S.C. 548(c)(2)(4). Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest seeking to enforce or enter into an exclusive contract in an area served by a cable operator must submit a ''petition for exclusivity'' to the Commission for approval. *See* 47 CFR 76.1002(c)(5).

5. Congress directed that the exclusive contract prohibition would cease to be effective on October 5, 2002, unless the Commission found in a proceeding conducted between October 2001 and October 2002 that the prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' *See* 47 U.S.C. 548(c)(5). In October 2001, the Commission sought comment on this issue (*2001 Sunset NPRM,* 66 FR 54972, October 31, 2001) and ultimately concluded that the exclusive contract prohibition did continue to be ''necessary.'' *See 2002 Extension Order,* 67 FR 49247, July 30, 2002. The Commission therefore extended the prohibition for five years (i.e., through October 5, 2007).

6. The Commission further provided that, during the year before the expiration of the five-year extension of the exclusive contract prohibition, it would conduct another review to determine whether the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. We issued a *Notice of Proposed Rulemaking* (''*NPRM*'') in February 2007 to initiate this review (72 FR 9289, March 1, 2007).

B. Program Access Complaint Procedures

7. Section 628 of the Communications Act prohibits unfair methods of competition or unfair or deceptive practices that hinder or prevent any MVPD from providing satellite-delivered programming to consumers. Section 628(b) provides:

> It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

As part of the Telecommunications Act of 1996, Congress expanded program access protection to include common carriers and their affiliates that provide video programming by any means directly to subscribers, and to satellite cable programming vendors in which a common carrier has an attributable interest. *See* 47 U.S.C. 548(j). Section 628, among other things, protects access to vertically integrated cable programming services by competing MVPDs in order to increase competition and diversity in the MVPD market and foster the development of competition to traditional cable systems.

8. Parties aggrieved by conduct alleged to violate the program access provisions have the right to commence an adjudicatory proceeding before the Commission. As instructed by Section 628(c), the Commission promulgated regulations implementing a program access complaint process. The Commission determined that a streamlined program access complaint process, with limited discovery procedures and adjudication based on a complaint, answer, and reply, would provide the most flexible and expeditious means of enforcing the anti-discrimination program access provisions. The Commission further addressed program access complaint process issues in response to a petition for rulemaking filed by Ameritech New Media, Inc. The Commission resolved these and other issues in the *1998 Program Access Order* (13 FCC Rcd 15822).

9. In the *1998 Program Access Order,* the Commission affirmed its authority to impose damages on a case-by-case basis for program access violations and adopted guidelines for resolving program access disputes so that denial of programming cases, such as unreasonable refusal to sell, petitions for exclusivity, and exclusivity complaints, are resolved within five months of the submission of the complaint to the Commission and all other program access complaints, including price discrimination cases, are resolved within nine months of the submission of the complaint to the Commission. The Commission subsequently amended the program access rules as part of an overhaul of the Commission's pleading and complaint rules.

10. In the *NPRM,* in addition to seeking comment on extension of the exclusive contract prohibition, we sought comment on whether and how our procedures for resolving program access disputes under Section 628 should be modified. We sought comment on the costs associated with the complaint process and whether the pre-filing notice, pleading requirements, evidentiary standards, timing, and potential remedies are appropriate and effective. We also sought comment on whether specific time limits on the

Commission, the parties, or others would promote a speedy and just resolution of program access complaints. We asked whether the program access complaint rules and procedures, including those governing discovery and protection of confidential information, are adequate. We also asked whether we should adopt alternative procedures or remedies such as mandatory standstill agreements or arbitration, as the Commission has done in recent mergers.

III. Discussion

A. Exclusive Contract Prohibition

11. Our analysis of whether the exclusive contract prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming'' proceeds in five parts. Based on this five-part analysis, we conclude as explained below that the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming and, accordingly, retain it again for five years.

1. Standard of Review

12. Various cable MSOs repeat arguments made in response to the *2001 Sunset NPRM* that the Commission should construe the term ''necessary'' as used in Section 628(c)(5) as requiring the exclusive contract prohibition to be ''indispensable'' or ''essential'' to prevent harm to competition. In the *2002 Extension Order,* the Commission explained that the term ''necessary'' has been interpreted differently depending on the statutory context. In some cases, courts have interpreted the term to mean ''useful,'' ''convenient,'' or ''appropriate'' while in other contexts courts have interpreted the term in a more restrictive sense to mean ''indispensable'' or ''essential.'' Consistent with judicial precedent, the Commission construed the term ''necessary'' in its statutory context and determined that the exclusive contract prohibition continues to be ''necessary'' if, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected. We find no basis to revisit the conclusions reached in the *2002 Extension Order,* which, we note, were never challenged. We continue to believe that Section 628(c)(5), when construed in its statutory context, requires the exclusive contract prohibition to be extended if we find that, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected.

2. Status of the MVPD Market: 2002–2007

13. We examine below the changes that have occurred in the programming and distribution markets since 2002 when the Commission last reviewed whether the exclusive contract prohibition continued to be necessary to preserve and protect competition.

14. *Satellite-Delivered National Programming Networks.* The number of satellite-delivered national programming networks available to MVPDs has increased by 237 since 2002, from 294 networks to 531 networks. This amounts to an eighty percent increase in satellite-delivered national programming networks available to MVPDs.

15. *Vertically Integrated Satellite-Delivered National Programming Networks.* The number of satellite-delivered national programming networks that are vertically integrated with cable operators has increased by twelve since 2002, from 104 networks to 116 networks. The percentage of all satellite-delivered national programming networks that are vertically integrated with cable operators has declined since 2002, from 35 percent to 22 percent.

16. The amount of the most popular programming that is vertically integrated with cable operators has declined slightly since 2002. While nine of the Top 20 (45 percent) satellite-delivered national programming networks (as ranked by subscribership) were vertically integrated in 2002 when the Commission last reviewed the exclusive contract prohibition, commenters state that this number has decreased to seven (35 percent). As discussed below, we find that this number has decreased to six. These networks are The Discovery Channel, CNN, TNT, TBS, TLC, and Headline News.

17. Only the largest cable MSOs tend to own vertically integrated programming. In the *2002 Extension Order,* the Commission noted that all vertically integrated programming was attributable to five cable operators, four of which were among the seven largest cable MSOs. Today, all vertically integrated programming is attributable to five cable operators, all of which are among the six largest cable MSOs: Comcast, Time Warner, Cox, Cablevision, and Advance/Newhouse.

18. *Regional Programming Networks.* The number of regional programming networks available to MVPDs has increased by sixteen since 2002, from 80 networks to 96 networks. This amounts to a 20 percent increase since 2002 in regional programming networks available to MVPDs. The number of regional sports networks (''RSNs'') has increased by approximately 36 percent since 2002, from 28 networks to 39 networks, by some estimates. We note that, according to the Commission's most recent annual competition report, there were 37 RSNs as of June 2005. *See 12th Annual Report,* 21 FCC Rcd at 2510 and 2586. More recent data indicates that there are now 39 RSNs.

19. *Vertically Integrated Regional Programming Networks.* The number of regional programming networks that are vertically integrated with cable operators has increased by five since 2002, from 39 networks to 44 networks. The percentage of all regional programming networks that are vertically integrated with cable operators, however, has declined slightly since 2002, from 49 percent to 46 percent. The number of RSNs that are vertically integrated with cable operators has decreased by six since 2002, from 24 networks to 18 networks, by some estimates. We note that, according to the Commission's most recent annual competition report, there were 17 vertically integrated RSNs as of June 2005. *See* 12th *Annual Report,* 21 FCC Rcd at 2510 and 2586. More recent data indicates that there are now 18 vertically integrated RSNs. The percentage of all RSNs that are vertically integrated has declined since 2002, from 86 percent to approximately 46 percent. We note that, according to the Commission's most recent annual competition report, 45.9 percent of RSNs were vertically integrated as of June 2005. If the unaffiliated MASN and the cable-affiliated SportsNet New York are included, then 18 out of 39 RSNs, or 46.1 percent, are vertically integrated.

20. *MVPD Market.* Since the Commission last examined the exclusive contract prohibition in 2002, the percentage of MVPD subscribers receiving their video programming from a cable operator has declined from 78 percent to 67 percent, by some estimates. We note that, according to the Commission's annual competition reports, the percentage of MVPD subscribers receiving their video programming from a cable operator was 78.11 percent as of June 2001 and 69.41 percent as of June 2005. More recent data indicates that the portion of MVPD subscribers served by cable operators is now approximately 67 percent. The number of cable subscribers has declined by 3.4 million since 2002, from 69 million to 65.4 million. During this

same period, the percentage of MVPD subscribers receiving their video programming from a DBS operator has increased from 18 percent to over 30 percent, by some estimates. We note that, according to the Commission's annual competition reports, the percentage of MVPD subscribers receiving their video programming from a DBS operator was 18.2 percent as of June 2001 and 27.72 percent as of June 2005. Compare *8th Annual Report*, 17 FCC Rcd at 1388, Table C–1 (18.2 percent) with *12th Annual Report*, 21 FCC Rcd at 2617, Table B–1 (27.72 percent). More recent data indicates that the portion of MVPD subscribers served by DBS operators is now over 30 percent. The number of DBS subscribers has increased by 11.6 million since 2002, from 18 million to 29.6 million, by some estimates. We note that, according to the Commission's annual competition reports, the number of MVPD subscribers receiving their video programming from a DBS operator was 16.07 million as of June 2001 and 26.12 million as of June 2005. More recent data indicate that the number of DBS subscribers is now 29.6 million.

21. A significant development since 2002 is the emergence of video services offered by telephone companies, including AT&T, Qwest, and Verizon. As of the end of the second quarter of 2007, AT&T's U-Verse fiber-based video and Internet service passed over 4 million households. AT&T also recently announced that its U-Verse video service has more than 100,000 customers. Qwest has twenty-one cable franchises and provides nearly 60,000 subscribers with multichannel video service in Arizona, Colorado, Nebraska, and Utah. Verizon, which introduced its fiber-based FiOS TV service in September 2005, had 515,000 video subscribers at the end of the second quarter of 2007. Verizon's FiOS TV was available for sale to nearly 3.9 million premises in nearly 500 communities in 12 states as of the end of the second quarter of 2007. Other wireline Broadband Service Providers (''BSPs'') also offer video services in competition with cable operators, including RCN, WideOpenWest, Knology, and Grande. Some wireline entrants cite a 2004 Government Accountability Office (''GAO'') Report which concludes that wireline video entry provides more price discipline to cable than DBS and is more likely to cause cable operators to enhance their own services and to improve customer service. In response, cable MSOs argue that wireline entry does not have a greater impact on cable prices than DBS entry. Despite the significant investments made in competitive wireline networks, AT&T notes NCTA's estimate that wireline entrants have no more than 1.9 percent of all MVPD subscribers.

22. The cable industry also cites other potential sources of video competition, such as SMATV systems, providers of video on the Internet (such as YouTube, Google, and Akimbo), over-the-air broadcast television, DVDs and videotape purchases and rentals, municipal and non-municipal utilities, and providers of mobile video services. Comcast also argues that in every community, consumers can choose from a minimum of three MVPDs, and states that in many communities a fourth or fifth MVPD is available or will be soon. Cablevision states that DIRECTV and EchoStar have at least double the number of subscribers of every cable MSO, with the exception of Time Warner and Comcast.

23. Commenters in favor of extending the prohibition state that the figures cited by the cable industry are misleading. EchoStar claims that national DBS penetration figures obscure the extent of competition on a local or regional basis where DBS penetration is much lower than the national average. While the number of DBS subscribers has increased by 11.6 million since the *2002 Extension Order*, CA2C notes that cable subscribership during the same period decreased by less than one million, demonstrating that cable operators have maintained their position in the market. Some competitive MVPDs argue that the continued ability of cable operators to raise prices in excess of inflation demonstrates the lack of competition in the video marketplace. Competitive MVPDs also assert that barriers in the MVPD market still persist, as demonstrated by the Commission's efforts to promote greater competition. CA2C notes that the Commission in its decision on cable franchising reform found that in the vast majority of communities around the country, ''cable competition simply does not exist.'' Some competitive MVPDs disagree with the assertion by the cable industry that mobile video, Internet video, and DVDs are substitutes for cable television. Moreover, competitive MVPDs state that only 2.9 percent of MVPD subscribers receive service from an alternative provider to cable or DBS.

24. *Consolidation of the Cable Industry*. The cable industry has continued to consolidate since 2002. During this period, the percentage of MVPD subscribers receiving their video programming from one of the four largest cable MSOs (Comcast, Time Warner, Cox, and Charter) has increased from 48 percent to between 53 and 60 percent, by some estimates, after taking into account the recent acquisition by Comcast and Time Warner of cable systems formerly owned by Adelphia. We note that, according to the Commission's annual competition reports, the percentage of MVPD subscribers receiving their video programming from one of the four largest cable MSOs was 47.67 percent as of June 2001 and 47.78 percent as of June 2005. More recent data indicates that the percentage of MVPD subscribers receiving their video programming from one of the four largest cable MSOs (Comcast, Time Warner, Cox, and Charter) has increased to between 53 and 60 percent. Moreover, the percentage of MVPD subscribers receiving their video programming from one of the four largest *vertically integrated* cable MSOs (Comcast, Time Warner, Cox, and Cablevision) has increased significantly since 2002, from 34 percent to between 54 and 56.75 percent, by some estimates. We note that, according to the Commission's annual competition reports, the percentage of MVPD subscribers receiving their video programming from one of the four largest vertically integrated cable MSOs was 34.26 percent as of June 2001 and 44.63 percent as of June 2005. *Compare 8th Annual Report*, 17 FCC Rcd at 1341, Table C–3 (34.26 percent) with *12th Annual Report*, 21 FCC Rcd at 2620, Table B–3 (44.63 percent). More recent data indicates that the percentage of MVPD subscribers receiving their video programming from one of the four largest vertically integrated cable MSOs (Comcast, Time Warner, Cox, and Cablevision) has increased to between 54 and 56.75 percent.

25. *Clustering of Cable Systems*. The amount of regional clustering of cable systems has remained significant. Clustering refers to a strategy whereby cable MSOs concentrate their operations in regional geographic areas by acquiring cable systems in regions where the MSO already has a significant presence, while giving up other holdings scattered across the country. This strategy is accomplished through purchases and sales of cable systems, or by system ''swapping'' among MSOs. The percentage of cable subscribers that are served by systems that are part of regional clusters has increased since 2002, from 80 percent to as much as 85 to 90 percent, by some estimates, taking into account the acquisition by Comcast and Time Warner of cable systems formerly owned by Adelphia. We note

that, according to the Commission's annual competition reports, the percentage of cable subscribers served by systems that are part of regional clusters was 80.4 percent as of 2000 and 77.9 percent as of 2004. *Compare 8th Annual Report*, 17 FCC Rcd at 1340, Table C–2 (stating that, as of 2000, 108 cable system clusters were serving 54.4 million subscribers, or 80.4 percent of cable subscribers) *with 12th Annual Report*, 21 FCC Rcd at 2619, Table B–2 (stating that, as of 2004, 118 cable system clusters were serving 51.5 million subscribers, or 78.7 percent of cable subscribers). More recent data indicates that the percentage of cable subscribers that are served by systems that are part of regional clusters has increased to between 85 and 90 percent.

3. Ability and Incentive

26. Our analysis of whether the exclusive contract prohibition continues to be necessary requires us to assess whether, in the absence of the exclusive contract prohibition, vertically integrated programmers would have the ability and incentive to favor their affiliated cable operators over nonaffiliated competitive MVPDs and, if so, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming.

a. Ability

27. As discussed in this section, we conclude that satellite-delivered vertically integrated programming remains programming for which there are often no good substitutes and that such programming is necessary for viable competition in the video distribution market. In assessing the ability of satellite-delivered vertically integrated programmers to favor their affiliated cable operators to the detriment of competing MVPDs, we consider whether developments in the last five years have diminished the importance of satellite-delivered vertically integrated programming or have affected the ability of satellite-delivered vertically integrated programmers to favor their affiliated cable operators over other MVPDs.

28. *Discussion.* Despite some pro-competitive developments over the past five years, we find that access to vertically integrated programming continues to be necessary in order for competitive MVPDs to remain viable substitutes to the incumbent cable operator in the eyes of consumers. What is most significant to our analysis is not the percentage of total available programming that is vertically integrated with cable operators, but rather the popularity of the programming that is vertically integrated and how the inability of competitive MVPDs to access this programming will affect the preservation and protection of competition in the video distribution marketplace. While there has been a decrease since 2002 in the percentage of the most popular programming networks that are vertically integrated, we find that the four largest cable MSOs (Comcast, Time Warner, Cox, and Cablevision) still have (i) an interest in six of the Top 20 satellite-delivered networks as ranked by subscribership (The Discovery Channel, CNN, TNT, TBS, TLC, and Headline News); (ii) seven of the Top 20 satellite-delivered networks as ranked by prime time ratings (TNT, Adult Swim, HBO, TBS, American Movie Classics, Cartoon Network, and The Discovery Channel); (iii) almost half of all RSNs; (iv) popular subscription premium networks, such as HBO and Cinemax (competitive MVPDs argue that first-run programming produced by HBO and other premium networks are essential for a competitive MVPD to offer to potential subscribers in order to compete with the incumbent cable operator); and (v) video-on-demand (''VOD'') networks, such as iN DEMAND (competitive MVPDs argue that movie libraries owned by VOD networks are essential for a competitive MVPD to offer to potential subscribers in order to compete with the incumbent cable operator). The record thus reflects that popular national programming networks, such as CNN, TNT, TBS, and The Discovery Channel, among many others, in addition to premium programming networks, RSNs, and VOD networks, are affiliated with the four largest vertically integrated cable MSOs and that such programming networks are demanded by MVPD subscribers. We thus find that cable-affiliated programming continues to represent some of the most popular and significant programming available today.

29. We find that access to vertically integrated programming is essential for new entrants in the video marketplace to compete effectively. If the programming offered by a competitive MVPD lacks ''must have'' programming that is offered by the incumbent cable operator, subscribers will be less likely to switch to the competitive MVPD. We give little weight to the claims by cable operators that recent entrants, such as telephone companies, have not experienced ''any trouble'' to date in acquiring access to satellite-delivered vertically integrated programming. As an initial matter, we note that competitive MVPDs state that they pay significant amounts for access to satellite-delivered vertically integrated programming. Moreover, because the exclusive contract prohibition is currently in effect and has been since 1992, vertically integrated programmers delivering programming to MVPDs via satellite were not able to deny competitors access to their programming. We also reject the cable MSOs' suggestion that the resources of some competitors in the video distribution market (i.e., telephone companies) should change our analysis of whether to extend the prohibition at this time. The competitors to which the cable operators refer are new entrants to the video distribution market, and have no established customer base. If cable operators have exclusive access to content that is essential for viable competition and for which there are no close substitutes, and they have the incentive to withhold such content, they can significantly impede the ability of new entrants to compete effectively in the marketplace, regardless of their level of resources. As competitive MVPDs note, DBS providers have been able to attract and retain millions of subscribers because of their ability to offer ''must have'' programming that is affiliated with cable operators.

30. For the reasons discussed above, we conclude that there are no close substitutes for some satellite-delivered vertically integrated programming and that such programming is necessary for viable competition in the video distribution market. Having made this determination, we further conclude that vertically integrated programmers continue to have the ability to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected. Accordingly, assuming vertically integrated programmers continue to have the incentive to favor their affiliated cable operators, allowing vertically integrated programmers to enter into exclusive arrangements with their affiliated cable operators will fail to protect and preserve competition and diversity in the distribution of video programming.

b. Incentive

31. We next assess whether vertically integrated programmers continue to have the incentive to favor their affiliated cable operators over competitive MVPDs. This requires us to analyze (i) whether cable operators, through the number of subscribers they

serve, the number of homes they pass, and their affiliations with programmers, continue to have market dominance of sufficient magnitude that, in the absence of the prohibition, they would be able to act in an anticompetitive manner; and (ii) whether there continues to be an economic rationale for vertically integrated programmers to engage in exclusive agreements with cable operators that will cause such anticompetitive harms.

32. While cable MSOs argue that they have no incentive to withhold programming, competitive MVPDs provide the following examples which they claim demonstrate that cable MSOs will withhold programming if advantageous and permitted. Competitive MVPDs argue that many of the examples listed below, involving terrestrially delivered programming (sports as well as non-sports)—for which the exclusive contract prohibition does not apply—demonstrate the incentive and ability of vertically integrated cable operators to deny access to programming where permitted by the statute.

Sports Programming

• *Comcast SportsNet Philadelphia.* Some competitive MVPDs state that Comcast refuses to make the terrestrially delivered Comcast SportsNet Philadelphia channel available to EchoStar and DIRECTV. Competitive MVPDs cite the Commission's conclusion in the *Adelphia Order* that the percentage of households that subscribe to DBS service in Philadelphia is 40 percent below what would otherwise be expected. In response, Comcast notes that Comcast SportsNet Philadelphia is available to RCN.

• *Channel 4 San Diego.* Some competitive MVPDs claim that Cox makes available its Channel 4 San Diego network, which has exclusive rights to San Diego Padres baseball games, only to cable operators that do not directly compete with Cox and not to DIRECTV, EchoStar, and AT&T. While competitive MVPDs state that DIRECTV's market penetration in San Diego is half of its national average, Cablevision notes that DIRECTV in the *Adelphia* proceeding reported that it did not find a statistically significant effect on its market penetration in San Diego resulting from its inability to access this RSN.

• *Overflow sports programming in New York, NY.* RCN notes that it was deprived of access to overflow sports programming from Cablevision after Cablevision revised its distribution system from satellite to terrestrial delivery.

• *RSNs Affiliated with Cablevision in New York and New England.* Verizon notes that it was forced to file a program access complaint against Cablevision and its vertically integrated programming subsidiary, Rainbow Media Holdings, LLC, in order to obtain access to RSNs in the New York City metropolitan area and New England.

• *High Definition (''HD'') Feeds of RSNs Affiliated with Cablevision.* While Rainbow has made available standard definition feeds of its RSNs, Verizon states that Rainbow is delivering HD feeds of this programming terrestrially to avoid the program access rules.

Non-Sports Programming

• *New England Cable News (''NECN'') in Boston, MA.* One commenter claims that RCN was provided with access to NECN, a terrestrially delivered network that is 50 percent owned by Comcast, only after the Senate Judiciary Committee indicated that they were considering legislative action to apply an exclusive contract prohibition to terrestrially delivered programming.

• *PBS Kids Sprout.* AT&T and RCN claim that after PBS Kids Sprout became vertically integrated with Comcast, RCN lost access to the network, resulting in an 83 percent drop in the usage of its children's VOD service.

• *iN DEMAND.* CA2C notes that iN DEMAND is jointly owned by Time Warner, Comcast, and Cox. CA2C argues that iN DEMAND has taken the position that its programming is beyond the scope of the exclusive contract prohibition in Section 628(c)(2)(D) because iN DEMAND programming is delivered to MVPDs terrestrially. CA2C claims that iN DEMAND initially refused to provide its service to BSPs that competed with incumbent cable operators and that it reversed this position only after meetings were held with the Antitrust Subcommittee of the Senate Judiciary Committee.

• *CN8—The Comcast Network.* Qwest claims that CN8—The Comcast Network is a local news and information channel that serves 12 states and 20 television markets but is only available to Comcast and Cablevision subscribers because it is terrestrially delivered and therefore beyond the scope of Section 628(c)(2)(D).

• *NRTC.* NRTC, which acts as a ''buying group'' on behalf of its members, claims that it has been denied access to two vertically integrated programming networks, the identities of which it claims it cannot disclose due to non-disclosure agreements.

33. *Discussion.* We conclude that vertically integrated cable programmers retain the incentive to withhold programming from their competitors. We recognize the pro-competitive developments in the MVPD market since the *2002 Extension Order*, such as the reduction in the cable industry's share of MVPD subscribers from 78 percent to an estimated 67 percent and the increase in the DBS industry's market share from 18 percent to approximately 30 percent. Despite these positive trends, however, almost seven out of ten subscribers still choose cable over competitive MVPDs, the percentage of all MVPD subscribers nationwide served by one of the four largest vertically integrated cable operators has increased substantially since 2002, and cable operators have continued to raise prices in excess of inflation. While cable MSOs claim that the emergence of telephone companies as new video competitors demonstrates that competition is flourishing, the fact is that, based on estimates provided by the cable industry, competitive MVPDs, excluding DBS operators, serve approximately three percent of all MVPD subscribers nationwide, which accounts for less than three million total MVPD subscribers. Although we are encouraged by developments since 2002, we do not believe these developments have been significant enough for us to reverse the Commission's previous conclusion that cable operators have market dominance of sufficient magnitude that, in the absence of the prohibition, they would be able to act in an anticompetitive manner.

34. We also conclude that cable-affiliated programmers continue to have an economic incentive to favor their affiliated cable operators over competitive MVPDs by entering into exclusive agreements. We agree that in many instances a cable-affiliated programmer may choose to provide its programming to as many platforms as possible in order to maximize advertising and subscription revenues. In other cases, however, cable-affiliated programmers will have an incentive to withhold programming from competitive MVPDs in order to favor their affiliated cable operator. Our conclusion that vertically integrated cable programmers retain the incentive to withhold programming from their competitors is reinforced by specific factual evidence that vertically integrated programmers have withheld and continue to withhold programming, including both sports and non-sports programming, from competitive MVPDs. If vertically integrated programmers had no economic incentive other than to distribute their programming to as many

platforms as possible, then we would not expect to see such examples of withholding.

35. As the Commission did in the *2002 Extension Order*, we find that the costs (i.e., foregone revenues) incurred by a cable-affiliated programmer by refusing to sell to competitive MVPDs would be offset by (i) revenues from increased subscriptions to the services of its affiliated cable operator resulting from subscribers that switch to cable to obtain access to the cable-exclusive programming; (ii) revenues from increased rates charged by the affiliated cable operator in response to increased demand for its services resulting from its ability to offer exclusive programming; and (iii) revenues resulting from the ability of the cable-affiliated programmer to raise the price it charges for programming to other cable operators in return for exclusivity. Thus, particularly where competitive MVPDs are limited in their market share, a cable-affiliated programmer will be able to recoup a substantial amount, if not all, of the revenues foregone by pursuing a withholding strategy. In the long term, a withholding strategy may result in a reduction in competition in the video distribution market, thereby allowing the affiliated cable operator to raise rates. We thus conclude that the one-third share of the MVPD market held by competitive MVPDs remains limited enough to allow cable-affiliated programmers to successfully and profitably implement a withholding strategy.

36. We also find that three additional developments since 2002 provide cable-affiliated programmers with an even greater economic incentive to withhold programming from competitive MVPDs: (i) the increase in horizontal consolidation in the cable industry; (ii) the increase in clustering of cable systems; and (iii) the recent emergence of new entrants in the video market place, such as telephone companies.

37. *Horizontal Consolidation.* The cable industry has continued to consolidate since 2002. Since this time, the percentage of MVPD subscribers receiving their video programming from one of the four largest vertically integrated cable MSOs (Comcast, Time Warner, Cox, and Cablevision) has increased from 34 percent to between 54 and 56.75 percent. Moreover, the percentage of MVPD subscribers receiving their video programming from one of the four largest cable MSOs (Comcast, Time Warner, Cox, and Charter) has increased from 48 percent to between 53 and 60 percent after taking into account the recent acquisition by Comcast and Time Warner of cable systems formerly owned by Adelphia. Thus, while the evidence demonstrates that the market share of small-to-medium sized, non-vertically integrated cable operators has declined, the market share of large cable operators, and in particular those that own cable programming, has increased substantially since 2002. In the *2002 Extension Order*, the Commission observed that because four of the five largest vertically integrated cable operators served 34 percent of all MVPD subscribers, they could reap a substantial portion of the gains from withholding programming from their rivals. Now that the market share of the four largest vertically integrated cable MSOs has increased to between 54 and 56.75 percent, the largest vertically integrated cable operators stand to gain even more from a withholding strategy. Thus, the increase in horizontal consolidation in the cable industry since 2002 increases the incentive to pursue anticompetitive withholding strategies.

38. *Clustering.* The cable industry has continued to form regional clusters since the *2002 Extension Order*, when approximately 80 percent of cable subscribers were served by systems that were part of regional clusters. Today, taking into account the sale of Adelphia's systems to Comcast and Time Warner, some estimate that the percentage of cable subscribers served by systems that are part of regional clusters has increased to between 85 and 90 percent. The Commission concluded in the *2002 Extension Order* that horizontal consolidation and clustering combined with affiliation with regional programming contributed to the cable industry's overall market dominance. Given the increase in horizontal consolidation and regional clustering since 2002, this statement is no less true today. With a regional programming denial strategy, a cable-affiliated programmer foregoes only those revenues associated with the subscribers of competitive MVPDs within the cluster, not the revenues associated with subscribers of competitive MVPDs nationwide. As the Commission concluded previously, in many cities where cable MSOs have clusters, the market penetration of competitive MVPDs is much lower and cable market penetration is much higher than their nationwide penetration rates. For example, according to data from Nielsen Media Research, the collective market penetration of competitive MVPDs in many DMAs where cable MSOs have clusters is far less than their collective nationwide market penetration rate (approximately 33 percent): San Diego (13.7 percent), New York (18.2 percent), Philadelphia (19.8 percent), and San Francisco (26.9 percent). As the Commission acknowledged in the *2002 Extension Order*, this market penetration data may not correspond exactly to cable MSO cluster boundaries, and there are likely other factors, such as line-of-sight, in addition to cable competition that affect city market penetration. Nevertheless, we believe that this market penetration data provide support for the position that market penetration of competitive MVPDs is lower in certain cable cluster areas than nationwide. Moreover, due to the national distribution of DBS services and the insufficient mass of DBS subscribers on a regional basis, DBS operators do not have an economic base for substantial regional programming investments on a market-by-market basis. As a result, the cost to a cable-affiliated programmer of withholding regional programming is lower in many cases than the cost of withholding national programming. Moreover, the affiliated cable operator will obtain a substantial share of the benefits of a withholding strategy because its share of subscribers within the cluster is likely to be inordinately high.

39. As we concluded in the *2002 Extension Order*, Sections 628(b), 628(c)(2)(A), and 628(c)(2)(B) of the Communications Act are not adequate substitutes for the particularized protection afforded under Section 628(c)(2)(D). We stated that (i) Section 628(c)(2)(D) places the burden on the party seeking exclusivity to show that an exclusive contract meets the statutory public interest standard and that no other program access provision provides this protection; (ii) these other provisions were all enacted as part of the 1992 Cable Act, indicating that, despite the existence of these other program access provisions, Congress found the exclusive contract prohibition to be necessary to preserve and protect competition and diversity; (iii) as compared to Section 628(c)(2)(D), Section 628(b) carries with it an added burden ''to demonstrate that the purpose or effect of the conduct complained of was to ''hinder significantly or to prevent'' an MVPD from providing programming to subscribers or customers''; (iv) conduct of undue influence necessary to establish a violation of Section 628(c)(2)(A) ''may be difficult for the Commission or complainants to establish''; and (v) the prohibition of ''non-price discrimination'' in Section 628(c)(2)(B) requires the complainant to

demonstrate the conduct was ''unreasonable'' which may be difficult to establish. No commenter provides any basis for us to revisit these conclusions. Moreover, we note that some competitive MVPDs argue that allowing the exclusive contract prohibition to sunset would provide cable-affiliated programmers with an incentive to enter into exclusive contracts with their affiliated cable operators to avoid allegations of unfair acts or practices or discrimination with respect to their dealings with unaffiliated distributors.

40. We recognize the benefits of exclusive contracts and vertical integration cited by some cable MSOs, such as encouraging innovation and investment in programming and allowing for ''product differentiation'' among distributors. We do not believe, however, that these purported benefits outweigh the harm to competition and diversity in the video distribution marketplace that would result if we were to lift the exclusive contract prohibition. In addition, the Commission's rules permit cable-affiliated programmers to seek approval to enter into an exclusive contract based on a demonstration that the exclusive arrangement serves the public interest consistent with factors established by Congress.

c. Impact on Programming

41. We find above that the exclusive contract prohibition continues to be necessary to preserve and protect diversity in the distribution of programming. As we stated in the *2002 Extension Order*, while we recognize that the exclusive contract prohibition's impact on programming diversity is one component of our analysis, Congress directed that ''our primary focus should be on preserving and protecting diversity in the *distribution* of video programming—i.e., ensuring that as many MVPDs as possible remain viable distributors of video programming.'' While cable MSOs contend that the exclusive contract prohibition reduces incentives for cable operators and competitive MVPDs to create and invest in new programming, we find no evidence to support this theory. To the contrary, the number of vertically integrated satellite-delivered national programming networks has more than doubled since 1994 when the rule implementing the exclusive contract prohibition took effect and has continued to increase since 2002 when the Commission last examined the exclusive contract prohibition. There is also evidence that some competitive MVPDs have begun to invest in their own programming despite their ability to access cable-affiliated programming based on the exclusive contract prohibition and the program access rules. Accordingly, we find no basis to conclude that extending the exclusive contract prohibition will create a disincentive for the creation of new programming.

42. We are mindful that our decision to extend the exclusive contract prohibition must withstand an intermediate scrutiny test pursuant to First Amendment jurisprudence. As the D.C. Circuit explained in rejecting a facial challenge to the constitutionality of the exclusive contract prohibition in Section 628(c)(2)(D), the prohibition will survive intermediate scrutiny if it ''furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.'' For the reasons discussed herein, our decision to extend the exclusive contract prohibition satisfies this intermediate scrutiny test. First, in *Time Warner*, the court found that the governmental interest Congress intended to achieve in enacting the exclusive contract prohibition was ''the promotion of fair competition in the video marketplace,'' and that this interest was substantial. Moreover, one of Congress' express findings in enacting the 1992 Cable Act was that ''[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.'' Moreover, the court noted Congress' conclusion that ''the benefits of these provisions—the increased speech that would result from fairer competition in the video programming marketplace—outweighed the disadvantages [resulting in] the possibility of reduced economic incentives to develop new programming.'' We disagree with cable MSOs to the extent they argue that the substantial government interest in achieving competition in the video distribution market has been met. As discussed above, cable operators still have a dominant share of MVPD subscribers (approximately 67 percent), have raised prices in excess of inflation despite the emergence of new competitors, and still own significant programming networks. Accordingly, we conclude that competition and diversity in the video distribution market has not reached the level at which Congress intended the exclusive contract prohibition would sunset. Second, in *Time Warner*, the court held that the governmental objective in adopting the exclusive contract prohibition in Section 628(c)(2)(D) was unrelated to the suppression of free speech. In this *Order*, we extend the exclusive contract prohibition for an additional five years but do not otherwise modify the prohibition. Thus, the prohibition remains unrelated to the suppression of free speech, as the D.C. Circuit Court of Appeals previously held. Third, in *Time Warner*, the court rejected claims that the exclusive contract prohibition was not narrowly tailored to achieve the stated government interest. In this *Order*, we extend the exclusive contract prohibition for a term of five years but do not otherwise modify the prohibition. Thus, the prohibition remains narrowly tailored to meet the statute's objective, and any incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that objective.

43. We note that cable MSOs argue that the exclusive contract prohibition is not narrowly tailored because it is allegedly both overinclusive (in that it applies to ''new,'' ''unpopular,'' and other types of programming that are arguably not essential to the viability of competition in the video distribution market) and underinclusive (in that it does not apply to certain non-cable-affiliated programming that may be necessary for viable competition in the MVPD market). Moreover, we note that the exclusive contract prohibition in Section 628(c)(2)(D) is not absolute. Rather, cable-affiliated programmers may seek approval to enter into exclusive programming contracts that satisfy the criteria set forth by Congress in Section 628(c)(2) and (4). Despite claims that the exclusive contract prohibition deprives cable operators and others of the incentive to invest in new programming, thereby restricting the creation of new programming, the record reflects the opposite. Thus, contrary to these contentions, the prohibition has fostered, not restricted, speech.

4. Scope of Exclusive Contract Prohibition

44. Various commenters argue that the exclusive contract prohibition is both overinclusive and underinclusive with respect to the type of programming and MVPDs it covers. As discussed below, we decline to either narrow or expand the exclusive contract prohibition.

a. Narrowing the Prohibition

(i) Narrowing Based on Status of Programming Network

45. For the reasons discussed below, we decline to narrow the scope of the exclusive contract prohibition based on the status of the programming network. The exclusive contract prohibition in Section 628(c)(2)(D) and the implementing rules pertain to all satellite-delivered programming networks that are vertically integrated with a cable operator, regardless of their popularity.

46. As an initial matter, we note that in adopting the exclusive contract prohibition in Section 628(c)(2)(D), Congress applied the prohibition to all cable-affiliated programming. Congress did not distinguish between different types of cable-affiliated programming. Accordingly, as the Commission concluded in the *2002 Extension Order*, we believe that treating all satellite cable programming and satellite broadcast programming uniformly for purposes of the exclusive contract prohibition is consistent with Section 628(c)(2)(D) and the definitions set forth in Sections 628(i)(1) and (3). Moreover, no commenter has provided a rational and workable definition of ''must have'' programming that would allow us to apply the exclusive contract prohibition to only this type of programming.

(ii) Narrowing Based on Status of Cable Operator

47. For the reasons discussed below, we decline to narrow the scope of the exclusive contract prohibition based on the status of the cable operator. Cable MSOs argue that we should narrow the exclusive contract prohibition by allowing certain types of exclusive arrangements based on the status of the cable operator, such as (i) those involving an affiliated cable operator whose network passes only a small number of households throughout the nation; (ii) those between a cable operator and an affiliated programming network outside the footprint of the affiliated cable operator; and (iii) those involving affiliated cable operators that face competition from both DBS and telephone companies.

48. In adopting the exclusive contract prohibition in Section 628(c)(2)(D), Congress applied the prohibition to all cable operators. Congress did not distinguish between different types of cable operators for purposes of Section 628(c)(2)(D). Moreover, in adopting the exclusive contract prohibition, Congress has already delineated a geographic demarcation applicable to the prohibition—''areas served by a cable operator.'' Congress did not provide that the exclusive contract prohibition should vary based on the competitive circumstances in individual geographic areas served by a cable operator.

49. We also find that these attempts to narrow the exclusive contract prohibition would harm competition in the video distribution marketplace. One of the key anticompetitive practices that the exclusive contract prohibition addresses is the practice of leveraging cable's market power collectively by withholding affiliated programming from rival MVPDs while selling the affiliated programming to other cable operators which do not compete with one another. A cable operator may gain by weakening a current or potential rival (such as a DBS operator) even in markets that the cable operator itself does not serve. Thus, proposals to narrow the exclusive contract prohibition by allowing exclusive arrangements outside of the footprint of the affiliated cable operator or with cable operators whose networks pass only a small number of households throughout the nation will impede competition in the video distribution marketplace. We similarly find that allowing exclusive arrangements for affiliated cable operators that face competition from both DBS and telephone companies would harm competition in the video distribution marketplace. We conclude herein that a cable operator will not lose the incentive and ability to enter into an exclusive arrangement in a given geographic area simply because it faces competition from both DBS operators and telephone companies in that area.

(iii) Narrowing Based on Status of Competitive MVPD

50. For the reasons discussed below, we decline to narrow the exclusive contract prohibition by precluding certain competitive MVPDs from benefiting from the prohibition. Comcast and Cablevision ask us to narrow the exclusive contract prohibition by precluding certain competitive MVPDs from benefiting from the prohibition, such as competitive MVPDs that (i) have been in the MVPD market for more than five years; (ii) have extensive resources; or (iii) enter into exclusive contracts for programming.

51. Section 628 makes no distinction among MVPDs of the kind suggested by these commenters. Moreover, we find that adopting such restrictions on the entities that can benefit from the prohibition will limit competition in the video distribution market and will result in no discernible public interest benefits. The resources of competitors or the number of years they have spent in the market has no bearing on the goal of Section 628(c)(2)(D) to preclude exclusive contracts in order to facilitate competition in the video distribution market. Rather, if cable operators have exclusive access to non-substitutable content that is essential for viable competition and they have the incentive to withhold such content, the amount of resources of competitive MVPDs or their longevity in the market will not be able to overcome that competitive advantage. Comcast asks us to prevent competitive MVPDs that themselves enter into exclusive programming contracts from being the beneficiaries of the exclusive contract prohibition applied to cable-affiliated programmers. Section 628, however, does not exempt cable operators from its restrictions based on the contracting practices of non-cable MVPDs.

b. Expanding the Prohibition

(i) Expanding the Prohibition to Non-Cable-Affiliated Programming

52. For the reasons discussed below, we decline to apply an exclusive contract prohibition to non-cable-affiliated programming. The exclusive contract prohibition in Section 628(c)(2)(D) and the implementing rules pertain only to programming networks that are vertically integrated with a ''cable operator,'' as that term is defined in the Communications Act. Competitive MVPDs, as well as some cable MSOs, argue that the prohibition is thus underinclusive because it does not pertain to certain non-cable-affiliated programming that is necessary for MVPDs to compete.

53. As an initial matter, to the extent that an MVPD meets the definition of a ''cable operator'' under the Communications Act, the exclusive contract prohibition in Section 628(c)(2)(D) already applies to its affiliated programming and, thus, no further action is required on our part. Moreover, as AT&T notes, Section 628(j) of the Communications Act provides that any provision of Section 628 that applies to a cable operator also applies to any common carrier or its affiliate that provides video programming. *See* 47 U.S.C. 548(j). We have previously explained that the exclusive contract prohibition in Section 628(c)(2)(D) does not extend to unaffiliated programming networks and programming networks affiliated with non-cable MVPDs, such as DBS operators. Moreover, the record before us in this proceeding does not provide sufficient evidence upon which to conclude that non-cable-affiliated

programming is being withheld from MVPDs to a significant extent or that such withholding is adversely impacting competition in the video distribution market.

(ii) Expanding the Prohibition to Terrestrially Delivered Programming

54. We decline to apply an exclusive contract prohibition to terrestrially delivered programming at this time. Some competitive MVPDs argue that the Commission should apply the exclusive contract prohibition to terrestrially delivered programming networks, citing various provisions of the Communications Act in addition to Section 628(c) for statutory support. The Commission previously declined to address arguments regarding the Commission's statutory authority to address terrestrially delivered programming under Sections 4(i) and 303(r) of the Communications Act. Commenters have failed to provide any new evidence or arguments that would lead us to reconsider our previous conclusion that terrestrially delivered programming is ''outside of the direct coverage'' of Section 628(c)(2)(D). We continue to believe that the plain language of the definitions of ''satellite cable programming'' and ''satellite broadcast programming'' as well as the legislative history of the 1992 Cable Act place terrestrially delivered programming beyond the scope of Section 628(c)(2)(D).

5. Length of New Term

55. We conclude that the exclusive contract prohibition will be extended for five years subject to review during the last year of this extension period (*i.e.*, between October 2011 and October 2012). We believe that five years could be a sufficient amount of time for competition to develop in the video distribution and programming markets. Accordingly, we believe that five years is an appropriate period of time to revisit the exclusivity prohibition. We also emphasize that, if adequate competition emerges before five years, the Commission could initiate its review earlier either on its own motion or in response to a petition. Moreover, we will continue to evaluate petitions for exclusivity under the public interest factors established by Congress.

6. Other Programming Issues

56. Small and rural telephone MVPDs raise additional concerns in their comments regarding the difficulties they face in trying to obtain access to programming, such as tying of desired with undesired programming and unwarranted security requirements. We find that these concerns are beyond the scope of the programming issues raised in the *NPRM*, which pertained only to the prohibition on exclusive contracts for satellite-delivered vertically integrated programming under Section 628(c)(2)(D) and the extension of that prohibition pursuant to Section 628(c)(5). We did not seek comment on these issues in the *NPRM* and, accordingly, do not have a sufficient record upon which to address these concerns in this *Order.* We seek further comment on these issues in the *Notice of Proposed Rulemaking* in MB Docket No. 07–198.

B. Modification of Program Access Complaint Procedures

57. As discussed below, we revise our program access complaint procedures. Specifically, we codify the existing requirement that respondents to program access complaints must attach to their answers copies of any documents that they rely on in their defense; find that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute; codify the Commission's authority to issue default orders granting a complaint if a respondent fails to comply with discovery requests; and allow parties to choose, within 20 days of the close of the pleading cycle, to engage in voluntary commercial arbitration of their program access complaints.

58. In the *NPRM*, the Commission sought comment on whether and how the procedures for resolving program access disputes under Section 628 should be modified.

1. Pleading Cycle

59. In this *Order*, we retain our existing pleading cycle. The Commission's existing rules provide that an MVPD aggrieved by conduct that it believes constitutes a violation of Section 628 and the Commission's program access rules may file a complaint with the Commission. *See* 47 CFR 76.7 and 76.1003. A complainant must first notify the programming vendor that it intends to file the complaint and allow the vendor 10 days to respond. Once a complaint is filed, the cable operator or satellite programming vendor must answer within 20 days of service of the complaint. Replies to the answer are due within 15 days of service of the answer.

60. *Discussion.* A shorter pleading cycle would not necessarily improve the overall time for complaint resolution because incomplete or rushed responses could lead to the need for further pleadings and discovery. We therefore decline to adopt a more expedited pleading cycle. However, we believe that electronic filing may help improve the speed of resolution and, therefore, we will continue to study this issue internally to determine if it is technologically feasible to require electronic filing for program access complaints, which necessarily involve a number of confidential documents. Currently, parties may voluntarily submit electronic copies of their pleadings to staff via e-mail in order to expedite review.

2. Discovery

61. In this *Order*, after reviewing our discovery rules pertaining to program access disputes, we codify the existing requirement that respondents to program access complaints must attach to their answers copies of any documents that they rely on in their defense; find that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute; and emphasize that the Commission will use its authority to issue default orders granting a complaint if a respondent fails to comply with its discovery requests. The respondent shall have the opportunity to object to any request for documents. Such request shall be heard, and determination made, by the Commission. The respondent need not produce the disputed discovery material until the Commission has ruled on the discovery request.

62. *Discussion.* We take measures to ensure that the Commission has the information necessary to expeditiously resolve program access complaints.

63. *Respondent's Answer.* In the *1998 Program Access Order*, the Commission clarified that, to the extent that a respondent expressly references and relies upon a document or documents in defending a program access claim, the respondent must attach that document or documents to its answer. In this *Order*, we expressly codify that requirement in the Commission's rules. To the extent that there has been any confusion about this requirement in the past, we clarify that a respondent must attach the necessary documentation to its answer to a program access complaint, subject to our rules on

confidential filings. Subsequent to the *1998 Program Access Order*, the Commission, in the *1998 Biennial Review* (64 FR 6565, February 10, 1999), further clarified the response requirements for specific types of program access complaints. To the extent that a respondent fails to include the permissive attachments identified in our rules that are necessary to a resolution of the complaint, the Commission may require the production of further documents. *See* 47 CFR 76.1003(e); 47 CFR 76.7(e)(2). Moreover, a program access complainant is entitled, either as part of its complaint or through a motion filed after the respondent's answer is submitted, to request that Commission staff order discovery of any evidence necessary to prove its case. *See* 47 CFR 76.7(e), (f). Respondents are also free to request discovery.

64. *Submission of Necessary Information.* We believe that expanded discovery will improve the quality and efficiency of the Commission's resolution of program access complaints. Accordingly, we find that it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission (indeed, in such circumstances, failure to produce the subject documents would also be a violation of a Commission order), provided that such documents are in its control and relevant to the dispute. While we retain the existing process for the Commission to order the production of documents and other discovery, we will also allow parties to a program access complaint to serve requests for discovery directly on opposing parties.

65. Parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. If the respondent refuses to produce the requested documents, the requesting party may file a petition with the Commission seeking to compel production of the documents. Such discovery dispute shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the respondent need not produce the disputed material. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

66. We reiterate that respondents to program access complaints must produce in a timely manner, the contracts and other documentation that are necessary to resolve the complaint, subject to confidential treatment. *See* 47 CFR 76.9. In order to prevent abuse, the Commission will strictly enforce its default rules against respondents who do not answer complaints thoroughly or do not respond in a timely manner to permissible discovery requests with the necessary documentation attached. Respondents that do not respond in a timely manner to all discovery ordered by the Commission will risk penalties, including having the complaint against them granted by default. Likewise, a complainant that fails to respond promptly to a Commission order regarding discovery will risk having its complaint dismissed with prejudice. Finally, a party that fails to respond promptly to a request for discovery to which it has not raised a proper objection will be subject to these sanctions as well.

67. *Confidential Material.* We understand that this approach requires the submission of confidential and extremely competitively-sensitive information. *See, e.g.*, 47 CFR 0.457(d)(iv). Accordingly, in order to appropriately safeguard this confidential information we believe it is necessary to revise the standard protective order and declaration (''Protective Order'') for use in program access proceedings.

68. To ensure that confidential information is not improperly used for competitive business purposes, we intend to make an important revision to the Protective Order. Specifically, we revise it to reflect that any personnel, including in-house counsel, involved in competitive decision-making are prohibited from accessing the confidential information.

69. In order to appropriately safeguard confidential information, we revise the Protective Order for use in program access proceedings to find that any personnel, including in-house counsel, (i) that are involved in competitive decision-making, (ii) are in a position to use the confidential information for competitive commercial or business purposes, or (iii) whose activities, association, or relationship with the complainant, client, or any authorized representative involve rendering advice or participation in any or all of said person's business decisions that are or will be made in light of similar or corresponding information about a competitor, are prohibited from accessing the confidential information. *See* Appendix.

70. A protective order constitutes both an order of the Commission and an agreement between the party executing the declaration and the submitting party. The Commission has full authority to fashion appropriate sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings. We intend to vigorously enforce any transgressions of the provisions of our protective orders.

3. Time Frame for Resolving Program Access Complaints

71. In this *Order*, we retain our current goals for resolving program access complaints with the intent to expedite complaints filed by small companies without existing carriage contracts. Under the current process, the Commission has set forth goals for the resolution of program access complaints as five months from the submission of a complaint for denial of programming cases, and nine months for all other program access complaints, such as price discrimination cases.

72. *Discussion.* We agree that program access complaints should be resolved in a timely manner, but the time frames for resolving complaints must be realistic. We will retain our goals of resolving program access complaints within five months from the submission of a complaint for denial of programming cases, and nine months for all other program access complaints, such as price discrimination cases.

73. However, we are concerned with delays in the resolution of complaints filed by new entrants, especially small businesses, and therefore, the Commission will expedite the resolution of such complaints and, as discussed above in Section III.B.2, will strictly enforce its default rules against respondents who do not answer complaints thoroughly with the necessary documentation attached. *See* 47 CFR 76.7(b)(2)(iii).

4. Arbitration

74. In this *Order*, we expand the use of voluntary arbitration for resolution of program access disputes, by increasing opportunities for parties to choose arbitration in lieu of Commission resolution of a pending complaint, and refrain from imposing a mandatory arbitration requirement at this time.

75. *Discussion.* We decline to impose mandatory arbitration as a rule in all

program access cases at this time. We would like to see how arbitration of program access disputes, either through a merger condition or through voluntary arbitration, is working over time, to determine if modifications to the arbitration process are necessary prior to imposing a mandatory requirement on all parties to all program access complaints. Once there is a track record for arbitration of program access disputes, we will be able to determine which types of disputes lend themselves more readily to resolution by arbitration and which may be more judiciously resolved by the Commission in the first instance.

76. The current rules allow parties to voluntarily engage in ADR, including arbitration, in lieu of an administrative hearing. *See* 47 CFR 76.7(g)(2). However, we believe that parties to program access complaints should be able to voluntarily choose arbitration prior to the Commission making a determination to forward the complaint to an administrative law judge and that the *Adelphia Order* provides adequate guidance for the arbitration process. Therefore, the Commission will suspend action on a complaint where both parties agree to use ADR, including commercial arbitration, within 20 days following the close of the pleading cycle. Parties may agree that voluntary arbitration is a quick and productive way to resolve their commercial disputes. Moreover, we will continue to monitor developments in the marketplace and will, if necessary, revisit in the future whether to adopt a mandatory arbitration requirement.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

77. This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

78. We have assessed the effects of the information collection requirements, and find that those requirements will benefit companies with fewer than 25 employees by facilitating the resolution of program access complaints and that these requirements will not burden those companies.

B. Congressional Review Act

79. The Commission will send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

80. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 604, the Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') relating to the *Order.* An Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *NPRM* in MB Docket No. 07–29 (72 FR 9289, March 1, 2007). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. This present FRFA conforms to the RFA. We note that, because our action with respect to the exclusive contract prohibition in Section 628(c)(2)(D) retains the status quo in this context, we could have certified our action under the RFA. *See generally* 5 U.S.C. 605.

Need for, and Objectives of, the Rules Adopted

81. *Background.* Congress enacted the program access provisions contained in Section 628 of the Communications Act of 1934, as amended (the ''Communications Act''), as part of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Act''). Section 628 is intended to encourage entry into the multichannel video programming distribution (''MVPD'') market by existing or potential competitors to traditional cable operators by requiring cable operators to make available to MVPDs the programming necessary for them to become viable competitors. Specifically, this proceeding involves (i) Section 628(c)(2)(D), which prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest; and (ii) the Commission's procedures for resolving program access disputes under Section 628.

82. *Extension of Exclusive Contract Prohibition.* Section 628(c)(5) of the Communications Act directed that the exclusive contract prohibition in Section 628(c)(2)(D) would cease to be effective on October 5, 2002, unless the Commission found in a proceeding conducted between October 2001 and October 2002 that the prohibition ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' 47 U.S.C. 548(c)(5). In October 2001, the Commission issued a *Notice of Proposed Rulemaking* in CS Docket No. 01–290 seeking comment on whether the exclusive contract prohibition continued to be ''necessary'' pursuant to the criteria set forth in Section 628(c)(5). *See* 66 FR 54972, October 31, 2001. In June 2002, the Commission issued a decision concluding that the exclusive contract prohibition continued to be ''necessary'' pursuant to these criteria and therefore extended the prohibition for five years (*i.e.*, through October 5, 2007). *See* 67 FR 49247, July 30, 2002. The Commission also provided that, during the year before the expiration of the five-year extension of the exclusive contract prohibition, it would conduct another review to determine whether the exclusive contract prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. We issued the *NPRM* in February 2007 to initiate this review. *See* 72 FR 9289, March 1, 2007.

83. The *Order* herein adopted retains for five years (until October 5, 2012) the prohibition on exclusive contracts for satellite cable programming and satellite broadcast programming between vertically integrated programming vendors and cable operators as set forth in Section 628(c)(2)(D) of the Communications Act and Section 76.1002(c)(2) of the Commission's rules.

84. In the *Order*, we analyze the changes that have occurred in the video programming and distribution markets since 2002 when we last decided that the exclusive contract prohibition continued to be necessary to preserve and protect competition. While the markets for both programming and distribution reflect some pro-competitive trends since 2002, we conclude that these developments are not sufficient to allow us to decide that the exclusive contract prohibition is no longer necessary to preserve and protect competition and diversity in the distribution of video programming. We then assess whether vertically integrated programmers today retain both the ability and incentive to favor their affiliated cable operators over nonaffiliated MVPDs such that competition and diversity in the distribution of video programming

would not be preserved and protected. We conclude that vertically integrated programmers retain this ability and incentive. Thus, we find that the exclusive contract prohibition is necessary to preserve and protect competition and diversity in the distribution of video programming. We therefore extend the exclusive contract prohibition for five years subject to review during the last year of this extension period.

85. In the *Order*, we also reject proposals presented by some commenters to narrow the exclusive contract prohibition based on the status of the programming, the cable operator, or the competitive MVPD. We find that narrowing the prohibition in this manner is not supported by the Communications Act and would not promote competition. We also reject proposals presented by some commenters to expand the exclusive contract prohibition to non-cable-affiliated programming and unaffiliated programming. We find that expanding the prohibition is not supported by the Communications Act and that there is no record evidence to support such an expansion of the prohibition. We also considered the possibility of allowing the exclusive contract prohibition to sunset. Because we conclude that the exclusive contract prohibition is necessary to preserve and protect competition and diversity in the video distribution market, we decide not to allow the exclusive contract prohibition to sunset. The decision to retain the exclusive contract prohibition will facilitate competition in the video distribution market, thereby benefiting various competitive MVPDs including those that are smaller entities. Therefore, we conclude that our decision to retain the exclusive contract prohibition set forth in Section 628(c)(2)(D) benefits smaller entities as well as larger entities.

86. *Modification of Program Access Complaint Procedures.* The Commission's rules provide that any MVPD aggrieved by conduct that it believes constitutes a violation of Section 628 and the Commission's program access rules may file a complaint at the Commission. 47 CFR 76.7 and 76.1003. In the *NPRM*, we considered whether and how our procedures for resolving program access disputes under Section 628 should be modified. Among other things, we considered (i) whether specific time limits on the Commission, the parties, or others would promote a speedy and just resolution of these disputes; (ii) whether our rules governing discovery and protection of confidential information are adequate; and (iii) whether the Commission should adopt alternative procedures or remedies such as mandatory standstill agreements and arbitration.

87. In the *Order*, to facilitate the resolution of program access complaints, we modify our procedures for resolving such complaints by (i) codifying the requirements that a respondent in a program access complaint proceeding who expressly relies upon a document in asserting a defense must include the document as part of its answer; (ii) finding that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute; (iii) codifying the Commission's authority to issue default orders granting a complaint if the respondent fails to comply with discovery requests; and (iv) allowing parties to a program access complaint proceeding to voluntarily engage in alternative dispute resolution, including commercial arbitration, during which time Commission action on the complaint will be suspended. We also retain our goals of resolving program access complaints within five months from the submission of a complaint for denial of programming cases, and within nine months for all other program access complaints, such as price discrimination cases.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

88. In its Comments on the IRFA, the Office of Advocacy of the United States Small Business Administration (''SBA Office of Advocacy'') claims that the Commission's IRFA in this proceeding was inadequate because it allegedly (i) did not contain a complete economic analysis of the impact of a decision to allow the exclusive contract prohibition to sunset on the small entities listed in the IRFA; (ii) failed to consider alternatives to allowing the prohibition to sunset that will achieve the Commission's goals while minimizing burdens on small entities; and (iii) failed to collect data on the impact of a sunset of the prohibition on small businesses that offer video programming to customers, such as sports bars, smalls entities in the hospitality industry, and certain housing developments. The SBA Office of Advocacy Office argues that without access to video content demanded by subscribers, small providers of video services will not be able to compete in the MVPD market. Accordingly, the SBA Office of Advocacy urges a three-year extension of the exclusive contract prohibition. Although not filed specifically in response to the IRFA, comments were filed in response to the *NPRM* by small competitive MVPDs and small cable operators that urged the Commission to retain the exclusive contract prohibition and to revise the procedures for resolving program access complaints. These commenters argued that they will be unable to viably compete in the video distribution market if denied access to vertically integrated programming. Moreover, they argued that the current program access complaint process is costly and time-consuming such that it makes it impracticable for small carriers to pursue filing a program access complaint. Our response to all such comments is contained below.

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

89. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

90. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' (2007 NAISC Code 517110) to include the following three classifications which were listed separately in the 2002 NAICS: Wired Telecommunications Carriers (2002 NAICS Code 517110), Cable and Other Program Distribution (2002 NAISC Code 517510), and Internet Service Providers (2002 NAISC Code 518111). The 2007 NAISC defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of

technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all firms having 1,500 employees or less. According to Census Bureau data for 2002, there were a total of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC Code 517110) that operated for the entire year; 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC Code 517510) that operated for the entire year; and 3,408 firms in the Internet Service Providers category (2002 NAISC Code 518111) that operated for the entire year. Of these totals, 25,374 of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC Code 517110) had less than 100 employees; 5,496 of 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC Code 517510) had less than 100 employees; and 3,303 of the 3,408 firms in the Internet Service Providers category (2002 NAISC Code 518111) had less than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

91. *Cable and Other Program Distribution.* The 2002 NAICS defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). The SBA has developed a small business size standard for Cable and Other Program Distribution, which is all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

92. *Cable System Operators (Rate Regulation Standard).* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. As of 2006, 7,916 cable operators qualify as small cable companies under this standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

93. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 65.4 million cable subscribers in the United States today. Accordingly, an operator serving fewer than 654,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 654,000 subscribers or less totals approximately 7,916. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

94. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, three operators provide DBS service, which requires a great investment of capital for operation: DIRECTV, EchoStar (marketed as the DISH Network), and Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). All three currently offer subscription services. Two of these three DBS operators, DIRECTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion's Sky Angel service, serves fewer than one million subscribers and provides 20 family and religion-oriented channels. Dominion does not report its annual revenues. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we recognize the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

95. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are approximately 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve

approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO may qualify as small entities.

96. *Home Satellite Dish (''HSD'') Service*. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2004 and June 2005, HSD subscribership fell from 335,766 subscribers to 206,358 subscribers, a decline of more than 38 percent. The Commission has no information regarding the annual revenue of the four C-Band distributors.

97. *Broadband Radio Service and Educational Broadband Service*. Broadband Radio Service comprises Multichannel Multipoint Distribution Service (MMDS) systems and Multipoint Distribution Service (MDS). MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of MDS and Educational Broadband Service (EBS) (formerly known as Instructional Television Fixed Service (ITFS)). We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. The SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to MDS and ITFS.

98. The Commission has also defined small MDS (now BRS) entities in the context of Commission license auctions. For purposes of the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution, which includes all such entities that do not generate revenue in excess of $13.5 million annually. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

99. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

100. *Local Multipoint Distribution Service*. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to LMDS. The Commission has also defined small LMDS entities in the context of Commission license auctions. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

101. *Open Video Systems (''OVS'')*. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has approved approximately 120 OVS certifications with some OVS operators now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority. As of June 2005, RCN Corporation is the largest BSP and 14th largest MVPD, serving approximately 371,000 subscribers. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least

some of the OVS operators may qualify as small entities.

102. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 270 firms in this category that operated for the entire year. Of this total, 217 firms had annual receipts of under $10 million and 13 firms had annual receipts of $10 million to $24,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

103. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

104. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

105. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

106. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Description of Reporting, Recordkeeping and Other Compliance Requirements

107. The rules adopted in the *Report and Order* will impose additional reporting, recordkeeping, and compliance requirements on complainants and respondents in program access disputes by (i) codifying the requirements that a respondent in a program access complaint proceeding who expressly relies upon a document in asserting a defense must include the document as part of its answer; and (ii) finding that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute.

Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

108. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

109. The *NPRM* invited comment on issues that had the potential to have significant economic impact on some small entities, including (i) whether the exclusive contract prohibition remains necessary to preserve and protect competition in the video distribution market; and (ii) whether and how our procedures for resolving program access disputes under Section 628 should be modified.

110. *Extension of Exclusive Contract Prohibition.* As discussed above, the decision to extend the exclusive contract prohibition for five years will facilitate competition in the video distribution market by ensuring that

competitive MVPDs continue to have access to the programming they need to compete. The decision therefore confers benefits upon various competitive MVPDs, including those that are smaller entities. Moreover, the decision avoids the adverse impact to smaller entities that the SBA Office of Advocacy Office and others stated would occur if the prohibition were to sunset. Therefore, we conclude that our decision to retain the exclusive contract prohibition set forth in Section 628(c)(2)(D) benefits smaller entities as well as larger entities. The alternative of allowing the exclusive contract prohibition to expire would hinder competition in the video distribution market, thereby harming smaller entities.

111. *Modification of Program Access Complaint Procedures.* As discussed above, the decision to modify the procedures for resolving program access disputes will facilitate the processing and resolution of program access complaints, thereby conferring benefits upon smaller entities as well as larger entities that seek to compete in the video distribution marketplace. The alternative of retaining the current program access complaint procedures would not facilitate the resolution of program access complaints and would thereby harm smaller entities that file such complaints.

Report to Congress

112. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

113. *It is ordered* that, pursuant to the authority found in Sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 548, this *Report and Order is adopted.*

114. *It is ordered* that, pursuant to the authority found in Sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 548, the Commission's rules *are hereby amended* as set forth in the Rules Changes below.

115. *It is ordered* that the rules adopted herein are effective October 4, 2007, except for § 76.1003(e)(1) and (j) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

116. *It is ordered* that, pursuant to 5 U.S.C. 553(d)(3) and 47 CFR 1.427(b), the Commission finds good cause to make § 76.1002(c)(6) and § 76.1003(i) and (k) effective upon publication in the **Federal Register**. Section 76.1002(c)(6) provides that the exclusive contract prohibition set forth in § 76.1002(c)(2) will expire on October 5, 2007. *See* 47 CFR 76.1002(c)(6). Accordingly, it is necessary for the five-year extension of this prohibition reflected in the amendment to § 76.1002(c)(6) adopted herein to take effect by October 5, 2007. We thus find good cause to make the amendment to § 76.1002(c)(6) effective upon publication in the **Federal Register**. We note further that this amendment extends an existing requirement and does not impose any new requirements on any entity. Accordingly, no entity will be harmed as a result of our decision to make this amendment effective upon publication in the **Federal Register**. We also find good cause to make the amendments to our procedural rules adopted herein, other than those that require OMB approval, effective upon publication in the **Federal Register**. These rules are (i) new § 76.1003(i), which allows parties to a program access dispute to voluntarily engage in ADR; and (ii) new § 76.1003(k), which pertains to the Commission's authority to issue protective orders regarding confidential material submitted in program access complaint proceedings and to issue appropriate sanctions for violations of its protective orders. These new rules are essential to our goal of expeditiously resolving program access complaints. We find good cause to make these amendments effective upon publication in the **Federal Register** so that parties to all program access complaint proceedings, including those currently pending before the Commission, can benefit from these new rules. With respect to new § 76.1003(i) regarding ADR, we note this procedure is voluntary and requires both parties to agree to engage in alternative dispute resolution; thus, no entity will be harmed as a result of our decision to make this amendment effective upon publication in the **Federal Register**. With respect to new § 76.1003(k) regarding protective orders, we note that this rule enhances existing safeguards provided under our form protective order, and will facilitate and expedite the review of privileged and/or confidential documents; thus, no entity will be harmed as a result of our decision to make this amendment effective upon publication in the **Federal Register**.

117. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

118. *It is further ordered* that the Commission shall send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

■ 2. Section 76.1002 is amended by revising paragraph (c)(6) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(6) *Sunset provision.* The prohibition of exclusive contracts set forth in paragraph (c)(2) of this section shall cease to be effective on October 5, 2012, unless the Commission finds, during a proceeding to be conducted during the year preceding such date, that said prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

* * * * *

■ 3. Section 76.1003 is amended by adding a sentence to the end of paragraph (e)(1) and by adding

paragraphs (i), (j) and (k) to read as follows:

§ 76.1003 Program access proceedings.

* * * * *

(e) *Answer.* (1) * * * To the extent that a cable operator, satellite cable programming vendor or satellite broadcast programming vendor expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the answer.

* * * * *

(i) *Alternative dispute resolution.* Within 20 days of the close of the pleading cycle, the parties to the program access dispute may voluntarily engage in alternative dispute resolution, including commercial arbitration. The Commission will suspend action on the complaint if both parties agree to use alternative dispute resolution.

(j) *Discovery.* In addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

(k) *Protective Orders.* In addition to the procedures contained in § 76.9 of this part related to the protection of confidential material, the Commission may issue orders to protect the confidentiality of proprietary information required to be produced for resolution of program access complaints. A protective order constitutes both an order of the Commission and an agreement between the party executing the protective order declaration and the party submitting the protected material. The Commission has full authority to fashion appropriate sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings.

Note: The attached Appendix *will not be included* in the Code of Federal Regulations (CFR).

Appendix—Standard Protective Order and Declaration for Use in Section 628 Program Access Proceedings Before the Federal Communications Commission, Washington, DC 20554

In the Matter of _____
[Name of Proceeding] _____
Docket No. _____

PROTECTIVE ORDER

1. This Protective Order is intended to facilitate and expedite the review of documents obtained from a person in the course of discovery that contain trade secrets and privileged or confidential commercial or financial information. It establishes the manner in which ''Confidential Information,'' as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR § 0.442.

2. *Definitions.*

a. *Authorized Representative.* ''Authorized Representative'' shall have the meaning set forth in Paragraph 7.

b. *Commission.* ''Commission'' means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. *Confidential Information.* ''Confidential Information'' means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) and (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of, notes, and information derived from Confidential Information.

d. *Declaration.* ''Declaration'' means Attachment A to this Protective Order.

e. *Reviewing Party.* ''Reviewing Party'' means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. *Submitting Party.* ''Submitting Party'' means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

2A. *Claim of Confidentiality.* The Submitting Party may designate information as ''Confidential Information'' consistent with the definition of that term in Paragraph 2.c of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR 0.459 and 0.461, determine that all or part of the information claimed as ''Confidential Information'' is not entitled to such treatment.

3. *Procedures for Claiming Information is Confidential.* Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, ''CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION—DO NOT RELEASE.'' Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

4. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

5. *Access to Confidential Information.* Confidential Information shall only be made available to Commission staff, Commission consultants and to counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement the scope of which includes the Confidential Information, or if they execute the attached Declaration.

6. *Disclosure.* Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

7. *Authorized Representatives shall be limited to:*

a. Subject to Paragraph 7.d, counsel for the Reviewing Parties to this proceeding,

including in-house counsel, actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Subject to Paragraph 7.d, specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; and

c. Subject to Paragraph 7.d, any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper; except that,

d. Disclosure shall be prohibited to any persons in a position to use the Confidential Information for competitive commercial or business purposes, including persons involved in competitive decision-making, which includes, but is not limited to, persons whose activities, association or relationship with the Reviewing Parties or other Authorized Representatives involve rendering advice or participating in any or all of the Reviewing Parties', Associated Representatives' or any other person's business decisions that are or will be made in light of similar or corresponding information about a competitor.

8. *Inspection of Confidential Information.* Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice not to exceed one business day during normal business hours.

9. *Copies of Confidential Information.* The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly and fully secured from access by unauthorized persons at all times.

10. *Filing of Declaration.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. *Use of Confidential Information.* Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: ''Confidential Information included pursuant to Protective Order, [cite proceeding];'' and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notations required by this Paragraph 12 are not removed.

13. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

14. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of the Submitting Party, destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

16. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

17. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

18. *Authority.* This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. 154(i), (j) and 47 CFR 0.457(d).

Attachment A to Standard Protective Order

DECLARATION

In the Matter of _____
[Name of Proceeding] _____
Docket No. _____

I, _____, hereby declare under penalty of perjury that I have read the

Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party. I am not in a position to use the Confidential Information for competitive commercial or business purposes, including competitive decision-making, and my activities, association or relationship with the Reviewing Parties, Authorized Representatives, or other persons does not involve rendering advice or participating in any or all of the Reviewing Parties,' Associated Representatives' or other persons' business decisions that are or will be made in light of similar or corresponding information about a competitor.

(signed) _____
(printed name) _____
(representing) _____
(title) _____
(employer) _____
(address) _____
(phone) _____
(date) _____

[FR Doc. 07–4935 Filed 10–3–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02]

RIN 0648–AW07

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

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

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

SUMMARY: This final rule announces inseason changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries and the reopening of the 2007 Pacific whiting primary season. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

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

ADDRESSES: You may submit comments, identified by RIN 0648–AW07 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will generally be posted to *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.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery and Amendment 16–4 of the FMP was published on September 29, 2006 (71 FR 57764). The final rule to implement the 2007–2008 specifications and management measures for the Pacific Coast Groundfish Fishery was published on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The final rule was subsequently amended on: March 20, 2007 (71 FR 13043); April 18, 2007 (72 FR 19390); July 5, 2007 (72 FR 36617); August 3, 2007 (72 FR 43193); and September 18, 2007 (72 FR 53165).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its September 10–14, 2007, meeting in Portland, Oregon. At that meeting, the Pacific Council recommended adjusting current groundfish management measures to respond to updated fishery information and other inseason management needs.

The Pacific Council recommended: (1) increasing the 2–month cumulative limit in the limited entry fixed gear fishery for shortspine thornyheads south of 34°27′ N. lat.; (2) prohibiting retention of cabezon by recreational ocean boat anglers in Federal waters off Oregon; (3) closing the Federal recreational fishing season for rockfish, cabezon, greenlings, and lingcod from 42° N. lat. to 37°11′ N. lat.; (4) adjust the shoreward boundary of the limited entry non-whiting trawl RCA to a line approximating the 75–fm (137–m) depth contour North of Cape Alava (48°10′ N. lat.) and between Humbug Mountain (43°20.83′ N. lat.) and Cape Arago (42°40.50′ N. lat.); (5) increasing coastwide sablefish limits for large and small footrope trawl gear; (6) increasing longspine thornyhead limits south of 40°10′ N. lat. for large and small footrope trawl gear; (7) increasing shortspine thornyhead limits coastwide for large and small footrope trawl gear; (8) increasing coastwide Dover sole limits for large and small footrope trawl gear; (9) increasing coastwide other flatfish limits for large and small footrope trawl gear; (10) increasing petrale sole limits north of 40°10′ N. lat. for large and small footrope trawl gear; (11) increasing slope rockfish limits for limited entry trawl gear south of 38° N. lat.; (12) increasing the 2007 non-tribal whiting widow rockfish bycatch limit

from 220 mt to 275 mt, and (13) re-opening the 2007 non-tribal whiting primary season for the catcher-processor, mothership, and shore-based sectors.

NMFS has considered these recommendations, and is implementing them as described below. Pacific Coast groundfish landings will be monitored throughout the remainder of the year, and further adjustments to trip limits or management measures may be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

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

As of May 31, 2007, the total shortspine thornyhead landings south of 34°27′ N. lat. were estimated to be 60.6 mt out of a 421–mt OY. In June 2007, the Council recommended a short term increase in shortspine thornyhead cumulative limits south of 34°27′ N. lat.. The Council considered that increases in effort in this area could result in higher incidental catches of sablefish and other species; however, estimates at that time showed that sablefish catches in this area were lower than they had been predicted to be at the beginning of the year. To balance the potential impacts on sablefish from a possible effort shift and the larger amount of shortspine thornyheads available for harvest, the shortspine thornyhead cumulative limits south of 34°27′ N. lat. were increased during Period 4 (July-August), and reverted back to the lower limits for Periods 5 and 6 (September-October and November-December, respectively).

At its September meeting, the Council considered further adjustments to shortspine thornyhead cumulative limits based on more recently available fishery data. Period 4 increases in the shortspine thornyhead cumulative limit did not result in a large effort shift, and only slightly increased the catch rate in this area. As of September 15, 2007, the total shortspine thornyhead landings south of 34°27′ N. lat. were estimated to be 87 mt out of a 421–mt OY. The Council considered continuing the Period 4 increases to the shortspine thornyhead cumulative limit south of 34°27′ N. lat. through the end of the year. Estimates show that sablefish catches in this area are lower than they had been predicted to be at the beginning of the year, and that maintaining the higher shortspine thornyhead cumulative limit would not exceed the 2007 sablefish 211–mt OY in this area. Shortspine thornyheads are a slope rockfish species and the overfished species south of 36° N. lat. are shelf species, so no increased impacts on overfished species are expected to occur as a result of increasing shortspine thornyhead trip limits.

Therefore, the Council recommended, and NMFS is implementing the following changes for the limited entry fixed gear fishery: (1) South of 34°27′ N. lat., increase the shortspine thornyhead limits from 2,000 lb (907 kg) per 2 months to 3,000 lb (1,361 kg) per 2 months, beginning October 1.

Recreational Fishery Management Measures

Oregon Recreational Fishery

In the Oregon recreational groundfish fishery, the Oregon Department of Fish and Wildlife (ODFW) manages cabezon, which is harvested primarily in state waters, under a state harvest limit. Oregon recreational catch estimates through July and projections from historical temporal catch patterns indicate that the Oregon state harvest limit for cabezon of 15.8 mt has been reached. State harvest limits apply to landings by recreational ocean boats and do not include shore catch and discards. State harvest limits are subset of Federal limits; the 2007 cabezon OY is 69 mt. Effective August 11, 2007, Oregon prohibited cabezon retention in the recreational ocean and estuary boat fisheries. Shore fisheries, including shore-based diving, angling and spear fishing, were not affected by this closure. A similar closure was implemented by ODFW for cabezon in 2006, on September 22, 2006. Landings data updated later in the year confirmed that the management measure was appropriate; cabezon landings were 14.9 mt, or 94 percent of the 2006 state harvest limit.

Therefore, in order to conform recreational management measures for Federal waters (3 200 nm) to management measures for Oregon state waters (0 3 nm), the Pacific Council recommended and NMFS is implementing a prohibition on the retention of cabezon by ocean boat anglers off Oregon in Federal recreational regulations beginning October 1.

California Recreational Fishery

In the California recreational groundfish fishery, the California Department of Fish and Game (CDFG) manages yelloweye, canary, and minor nearshore rockfish under state harvest limits. California recreational catch estimates through July and projections based on recent catch patterns indicate that the California state harvest limit for yelloweye, canary, and minor nearshore rockfish, which are 2.1 mt, 9 mt, and 426 mt, respectively, are projected to be exceeded. California projected that without taking inseason action, the total 2007 mortality from the California recreational fishery would be: 8.4 mt yelloweye rockfish; 12.3 mt canary rockfish; and 564 mt minor nearshore rockfish. Updates were made to catch and effort estimation methodologies to incorporate the most recent catch and effort data, which indicates higher than previously expected catches have occurred in the 2007 recreational fishery off California. Original projections for California coastwide catches of yelloweye rockfish in May and June were too low, and higher than expected catches of yelloweye rockfish also occurred in July north of 37°11′ N. lat. (Pigeon Point, CA) to the California-Oregon border at 42 N. lat.. Both of these factors have contributed to increased catch projections for the 2007 season, and without inseason action the California recreational catch of yelloweye rockfish, in combination with all other coastwide recreational and commercial fishery impacts, would exceed the 2007 yelloweye rockfish OY. State harvest limits apply to landings by recreational ocean boats and do not include shore catch and discards. To reduce recreational fishery impacts on yelloweye and canary rockfish, California will close the recreational boat-based fisheries north of 37°11′ N. lat. for all Federal groundfish species subject to bag limits in that area, effective October 1, 2007. Projections indicate that closure of the California recreational fishery north of 37°11′ N. lat. will reduce the impacts on yelloweye rockfish and canary rockfish, and keep the mortality of yelloweye rockfish within the 2007 OY. California projected that taking inseason action to close recreational fishing from 42° N. lat. to 37°11′ N. lat. would reduce the total mortality from the California recreational fishery to: 7.2 mt yelloweye rockfish; 10.1 mt canary rockfish; and 523 mt minor nearshore rockfish. Shore fisheries, including shore-based diving, angling and spear fishing, were not affected by this closure, nor were fisheries not subject to bag limits.

Therefore, in order to conform recreational management measures for Federal waters (3 200 nm) to management measures for California state waters (0 3 nm), the Pacific Council recommended and NMFS is implementing a closure of the Federal recreational fishing season for rockfish, cabezon, greenlings, and lingcod from 42° N. lat. to 37°11′ N. lat. beginning October 1.

Limited Entry Trawl Fishery Management Measures

Catch of canary rockfish by research vessels is lower than projected for 2007. Earlier in the year, an advisory body to the Pacific Council, the Groundfish Management Team (GMT), had projected 7.7 mt of canary rockfish would be taken as 2007 research catch in their bycatch scorecard. The bycatch scorecard is a tool used by the GMT to track estimated and projected total mortality of overfished species for the year. The 7.7 mt of canary rockfish projected earlier this year to be taken in 2007 scientific research consisted of 7.3 mt from the NMFS trawl survey and 0.4 mt from other research. The projected catch of 7.3 mt for the NMFS trawl survey is equivalent to the total 2006 catch of canary rockfish in this survey; however, in 2001–2005 no more than 2.3 mt of canary rockfish was taken per year in this survey. Based on preliminary information received from the NMFS trawl survey research vessels on September 10, 2007, the total 2007 research catch for the trawl survey is predicted to be 3.3 mt; therefore, the GMT reduced the total projected 2007 research catch value in the bycatch scorecard from 7.7 mt to 3.7 mt of canary rockfish (3.3 mt from the NMFS triennial trawl survey and 0.4 mt from other research). At the time of the update, the NMFS trawl survey was complete in almost all of the areas where high catch of canary rockfish occurred in 2006, and no high canary rockfish catches have occurred thus far. The updated value NMFS researchers provided to the GMT included expected catches for the remainder of the 2007 survey. The reduction in the expected amount of canary rockfish caught by research vessels, and the decrease in the expected amount of canary rockfish caught in California recreational fisheries due to recreational closures in the North and North Central regions, is projected to result in a lower total estimated canary rockfish mortality of 40.4 mt out of a 44–mt OY.

Non-whiting Limited Entry Trawl Fishery

The Council received a request to consider adjusting the shoreward boundary of the limited entry non-whiting trawl rockfish conservation area (RCA) to open the areas shoreward of a line approximating the 75–fm (137–m) depth contour North of Cape Alava (48°10′ N. lat.) and between Humbug Mountain (43°20.83′ N. lat.) and Cape Arago (42°40.50′ N. lat.). These shoreward areas were closed on April 18, 2007 (72 FR 19390) by moving the shoreward boundary of the RCA from a line approximating the 75–fm (137–m) depth contour to the shore to keep canary rockfish within the 2007 canary rockfish OY. With the lower than expected catch of canary rockfish by research vessels and lowered impacts on canary rockfish due to closure of the California recreational fishery from 42° N. lat. to 37°11′ N. lat., the Council considered the impacts of adjusting the shoreward RCA boundary and providing fishing opportunity in areas that had been closed earlier in the year to protect canary rockfish. Based on the most recently available data from the trawl fishery, reopening these areas would take an additional 1.7 mt of canary rockfish but would not be expected to increase impacts to any other overfished species.

The Council also considered adjustments to trip limits in the limited entry non-whiting trawl fishery. At the September meeting, the GMT reviewed the best available data on estimates of landed catch and total mortality for the limited entry trawl fishery. These data, which which estimated catch through the end of July, were compared to catch and mortality estimates modeled for the trawl fishery and were used to update catch predictions through the end of the year. Based on the Pacific Fishery Information Network's (PacFIN's) Quota Species Monitoring(QSM) data, groundfish landed catch and total mortality data were lower than expected for all target species taken with large and small footrope trawl gear in the non-whiting trawl fishery. These species include: sablefish; longspine and shortspine thornyheads; Dover sole; other flatfish; petrale sole; and slope rockfish species. The Council considered increases to trip limits for these species and the potential impacts on overall catch levels and overfished species.

The most recently updated catch projections for 2007 indicate that the following percentages of groundfish species or species groups are expected to be taken through the end of the year: 81 percent (2,138 mt out of 2,651 mt) of the trawl allocation of sablefish north of 36°; 37 percent (827 mt out of 2,220 mt) of the longspine thornyhead OY north of 34°27′ N. lat.; 52 percent (853 mt out of 1,634 mt) of the coastwide shortspine thornyhead OY; 58 percent (9,595 mt out of 16,500 mt) of the coastwide Dover sole OY; 62 percent (3,599 mt out of 5,800 mt) of the coastwide arrowtooth flounder OY; 94 percent (2,356 mt out of 2,499 mt) of the coastwide petrale sole OY; 31 percent (1,510 mt out of 4,884 mt) of the coastwide other flatfish OY, and; 16 percent (286 mt out of 1,786 mt) of the minor slope rockfish OY south of 38 N. lat.. These projections are below the anticipated catch projections through the end of 2007, and continuing the trawl fishery under these limits is projected to prevent the fishery from attaining the OYs for these species. Increases to cumulative limits are expected to increase overall catch levels, but those increases are predicted to be within the 2007 OYs for these species. Increased catch levels for these species will increase the canary rockfish catch in the limited entry non-whiting trawl fishery by 0.3 mt, but are not expected to result in greater than projected impacts on other overfished species. Yelloweye rockfish, impacts to which are of concern in hook-and-line fisheries like the California recreational fishery, are rarely taken in trawl fisheries.

Therefore, the Council recommended and NMFS is implementing the following changes for the limited entry trawl fishery through the end of the year, beginning October 1 unless otherwise specified: (1) Adjust the shoreward boundary of the limited entry non-whiting trawl RCA to a line approximating the 75–fm (137–m) depth contour North of Cape Alava (48°10′ N. lat.) and between Humbug Mountain (43°20.83′ N. lat.) and Cape Arago (42°40.50′ N. lat.); (2) increase coastwide sablefish limits for large and small footrope trawl gear to 22,000 lb (9,979 kg) per 2 months; (3) increase longspine thornyhead limits south of 40°10′ N. lat. for large and small footrope trawl gear from 22,000 lb (9,979 kg) per 2 months to 25,000 lb (11,340 kg) per 2 months; (4) increase shortspine thornyhead limits north of 40°10′ N. lat. for large and small footrope trawl gear from 10,000 lb (4,536 kg) per 2 months to 12,000 lb (5,443 kg) per 2 months; (5) increase shortspine thornyhead limits south of 40°10′ N. lat. for large and small footrope trawl gear from 7,500 lb (3,402 kg) per 2 months to 13,000 lb (5,896 kg) per 2 months; (6) increase Dover sole limits for large and small footrope trawl gear from 60,000 lb (27,216 kg) north of 40°10′ N. lat. and 80,000 lb (36,287 kg) south of 40°10′ N. lat. to 95,000 lb (43,091 kg) per 2 months coastwide; (7) increase coastwide other flatfish limits for large and small footrope trawl gear from 110,000 lb (49,895 kg) to 150,000 lb (68,039 kg) per 2 months; (8) increase petrale sole limits north of 40°10′ N. lat. for large and small footrope trawl gear from 30,000 lb (13,608 kg) per 2 months to 40,000 lb (18,143 kg) per 2 months beginning in Period 6, and; (9) increase slope rockfish limits for limited entry

trawl gear south of 38° N. lat. from 40,000 lb (18,143 kg) per 2 months to 55,000 lb (36,287 kg) per 2 months.

Limited Entry Trawl Whiting Fishery

The 2007 Pacific whiting (whiting) primary season closed for the catcher-processor, mothership and shore-based sectors on July 26, 2007 (72 FR 46176) when estimates indicated that the bycatch limit for widow rockfish had been reached. The limited availability of overfished species that can be taken as incidental catch in the whiting fisheries, particularly canary, darkblotched and widow rockfish, led to NMFS implementing bycatch limits for those species. With bycatch limits, the industry has the opportunity to harvest a larger whiting OY, providing the incidental catch of overfished species does not exceed the adopted bycatch limits. If a bycatch limit is reached, all non-tribal sectors of the whiting fishery are closed for the remainder of the year. For 2007, the following bycatch limits were specified for the non-tribal whiting sectors: 4.7 mt for canary rockfish, 25 mt for darkblotched rockfish and 220 mt for widow rockfish.

The best available information on July 25, 2007, indicated that 220.7 mt of widow rockfish had been taken in the non-tribal whiting fisheries in 2007. Accordingly, the primary seasons for the catcher-processor sector, mothership sector and the shore-based sectors were closed at 1800 l.t. July 26, 2007. Data corrections were made and some additional data were incorporated into the catch estimates after the closure, and estimates from September 10, 2007 indicate the non-tribal fishery took: 158,036 mt of the 208,091 mt of whiting available to the non-tribal fishery, 241.6 mt of widow rockfish, 4 mt of canary rockfish, and 12.8 mt of darkblotched rockfish.

At its September meeting, the Council considered reopening the non-tribal whiting fishery based on availability of bycatch species and fishing impacts on protected species through the end of 2007. The Council also considered an inseason adjustment of the widow rockfish bycatch limit for the whiting fishery in order to allow the fishery to reopen. Updated fishery information indicates that the entire coastwide groundfish fishery, including the 241.6 mt of widow rockfish taken in the non-tribal whiting fishery, is projected to take 301.9 mt of widow rockfish through the end of the year. This leaves 66.1 mt of the 368–mt OY available to provide additional groundfish fishing opportunity in 2007. The Council considered an increase in the widow rockfish bycatch limit for the non-tribal whiting fishery to 275 mt, resulting in 32.7 mt of widow rockfish projected to remain unharvested through 2007. Widow rockfish is primarily taken as bycatch in the whiting fisheries.

The whiting fishery exceeded their initial 2007 bycatch limit for widow rockfish of 220 mt by 21.6 mt. This is likely due to several factors, including: fishing effort increased during the period when fishery participants knew that the fishery was nearing the widow rockfish bycatch limit; some final landings data were delayed, which caused a delay in the total catch estimates that should have closed the fishery earlier; and, the bycatch limit for widow rockfish was set too low to accommodate the 2007 whiting OY because the bycatch rate of widow rockfish in 2007 was higher than projected at the beginning of the year, likely due to the widow rockfish stock rebuilding while the whiting stock is in a period of decline. Therefore, at its September meeting, the Council purposefully recommended setting the widow rockfish bycatch limit well under the amount of widow rockfish estimated to be available through the end of 2007. In order to ensure more timely data reporting from the shore-based sector when the fishery reopened, the Council also recommended delaying reopening of the whiting fishery until after the new catch accounting requirements went into effect for whiting processors on October 5, 2007 (72 FR 50906). This new regulation requires first receivers of whiting deliveries of 4,000 lb (XXX kg) or more to submit catch reports to the Pacific States Marine Fish Commission within 24 hours of landing. Prior to this rulemaking, NMFS had no regulations in place to delineate a time frame in which reports should be received by fishery managers.

At its September meeting, the Council also addressed concerns with availability of canary rockfish if the whiting fishery were to reopen under the higher widow rockfish bycatch limit. The whiting fishery had closed with 0.7 mt available in the canary rockfish bycatch limit, and an increase in this bycatch limit was not considered by the Council due to limited availability of canary rockfish from other fisheries. If the whiting fishery were reopened under the same management measures that were in place earlier in the year, approximately 1.7 mt of canary rockfish would be estimated to be taken if the entire remaining 2007 whiting OY were caught, exceeding the canary rockfish bycatch limit of 4.7 mt by 1 mt. The Council discussed reopening the whiting fishery seaward of a line approximating the 150–fm (274–m) depth contour to reduce the impacts on canary rockfish, which are strongly associated with shelf habitat in depths shoreward of 150 fm (274 m), and to keep the total catch of canary rockfish within the bycatch limit of 4.7 mt. Estimates show that if the entire remaining whiting OY were prosecuted seaward of 150 fm (274 m), the canary rockfish catch would be 4.7 mt, equivalent to the 2007 bycatch limit.

Shifting all of the non-tribal whiting fishery effort seaward of a line approximating the 150–fm (274–m) depth contour is expected to increase impacts on darkblotched rockfish; however, the whiting fishery has only taken 12.8 mt of the 25–mt darblotched rockfish bycatch limit, or 51 percent, while they have taken 76 percent of the 2007 non-tribal whiting allocation. If all of the fisheries that are anticipated to take darkblotched rockfish reach their projected take for 2007, including the 25–mt bycatch limit for darkblotched rockfish in the non-tribal whiting fishery, there would be 37.7 mt of darkblotched rockfish projected to remain unharvested through 2007.

A depth-based closure is not a routine management measure for the whiting fishery; therefore, a closure shoreward of the line approximating the 150–fm (274–m) depth contour cannot be implemented via inseason action. The shore-based sector operates in the non-tribal whiting primary season under an exempted fishing permit (EFP). A second 2007 EFP will be issued to each participant in the shore-based fishery qualified to fish in the reopening of the fishery. The new EFP must be signed and returned to NMFS NWR prior to participation in the fishery, and will require that the vessel fish seaward of a line approximating the 150–fm (274–m) depth contour. Although a depth-based closure cannot be imposed on the mothership or catcher-processor sector via timely regulation or EFP, these sectors have agreed to fish seaward of a line approximating the 150–fm (274–m) depth contour. On several past occasions, these fleets have successfully taken similar voluntary action to constrain their bycatch of overfished groundfish species or salmon.

The Council considered possible dates that could be set for reopening the non-tribal whiting fishery. The Council agreed that reopening the fishery as quickly as possible would be beneficial for several reasons, particularly: aggregations of whiting will begin to disperse later in the year, potentially causing increased bycatch rates for non-whiting species, and; increasing the

danger of operating in less favorable late autumn weather. Based on their discussion of the October 5, 2007 implementation of the first receiver reporting rule, described above, the Council recommended reopening the fishery as close as possible to October 5, 2007. Subsequent Council discussions also highlighted the benefits to the data-reporting structure for this fishery of reopening on a Sunday or a Monday to shorten the lag time between when the fishery reopens and when managers have access to fishery data.

Based on Council recommendations and discussions, NMFS is implementing: (1) an increase in the 2007 non-tribal whiting widow rockfish bycatch limit from 220 mt to 275 mt; (2) re-opening the 2007 non-tribal whiting primary season for the catcher-processor, mothership, and shore-based sectors at 0800 l.t. on Sunday, October 7, 2007 and restricting of the shore-based sector to fishing seaward of a line approximating the 150–fm (274–m) depth contour through the EFP.

Classification

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

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

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

The data upon which these recommendations were based was provided to the Council and the Council made its recommendations at its September 10–14, 2007, meeting in Portland, OR. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this notice, affording the time necessary for prior notice and opportunity for public comment would be impractical and contrary to the public interest because it would prevent the Agency from managing fisheries using the best available science to approach without exceeding the OYs for Federally managed species. The adjustments to management measures in this document affect commercial and recreational groundfish fisheries off Washington, Oregon, and California.

Changes to the limited entry trawl RCA must be implemented as quickly as possible to allow fishing opportunities that had been restricted earlier in the year. Changes to the trawl RCA made in April 2007, restricted fishing effort in areas of high canary rockfish bycatch rates. Catch of canary rockfish by research vessels was much lower than predicted over the summer months, and there is canary rockfish available for harvest in groundfish fisheries that take canary rockfish incidentally. It would be contrary to the public interest to wait to implement this RCA revision until after public notice and comment, because making this regulatory change as soon as possible relieves a regulatory restriction for fisheries that are important to coastal communities.

Changes to the cumulative limits in the non-whiting commercial fisheries must be implemented in a timely manner to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks. Changes to cumulative limits for the following stocks must be implemented in a timely manner as close as possible to October 1, 2007: (1) sablefish, longspine thornyhead, shortspine thornyhead, Dover sole, other flatfish, and slope rockfish in the limited entry trawl fishery; and (2) shortspine thornyheads in the limited entry fixed gear fishery. In the limited entry trawl fishery, changes to the petrale sole cumulative limits must be implemented in a timely manner by November 1, 2007. These changes allow fishermen an opportunity to harvest higher trip limits for stocks with catch tracking behind their projected 2007 catch levels. All of these cumulative limit changes are within projected mortality for overfished species. All of these actions provide increased trip limits; therefore, it would be contrary to the public interest to fail to relieve the current restrictions in a timely manner.

Changes to the non-tribal whiting widow rockfish bycatch limit must be implemented and the non-tribal fishery must be reopened on or as soon as possible after October 7, 2007, to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change by October 7 relieves a regulatory restriction for fisheries that are important to coastal communities. Currently, 24 percent, or 50,055 mt (110,352,385 lb) of the non-tribal whiting allocation remains unharvested. The current price of Pacific whiting dockside is $0.08 per pound, resulting in approximately $8,828,191 of whiting available for harvest. The whiting fishery contributes a large amount of revenue to the coastal communities of Washington and Oregon, and leaving this portion of the whiting OY unharvested sacrifices millions of dollars and hundreds of jobs for fishermen and coastal communities. Projected effects of reopening the non-tribal whiting fishery and increasing the non-tribal whiting widow rockfish bycatch limit are within projected mortality for overfished species and other groundfish species. Failing to increase the non-tribal whiting widow rockfish bycatch limit and reopen the non-tribal fishery in a timely manner would result in unnecessary restriction of fisheries that are important to coastal communities and is therefore contrary to the public interest.

Changes to the Oregon recreational fishery must be implemented as quickly as possible in order to conform to existing Oregon state regulations and to keep recreational harvest within Oregon state harvest limits. Changes to the California recreational fishery must be implemented as quickly as possible in order to conform to upcoming California State regulations and to reduce the risk of further exceeding the harvest guideline and the risk of exceeding OYs. Without action, California's state harvest limits for canary, yelloweye and minor shelf rockfish were projected to be exceeded based on updated information as of September 10, 2007. CDFG will close recreational fisheries for all groundfish species subject to bag limits between 42° N. lat. and 37°11′ N. lat. beginning October 1, 2007. Even with this closure, projected impacts to canary, yelloweye, and minor nearshore rockfish could still exceed the harvest guidelines, and failing to take conforming action would risk additional recreational catches of canary, yelloweye, and minor nearshore rockfish in Federal waters, which could further exceed the harvest guideline and risk exceeding the OYs for these species.

Delaying these changes would keep management measures in place that are not based on the best available data, which could risk fisheries exceeding their OY, or deny fishermen access to available harvest. Such delay would

impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year.

List of Subjects in 50 CFR Part 660

Fisheries, and Fishing.

Dated: September 28, 2007.

Emily H. Menashes,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.373 paragraph (b)(4) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370(c)(1)(ii). These limits are routine management measures under § 660.370(c) and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. The whiting fishery bycatch limits for the sectors identified in § 660.323(a) are: 4.7 mt of canary rockfish; 275 mt of widow rockfish; and 25 mt of darkblotched rockfish.

* * * * *

■ 3. In § 660.384 a new sentence is added to paragraph (c)(2)(iii), and paragraphs (c)(3)(ii)(A)(*1*) and (*2*), and (c)(3)(iii)(A)(*1*) and (*2*) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(2) * * *

(iii) * * * From October 1 through December 31, 2007, taking and retaining cabezon is prohibited in all areas by boat anglers.

(3) *California.* * * *

(ii) * * *

(A) * * *

(*1*) North of 40°10′ N. lat. (North Region), recreational fishing for the RCG Complex is open from May 1, 2007 through September 30, 2007 (i.e., it's closed from January 1 through April 30 and from October 1 through December 31, 2007). Recreational fishing for the RCG Complex is open from May 1, 2008 through December 31, 2008.

(*2*) Between 40°10′ N. lat. and 37°11′ N. lat. (North Central Region), recreational fishing for the RCG Complex is open from June 1, 2007 through September 30, 2007 (i.e., it's closed from January 1 through May 31 and from October 1 through December 31, 2007). Recreational fishing for the RCG Complex is open from June 1, 2008 through November 30, 2008 (i.e., it's closed from January 1 through May 31 and from December 1–31, 2008).

* * * * *

(iii) * * *

(A) * * *

(*1*) North of 40°10′ N. lat. (North Region), recreational fishing for lingcod is open from May 1 through September 30, 2007 (i.e., it's closed from January 1 through April 30 and from October 1 through December 31, 2007). Recreational fishing for lingcod is open from May 1, 2008 through November 30, 2008 (i.e., it's closed from January 1 through April 30 and from December 1 31, 2008).

(*2*) Between 40°10′ N. lat. and 37°11′ N. lat. (North Central Region), recreational fishing for lingcod is open from June 1, 2007 through September 30, 2007 (i.e., it's closed from January 1 through May 31 and from October 1 through December 31, 2007). Recreational fishing for lingcod is open from June 1, 2008 through November 30, 2008 (i.e., it's closed from January 1 through May 31 and from December 1 31, 2008).

* * * * *

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

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

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 092007

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

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

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

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

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months		1,500 lb/ 2 months			
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish						
5	large & small footrope gear	13,000 lb/ 2 months		15,000 lb/ 2 months		22,000 lb/ 2 months	
6	selective flatfish trawl gear	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months			
7	multiple bottom trawl gear [8/]	5,000 lb/ 2 months	8,000 lb/ 2 months	5,000 lb/ 2 months			
8	Longspine thornyhead						
9	large & small footrope gear	22,000 lb/ 2 months			25,000 lb/ 2 months		
10	selective flatfish trawl gear	3,000 lb/ 2 months					
11	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
12	Shortspine thornyhead						
13	large & small footrope gear	7,500 lb/ 2 months		10,000 lb/ 2 months		12,000 lb/ 2 months	
14	selective flatfish trawl gear	3,000 lb/ 2 months					
15	multiple bottom trawl gear [8/]	3,000 lb/ 2 months					
16	Dover sole						
17	large & small footrope gear	80,000 lb/ 2 months		60,000 lb/ 2 months		95,000 lb/ 2 months	
18	selective flatfish trawl gear	40,000 lb/ 2 months		38,000 lb/ 2 months			25,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	40,000 lb/ 2 months		38,000 lb/ 2 months			25,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Whiting**					
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.				
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.				
23	**Flatfish** (except Dover sole)					
24	Arrowtooth flounder					
25	large & small footrope gear	100,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see below		
26	selective flatfish trawl gear	90,000 lb/ 2 months				
27	multiple bottom trawl gear [8/]	90,000 lb/ 2 months				
28	Other flatfish [3/], English sole, starry flounder, & Petrale sole					
29	large & small footrope gear for Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	150,000 lb/ 2 mo (including arrowtooth), no more than 20,000 lb/ 2 mo of which may be petrale sole.	150,000 lb/ 2 months (including arrowtooth)
30	large & small footrope gear for Petrale sole	50,000 lb/ 2 months				40,000 lb/ 2 months
31	selective flatfish trawl gear for Other flatfish[3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.
32	selective flatfish trawl gear for Petrale sole					
33	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 20,000 lb/ 2 months of which may be petrale sole.	70,000 lb/ 2 months (including arrowtooth), no more than 15,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months (including arrowtooth), no more than 8,000 lb/ 2 months of which may be petrale sole.
34	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**					
35	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.				
36	large & small footrope gear	300 lb/ 2 months				
37	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month
38	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

39	**Canary rockfish**				
40	large & small footrope gear	CLOSED			
41	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
42	multiple bottom trawl gear [8/]	CLOSED			
43	**Yellowtail**				
44	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.			
45	large & small footrope gear	300 lb/ 2 months			
46	selective flatfish trawl gear	2,000 lb/ 2 months			
47	multiple bottom trawl gear [8/]	300 lb/ 2 months			
48	**Minor nearshore rockfish & Black rockfish**				
49	large & small footrope gear	CLOSED			
50	selective flatfish trawl gear	300 lb/ month			
51	multiple bottom trawl gear [8/]	CLOSED			
52	**Lingcod** [4/]				
53	large & small footrope gear	1,200 lb/ 2 months	4,000 lb/ 2 months		
54	selective flatfish trawl gear		1,200 lb/2 months		
55	multiple bottom trawl gear [8/]				
56	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
57	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
58	**Other Fish** [5/]	Not limited			

TABLE 3 (North) con't

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

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

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

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

092007

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	40°10' - 38° N. lat.	100 fm - modified 200 fm [7/]	100 fm - 150 fm				100 fm - modified 200 fm [7/]
	38° - 34°27' N. lat.	100 fm - 150 fm					
	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
	All trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear is prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months				55,000 lb/ 2 months	
4	**Splitnose**						
5	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	14,000 lb/ 2 months				22,000 lb/ 2 months	
9	Longspine thornyhead	22,000 lb/ 2 months				25,000 lb/ 2 months	
10	Shortspine thornyhead	7,500 lb/ 2 months				13,000 lb/ 2 months	
11	Dover sole	70,000 lb/ 2 months			80,000 lb/ 2 months	95,000 lb/ 2 months	
12	**Flatfish** (except Dover sole)						
13	Other flatfish[3/], English sole, & starry flounder						
14	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole, starry flounder & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	Other flatfish, English sole, starry flounder, arrowtooth flounder & Petrale sole: 110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.		Other flatfish, English sole, starry flounder, arrowtooth flounder & Petrale sole: 150,000 lb/ 2 mo, no more than 25,000 lb/ 2 mo of which may be petrale sole.	150,000 lb/ 2 months (including arrowtooth)
15	South of 38° N. lat.						
16	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
17	Arrowtooth flounder						
18	40°10' - 38° N. lat.	10,000 lb/ 2 months		Arrowtooth included within other flatfish limits - - see above			
19	South of 38° N. lat.						
20	**Whiting**						
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

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

TABLE 3 (South) con't

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

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

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 092007

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

TABLE 4 (South)

Table 4 (South). Continued

TABLE 4 (South)

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

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

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

[FR Doc. 07–4917 Filed 10–1–07; 2:16 pm]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 72, No. 192
Thursday, October 4, 2007

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551–AA70

The Dairy Import Licensing Program

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would suspend the historical license reduction provisions of the dairy import licensing program, 7 CFR part 6, for a period of 5 years. This temporary suspension is intended to improve program administration and reflect changes in the markets for cheese and other dairy products subject to import licensing requirements.

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

ADDRESSES: Address all comments concerning this proposed rule to Ron Lord, Branch Chief, Sugar and Dairy Branch, Import and Trade Support Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250, Room 5531–S, STOP 1021, e-mail at *Ronald.Lord@usda.gov*, telephone (202) 720–2916, or fax at (202) 720–0876. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Contact Ron Lord, Branch Chief, Sugar and Dairy Branch, Import and Trade Support Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Washington, DC 20250, Room 5531–S, STOP 1021, e-mail at *Ronald.Lord@usda.gov*, telephone (202) 720–2916, or fax at (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be non-significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

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

Public Law 104–4 requires consultation with State and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on State, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

The proposed rule at 7 CFR part 6 would revise the Dairy Tariff-Rate Import Quota Licensing regulation in effect since October 9, 1996, by suspending the provisions with respect to the reduction of historical licenses based on surrenders of unused amounts.

Import licensing is one of the tools the U.S. Department of Agriculture (USDA) uses to administer the tariff-rate quota (TRA) system for U.S. imports of dairy products. TRQs replaced strictly quantitative import quotas for dairy products on January 1, 1995, as a result of the Uruguay Round Agreement on Agriculture and the Uruguay Round Agreements Act.

Under these TRQs, a low tariff rate, called the in-quota rate, applies to imports up to a specified quantity. A higher tariff rate called the over-quota rate, applies to any imports in excess of that amount. TRQ rates and quantities vary by product.

For dairy products subject to TRQs, a license issued by the Foreign Agricultural Service (FAS) is generally required to import products at the in-quota rate. No license is required to import products at the over-quota rate.

Under the historical license reductions provisions, the amount of the license issued by FAS is reduced if the importer surrenders more than 50 percent of the license during either three consecutive years or at least three out of five consecutive years. Specifically, section 6.25(b)(1)(i) provides that beginning with the 1999 quota year, if a licensee has surrendered more than 50 percent of a historical license in each of the three prior years, that license will be permanently reduced to the average amount entered during those three years. Section 6.25(b)(1)(ii) provides that beginning with the quota year 2001, if a licensee surrenders more than 50 percent of a historical license in at least three out of the five prior years, that license will be

permanently reduced to the average amount entered during those five years. These provisions are intended to provide a strong incentive for companies with historical licenses to utilize their licenses.

The current regulation permitted the Secretary of Agriculture to suspend the historical license reduction provisions applicable prior to 1999. In 1998, the Secretary published a notice in the **Federal Register** suspending these provisions for five years, thereby delaying their implementation until 2004. The provisions were suspended in order to ''provide adequate time for historical licensees of European Union (EU) cheeses to adjust to changing market conditions; to find alternative suppliers of cheese in the EU; and to develop new markets to enable importers to fully utilize their historical licenses for EU cheese.'' FAS also noted: ''The suspension is consistent with the intent of the U.S.-EU Uruguay Round bilateral agreement on maximizing utilization of U.S. licenses for EU cheese.''

However, current market conditions have again prompted the need for a temporary suspension of the historical license reduction provisions. The production of certain cheeses in the EU, particularly Swiss cheese, has declined primarily due to a reduction in subsidies. Other cheeses, particularly processed Gruyere cheese, have declined in production primarily due to a change in consumer preferences and market demand. And finally, production of industrial grade low-fat cheeses has declined precipitously due to a switch to more profitable, consumer-oriented cheeses. Additionally, the expansion of the EU from 15 to 27 countries has diminished the availability of milk for cheese production and reduced availability of cheese for export.

This temporary suspension is intended to improve program administration and reflect changes in the markets for cheese and other dairy products subject to import licensing requirements. The historical licenses provide for orderly importation of a wide variety of cheeses and permit companies to invest in market development with some assurance of future ability to provide specific types of cheese.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

For the reasons described in the preamble, the Department of Agriculture proposes to amend 7 CFR part 6 as follows:

PART 6—IMPORT QUOTAS AND FEES

1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 8, 65 Stat. 75; 19 U.S.C. 1365.

2. Section 6.25 is amended by revising paragraphs (b)(1)(i) and (ii) to read as follows:

§ 6.25 Allocation of Licenses

* * * * *

(b) * * *

(1) * * *

(i) Beginning with the 2012 quota year, a person who has surrendered more than 50 percent of such historical license in each of the prior three quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those three quota years; and

(ii) Beginning with the 2014 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

* * * * *

Dated: September 14, 2007.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. 07–4780 Filed 10–1–07; 2:37 pm]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 962

[Docket No. AMS–FV–07–0090; FV07–962–1 AN]

Handling Regulations for Leafy Greens Under the Agricultural Marketing Agreement Act of 1937

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Marketing Service (AMS) is issuing this advance notice of proposed rulemaking in response to industry interest in the establishment of a marketing program to address the handling of fresh and fresh-cut leafy green vegetables. The program would allow packers, processors, shippers, and marketers (collectively referred to as handlers) to maintain the quality of their products by reducing the risk of pathogenic contamination during the production and handling of leafy greens. Authorities and regulations under the program would not supplant those of the Food and Drug Administration (FDA), which is responsible for ensuring that foods are safe, wholesome, and sanitary. Comments are being sought from the public, particularly from growers, handlers, buyers, and sellers of leafy green commodities, regarding whether to issue such regulations under an AMS marketing program and if so, the possible substance and implementation of the program.

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

ADDRESSES: Interested persons are invited to submit written comments concerning the issues contained in this notice. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938 or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *laurel.may@usda.gov or kathy.finn@usda.gov.*

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking invites comments on a potential regulatory program intended to maintain the quality of leafy green commodities by reducing the risk of pathogenic contamination during their production and handling. AMS is considering implementation of a marketing agreement (agreement) in response to heightened public and industry concern about the safe production and handling of leafy greens.

Under the program being considered, handlers could voluntarily enter into the agreement, but signatories would then be required to comply with the agreement's regulations, which would specify Best Practices for minimizing the risk of pathogenic contamination of leafy greens. The Best Practices could include commodity-specific production and handling guidelines that would be developed in cooperation with the

industry and based upon FDA's voluntary *Guide to Minimize Microbial Food Safety Hazards in Fresh Fruits and Vegetables, Guide to Minimize Microbial Food Safety Hazards in Fresh-cut Fruits and Vegetables,* and other FDA-issued guidance (*http://www.fda.gov*).

The agreement could include a compliance certification and verification program. For example, handlers could be required to certify that the leafy green products they handle are produced in accordance with the specified guidelines. Handlers would further certify that the shipping, processing, and packing of their leafy green products meet the agreement's specifications. Signatory handlers that meet the agreement's requirements may be authorized to affix an official certification mark to their leafy green products. Use of the mark would certify that the products bearing the mark have been grown, harvested, packed, shipped, processed, and/or handled in accordance with the agreement's regulations.

Verification audits would be conducted by the Federal or Federal-State Inspection Program to ensure that handlers have complied with the prescribed requirements. Violation of the requirements could disqualify a non-compliant handler from using the mark for a certain period of time.

In addition to handling regulations, the agreement could include consumer education, production research, generic promotion, or other programs, depending upon the industry's needs and goals.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Department of Agriculture (USDA) would consider the economic impact that implementation of the proposed agreement would have on small entities and would prepare a regulatory flexibility analysis for inclusion in any subsequent rulemaking action. The informational impact of this action would also be considered under the Paperwork Reduction Act. Any action undertaken as a result of this advance notice would be reviewed by USDA under Executive Orders 12866 and 12988.

AMS is considering establishment of a marketing agreement rather than a marketing order (order), which is another regulatory program structure available through AMS. Below is a brief comparison of these two regulatory instruments, which is intended to allow interested persons a way to distinguish between an agreement and an order so they may better be able to provide comments to USDA.

Marketing Orders and Agreements

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' authorizes the implementation of Federal marketing orders and agreements designed to establish and maintain orderly marketing conditions for the regulated commodities. Orders and agreements are implemented by AMS following public notice and hearing at the request of industries that demonstrate interest in regulating the handling of commodities produced within specified geographic areas.

Orders may include the authority to regulate the grade, size, quality, packaging, inspection, and/or volume handled of certain agricultural commodities. Orders may also provide for production and marketing research, market development, and promotional activities. Once established, compliance with order regulations is mandatory for all handlers of the affected commodity within the production area. Orders must be approved by growers in referenda prior to implementation.

In comparison, agreements may be entered into by growers, handlers, processors, or others engaged in the handling of any agricultural commodity or its product. Signatories voluntarily agree to participate in the programs and comply with the regulations established by the agreements, which may include—but are not limited to—the types authorized for orders.

Violation of order regulations may result in the assessment of civil penalties. The violation of orders and agreements may result in enforcement actions filed in the United States District courts. Violation of agreements could also result in suspension of program privileges, such as use of the program's certification mark. Under the Perishable Agricultural Commodities Act, AMS is also authorized to investigate and prosecute alleged violations concerning misbranding or mislabeling of commodity containers, which would include misuse of a certification mark developed under the agreement. The FDA is responsible for determining whether a regulated product is causing an illness and may recall products or take other actions to halt the spread of that illness.

Orders and agreements offer flexibility in designing and modifying requirements to reflect changes in production and handling practices. Both are administered by committees of representatives that are nominated by the industries and selected by USDA. Committees plan annual program activities and submit budgets of expenditures for approval by USDA. Programs are funded by assessments, which are levied on handlers and based on the volume of commodity they handle.

USDA provides oversight of marketing programs to make sure the orders and agreements operate in a manner consistent with the Act. AMS representatives attend committee meetings and provide guidance to program committees regarding implementation of regulations and conduct of committee business and program activities. Regulations are implemented following USDA approval through the public rulemaking process. The Federal or Federal-State Inspection Programs inspect commodities, audit handler procedures, and/or review handler records to verify compliance with mandatory regulations under marketing orders and agreements.

Background

In mid-September 2006, the FDA issued the first public alerts [1] of a multi-state *Escherichia coli (E. coli)* outbreak linked to fresh spinach grown in California's Salinas Valley. The resulting recall was the largest ever for leafy green products. The produce industry responded quickly to the recall in an effort to rebuild consumer confidence and minimize the risk of future outbreaks.

Investigations by the FDA and the California Department of Health Services, in cooperation with the Centers for Disease Control and Prevention and USDA's Animal and Plant Health Inspection Service,[2] concluded that the E. coli contamination might have been attributed to environmental factors in the production area. In response, members of the California industry initiated the establishment of a State marketing agreement for handlers of leafy greens (*http://www.caleafygreens.ca.gov/docs/resources.asp*), which became effective February 10, 2007. Signatories to the State agreement certify that the production, handling, shipment, and sale of leafy green products they handle are compliant with commodity-specific food safety guidelines adopted as Best Practices under the agreement. The Best Practices and its guidelines are designed

[1] FDA Warning on Serious Foodborne E. coli O157:H7 Outbreak; FDA News, September 14, 2006; *http://www.fda.gov/bbs/topics/NEWS/2006/NEW01450.html.*

[2] FDA Finalizes Report on 2006 Spinach Outbreak, FDA News, March 23, 2007, *http://www.fda.gov/bbs/topics/NEWS/2007/NEW01593.html.*

to minimize the risk of pathogenic contamination. Compliance with the Best Practices is verified by agricultural inspection agencies under contract with the administrative Board established under the agreement.

Although AMS has not received an official proposal, members of the leafy greens industry have expressed interest in the establishment of similar standards through a Federal marketing program. Industry discussions have focused on the need for a program with national scope. In response, AMS is considering the development of a marketing agreement as previously described in this document. AMS believes that an agreement, rather than an order, is more likely to meet the needs of the produce industry across the fifty States and the District of Columbia. Agreements offer greater flexibility in designing regulatory programs since the programs authorized for agreements are not limited to those specified for orders under the Act. Also, handlers voluntarily enter into agreements, giving individuals the opportunity to determine whether they want to participate, which may be more responsive to the needs of a nationwide industry.

As part of its review, AMS is seeking public comments and proposals regarding establishment of a nationwide agreement for the handling of leafy green products. If further development is warranted by response to this request, AMS would publish a notice of hearing on a proposed marketing agreement in the **Federal Register** in accordance with the provisions of sections 556 and 557 of title 5 of the United States Code and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Public hearings regarding the proposed agreement would be held throughout the country, and handler sign-ups would be conducted if the agreement was approved by USDA.

Agency Request for Information

AMS is soliciting the views of growers, handlers, buyers, sellers, consumers, and other interested persons on a possible marketing agreement to regulate the handling of leafy green commodities. Additionally, AMS is interested in any information from industry organizations that could assist with the development of leafy green produce industry profiles. The agency will use information, comments, and proposals received to evaluate whether development of such an agreement for the fifty States and the District of Columbia should be pursued. In particular, AMS invites responses to the following questions:

(1) Would the handling of leafy greens be better addressed though regulations under a voluntary marketing agreement signed by handlers, or under a mandatory marketing order regulating handlers and approved by a producer referendum?

(2) Would such a program be better implemented on a national or a regional basis?

(3) How should the United States be subdivided into smaller regions for the purposes of committee representation and program administration?

(4) How should committee membership be allocated to adequately represent the interests of industry throughout all regions of the United States?

(5) What process should the committee follow to recommend regulations appropriate to the various regions? For example, would regulations for handling leafy greens on the east coast differ from those on the west coast, and if so, how should the administrative committee address the differences while developing recommendations for regulations?

(6) What specific problems or issues should be addressed by such a marketing program?

(7) Would Best Practices based upon FDA guidelines be the best criteria for regulation of leafy green handling, or are there other criteria available that might better meet the industry's needs?

(8) Which specific leafy green commodities should be included under the program's handling regulations?

(9) What are potential obstacles to the implementation of such a marketing program? For example, would distance make it impractical for the committee to meet frequently? Might regional subcommittees be appointed to meet more frequently and consider local matters for presentation at annual national committee meetings?

(10) What are the potential costs associated with the implementation of such a program, including changes to current production and handling procedures, assessments, and audits?

(11) How would a marketing program complement, duplicate, or conflict with any other existing programs, such as state food safety regulations? and

(12) Are there other issues and/or suggestions about such a marketing program?

All views are solicited so that every aspect of this potential regulation may be studied prior to formulating a proposed rule, if warranted, by AMS. This request for public comment does not constitute notification that the agreement described in this document is or will be proposed or adopted.

A 60-day comment period is provided to allow sufficient time for interested parties to comment on a possible leafy green marketing program. All timely written comments received will be considered before any subsequent rulemaking action is undertaken.

Authority: 7 U.S.C. 601–674.

Dated: October 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–19629 Filed 10–3–07; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 233

[Regulation GG; Docket No. R–1298]

DEPARTMENT OF THE TREASURY

31 CFR Part 132

RIN 1505–AB78

Prohibition on Funding of Unlawful Internet Gambling

AGENCIES: Board of Governors of the Federal Reserve System and Departmental Offices, Department of the Treasury.

ACTION: Notice of joint proposed rulemaking.

SUMMARY: This notice is published jointly by the Departmental Offices of the Department of the Treasury (the ''Treasury'') and the Board of Governors of the Federal Reserve System (the ''Board'') (collectively, the ''Agencies'') and proposes rules to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the ''Act''). In accordance with the requirements of the Act, the proposed rule designates certain payment systems that could be used in connection with unlawful Internet gambling transactions restricted by the Act. The proposed rule requires participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling. As required by the Act, the proposed rule also exempts certain participants in designated payment systems from the requirements to establish such policies and procedures because the Agencies believe it is not reasonably practical for those participants to identify and block, or otherwise prevent or prohibit,

unlawful Internet gambling transactions restricted by the Act. Finally, the proposed rule describes the types of policies and procedures that non-exempt participants in each type of designated payment system may adopt in order to comply with the Act and includes non-exclusive examples of policies and procedures which would be deemed to be reasonably designed to prevent or prohibit unlawful Internet gambling transactions restricted by the Act. The proposed rule does not specify which gambling activities or transactions are legal or illegal because the Act itself defers to underlying State and Federal gambling laws in that regard and determinations under those laws may depend on the facts of specific activities or transactions (such as the location of the parties).

DATES: Comments must be received on or before December 12, 2007.

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

Board: You may submit comments, identified by Docket Number R–1298, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Treasury:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* select ''Department of the Treasury—All'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''Treas–DO–2007–0015'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''User Tips'' link at the top of the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Mail:* Department of the Treasury, Office of Critical Infrastructure Protection and Compliance Policy, Room 1327, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: You must include ''Treas–DO'' as the agency name and ''Docket Number Treas–DO–2007–0015'' in your comment. In general, the Treasury will enter all comments received into the docket and publish them without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may view comments and other related materials by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* select ''Department of the Treasury—All'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''Treas–DO–2007–0015'' to view public comments for this notice of proposed rulemaking.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the Department of the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. You can make an appointment to inspect comments by calling (202) 622–0990.

Commenters are requested to submit copies of comments to both Agencies.

FOR FURTHER INFORMATION CONTACT:

Board: Christopher W. Clubb, Senior Counsel (202/452–3904), Legal Division; Jack K. Walton, II, Associate Director (202/452–2660), Jeffrey S. Yeganeh, Manager, or Joseph Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

Treasury: Charles Klingman, Deputy Director, Office of Critical Infrastructure Protection and Compliance Policy; Steven D. Laughton, Senior Counsel, or Amanda Wise, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), 202/622–9209.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

The Act prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Such transactions are termed ''restricted transactions.'' The Act generally defines ''unlawful Internet gambling'' as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.[1] The Act states that its provisions

[1] From the general definition, the Act exempts three categories of transactions: (i) Intrastate transactions (a bet or wager made exclusively within a single State, whose State law or regulation contains certain safeguards regarding such transactions and expressly authorizes the bet or wager and the method by which the bet or wager is made, and which does not violate any provision of applicable Federal gaming statutes); (ii) intratribal transactions (a bet or wager made exclusively within the Indian lands of a single Indian tribe or between the Indian lands of two or more Indian tribes as authorized by Federal law, if the bet or wager and the method by which the bet or wager is made is expressly authorized by and complies with applicable Tribal ordinance or resolution (and Tribal-State Compact, if applicable) and includes certain safeguards regarding such transaction, and if the bet or wager does not violate applicable Federal gaming statutes); and (iii) interstate horseracing transactions (any activity that is allowed under the Interstate Horseracing Act of 1978, 15 U.S.C. 3001 *et seq.*).

The Department of Justice has consistently taken the position that the interstate transmission of bets and wagers, including bets and wagers on horse races, violates Federal law and that the Interstate Horseracing Act (the ''IHA'') did not alter or amend the Federal criminal statutes prohibiting such transmission of bets and wagers. The horse racing industry disagrees with this position. While the Act provides that the definition of ''unlawful Internet gambling'' does not include ''activity that is allowed under the Interstate Horseracing Act of 1978,'' 31 U.S.C. 5362(10)(D)(i), Congress expressly recognized the disagreement over the interplay between the IHA and the Federal criminal laws relating to gambling and determined that the Act would not take a position on this issue. Rather, the Sense of Congress provision, codified at 31 U.S.C. 5362(10)(D)(iii), states as follows:

It is the sense of Congress that this subchapter shall not change which activities related to horse racing may or may not be allowed under Federal law. This subparagraph is intended to address concerns that this subchapter could have the effect of changing the existing relationship between the Interstate Horseracing Act and other Federal statutes in effect on the date of enactment of this subchapter. This subchapter is not intended to

Continued

should not be construed to alter, limit, or extend any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.[2] The Act does not spell out which activities are legal and which are illegal, but rather relies on the underlying substantive Federal and State laws.[3]

The Act requires the Agencies (in consultation with the U.S. Attorney General) to designate payment systems that could be used in connection with or to facilitate restricted transactions. Such a designation makes the payment system, and financial transaction providers participating in the system, subject to the requirements of the regulations.[4] The Act further requires the Agencies (in consultation with the U.S. Attorney General) to prescribe regulations requiring designated payment systems and financial transaction providers participating in each designated payment system to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The regulations must identify types of policies and procedures that would be deemed to be reasonably designed to achieve this objective, including non-exclusive examples. The Act also requires the Agencies to exempt certain restricted transactions or designated payment systems from any requirement imposed by the regulations if the Agencies jointly determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

Under the Act, a participant in a designated payment system is considered to be in compliance with the regulations if it relies on and complies with the policies and procedures of the designated payment system and such policies and procedures comply with the requirements of the Agencies' regulations. The Act also directs the Agencies to ensure that transactions in connection with any activity excluded from the Act's definition of ''unlawful Internet gambling,'' such as qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions, are not blocked or otherwise prevented or prohibited by the prescribed regulations.

The regulation being proposed by the Agencies in this notice: (i) Sets out definitions for terms used in the regulation; (ii) designates payment systems that could be used by participants in connection with, or to facilitate, a restricted transaction; (iii) exempts certain participants in certain designated payment systems from requirements of the regulation; (iv) requires the participants performing non-exempt functions in a designated payment system to establish and implement policies and procedures reasonably designed to prevent or prohibit restricted transactions, such as by identifying and blocking such transactions; (v) provides non-exclusive examples of policies and procedures for non-exempt participants in each designated payment system; and (vi) sets out the regulatory enforcement framework. Comments on all aspects of the proposed regulation are welcome; however, the Agencies are, in particular, seeking comment on the issues noted in the section-by-section analysis below.

The Agencies desire to achieve the purposes of the Act as soon as is practical, while also providing designated payment systems and their participants sufficient time to adapt their policies and practices as needed to comply with the regulation. The Agencies propose that the final regulations take effect six months after the joint final rules are published, and request comment on whether this period is reasonable. Commenters requesting a shorter period should explain why they believe payment system participants would be able to modify their policies and procedures, as required, in the shorter period. Similarly, commenters requesting a longer period should explain why the longer period would be necessary to comply with the regulations, particularly if the need for additional time is based on any system or software changes required to comply with the regulations.

II. Section by Section Analysis

A. Definitions

The proposed regulation provides definitions for terms used in the regulation. Many of the definitions (such as ''bet or wager,'' ''financial transaction provider,'' ''Internet,'' ''money transmitting business,'' ''restricted transaction,'' and ''unlawful Internet gambling'') follow or refer to the Act's definitions. The proposed rule does not attempt to further define gambling-related terms because the Act itself does not specify which gambling activities are legal or illegal and the Act does not require the Agencies to do so. The Act focuses on payment transactions and relies on prohibitions on gambling contained in other statutes under the jurisdiction of other agencies. Further, application of some of the terms used in the Act may depend significantly on the facts of specific transactions and could vary according to the location of the particular parties to the transaction or based on other factors unique to an individual transaction. The purpose of the proposed regulations is to implement the provisions of the Act that instruct the Agencies to require participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. For these reasons, and in consultation with the Department of Justice, the Agencies' preliminary view is that issues regarding the scope of gambling-related terms should be resolved by reference to the underlying substantive State and Federal gambling laws and not by a general regulatory definition.

The proposed rule includes definitions for some payment system terms (such as ''automated clearing house system,'' ''card system,'' ''check collection system,'' ''check clearing house,'' ''money transmitting business,'' ''money transmitting service,'' and ''wire transfer system'') because they relate to the designated payment systems, exemptions, and required policies and procedures. The definitions of most of these payment system terms are based on existing regulatory or statutory definitions, such as the Board's Regulation CC (12 CFR Part 229) or the Uniform Commercial Code (UCC).[5] Terms used in the context of particular payment systems are intended to be consistent with how those terms are used in those systems. The proposed rule incorporates by reference relevant definitions of terms regarding the automated clearing house (ACH) system as published in ''2007 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'' (the ACH Rules) by the

resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.

[2] 31 U.S.C. 5361(b).

[3] *See* H. Rep. No. 109–412 (pt. 1) p.10.

[4] The Act defines ''financial transaction provider'' as a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network or other participant in a designated payment system.

[5] The Uniform Commercial Code is a model commercial law developed by the National Conference of Commissioners on Uniform State Law (NCCUSL) in conjunction with the American Law Institute. NCCUSL is a non-profit organization that promotes the principles of uniformity by drafting and proposing specific statutes in areas of law where uniformity between the States is desirable. No uniform statute is effective until a State legislature adopts it as part of its State law.

National Automated Clearing House Association (NACHA). In accordance with the Act, the definitions of ''money transmitting business'' and ''money transmitting service'' have the meanings given the terms in the Bank Secrecy Act,[6] determined without regard to any regulations prescribed by the Treasury thereunder.[7]

In addition, the proposed regulation defines the term ''participant in a designated payment system'' as an operator of a designated payment system, or a financial transaction provider that is a member of, has contracted for services with, or is otherwise participating in, a designated payment system. The proposed regulatory definition clarifies that an end-user customer of a financial transaction provider is not included in the definition of ''participant,'' unless the customer is also a financial transaction provider otherwise participating in the designated payment system on its own behalf.

The Agencies request comment on all of the terms and definitions set out in this section. In particular, the Agencies request comment on any terms used in the proposed regulation that a commenter believes are not sufficiently understood or defined.

B. Designated Payment Systems

Section 3 of the proposed regulation designates the following payment systems as systems used by a financial transaction provider that could be used in connection with, or to facilitate, a restricted transaction: automated clearing house systems; card systems (including credit, debit, and pre-paid cards or stored value products); check collection systems; money transmitting businesses; and wire transfer systems. The broad range of the payment systems designated by the regulation reflects the fact that a restricted transaction may be made through many different payment systems. The designated payment systems are described in more detail below.

1. Automated Clearing House System

The ACH system is a funds transfer system, primarily governed by the rules and guidelines published by NACHA, that provides for the clearing and settlement of batched electronic entries for participating financial institutions.[8] ACH transfers can be either credit or debit transfers and can be either recurring or one-time transfers. Recurring ACH transfers typically occur on a set schedule and are pre-authorized by the individual or entity whose account is being credited or debited. Recurring credit transfers include payroll direct deposit payments, while recurring debit transfers include mortgage and other bill payments. One-time ACH transfers are authorized at the time the payment is initiated. One-time credit transfers include bill payments made through the bill payer's bank, while one-time debit transfers include bill payments made through the biller's payment site.

The designation of the originating and receiving institution in ACH terminology is based on the participants that initiate and receive the ACH entries, rather than the direction of the flow of funds. The originator of an ACH transfer generally sends the payment instruction to its bank, the originating depository financial institution (ODFI), so that the payment instruction can be entered into the ACH system. The ODFI combines the payment instructions with payment instructions from its other customers and sends them to an ACH operator for processing. The ACH operator will then sort and deliver the payments to the appropriate receiving depository financial institutions (RDFIs) and complete the interbank settlement process. The RDFIs then post the payments, either credits or debits, to the receivers' accounts. The fundamental difference between the ACH credit and debit transfers is that for ACH credit transfers funds are ''pushed'' to an account at the institution receiving the message, while in ACH debit transfers funds are ''pulled'' from an account at the institution receiving the message. In other words, for credit transfers, the originator is requesting that funds be credited to the receiver (the funds move in the same direction as the payment instruction), while for debit transfers, the originator is requesting that funds be debited from the receiver (the funds move in the opposite direction from the payment instruction).

In some instances, a ''third-party sender'' acts as an intermediary between an originator and an ODFI with respect to the initiation of ACH transactions where there is no contractual agreement between the originator and the ODFI. Under the ACH Rules, a third-party sender assumes the responsibilities of an originator and is obligated to provide the ODFI with any information the ODFI reasonably deems necessary to identify each originator for which the third-party sender transmits entries. The use of third-party senders in ACH transactions poses particular risks because the ODFI does not have a direct relationship with the originators.

The ACH Rules also include particular provisions governing cross-border ACH payments made in cooperation with another country's national payment system. Under the ACH Rules, the U.S. segment of a cross-border ACH transaction is settled separately between the U.S. participants and the U.S. gateway operator. The interface between the two national payment systems is commonly accomplished through an ''originating gateway operator'' in the originator's country and a ''receiving gateway operator'' in the receiver's country. Both the originating and receiving gateway operators are participants in their respective national payment systems and capable of clearing and settling payments in their respective systems. In the United States, the gateway operator can be an ODFI (for ''inbound'' transactions), an RDFI (for ''outbound'' transactions), or, with the appropriate agreements in place, an ACH operator. Additionally, a third-party sender may have proprietary arrangements with a foreign counterparty and accept instructions to submit cross-border ACH entries to the appropriate ACH operator or ODFI.

In the case of inbound transactions, the ''originating gateway operator'' in the country of the originator receives the entry from its national payments network and then transmits the entry to a receiving gateway operator in the receiving country. The receiving gateway operator then transmits the entry into its national payments system for delivery to the intended RDFI. If a U.S. ODFI acts as a receiving gateway operator, it would be the first U.S. institution involved in the transaction and would submit the transaction to its U.S. ACH operator for further processing. Under the ACH Rules, a U.S. receiving gateway operator for a particular cross-border transaction must make warranties expected of an ODFI for that transaction and assumes liability for breaches of those warranties to every RDFI and ACH operator, so in effect it becomes the ODFI for the U.S. segment of the transaction.[9] Similarly, a U.S. depository financial institution or third-party sender receiving instructions to originate cross-border ACH entries directly from a foreign counterparty would be the first U.S. participant involved in the transaction and would originate the ACH entry in the U.S. ACH system.

[6] 31 U.S.C. 5330(d).

[7] The Agencies believe that this cross-reference does not otherwise require the Act and the Bank Secrecy Act to be interpreted in light of each other.

[8] A primer on the ACH network is provided in the ACH Rules.

[9] *See* ACH Rules, Operating Rules §§ 11.6 and 11.7.

2. Card Systems

Card systems are systems for clearing and settling transactions in which credit cards, debit cards, pre-paid cards, or stored value products are used to purchase goods or services or to obtain a cash advance. In a typical card system transaction, there are three components to the transaction: Authorization, clearance, and settlement.

The transaction begins when the payor provides his card or card number to the payee, either in person or through the Internet or telephone. The payee uses that information to create a card payment authorization request, which it sends to its bank (the ''merchant acquirer'') or the bank's agent. The merchant acquirer sends an authorization request through the card system network to the bank that issued the payor's card (the ''card issuer'') or its agent.[10] The authorization request includes, amongst other information, the card number, the transaction amount, a merchant category code, and a transaction code. The merchant category code describes generally the nature of the payee's business and the transaction code describes whether the card was present at the point of transaction (*i.e.*, a point-of-sale transaction) or not present (*i.e.*, a transaction over the Internet or telephone). The card issuer or its agent either authorizes or declines the transaction and the payee is immediately notified of the decision through the card network. If authorization is granted, then the payee completes the underlying transaction with the payor; otherwise, the transaction is cancelled.

After the transactions have been authorized, they must then be cleared. The clearing process for personal identification number (PIN)-based debit card transactions is different from the process for credit card and signature-based debit card transactions. For PIN-based debit card transactions, the authorization and clearing occur at the same time and thus a separate clearing transmission by the payee to the merchant acquirer is not necessary. For credit cards and signature-based debit cards, the payee batches its authorized transactions and transmits them, typically at the end of the business day, to the merchant acquirer to be cleared through the card network. Depending on the card type, card issuer banks memo-post or charge transactions to their customers' accounts when the transactions are either authorized or cleared. Once the transactions have been cleared, they are settled at a time specified by the card network and the merchant acquirer and the card issuer are, respectively, credited and debited.

3. Check Collection Systems

A check collection system is an interbank system for collecting, presenting, returning, and settling checks or an intrabank system for settling checks deposited and drawn on the same bank (*i.e.*, ''on-us checks''). A typical check transaction is initiated by the payor writing a check to the order of a payee and giving the signed check to the payee as payment. The payee deposits the check with its bank (the bank of first deposit or the ''depositary bank''). Except for on-us checks, the depositary bank will then send the check to the bank on which it is drawn (the ''paying bank'') for payment.

The depositary bank may present the check for payment directly to the paying bank, may use a check clearing house, or may use the services of an intermediary bank, such as a Federal Reserve Bank or another correspondent bank (a ''collecting bank'').[11] These intermediaries handle large volumes of checks daily and typically rely on three pieces of information: The routing number of the bank from which it received the check; the routing number of the bank to which the check is destined (*i.e.* the paying bank); and the amount of the check. Upon presentment, the paying bank settles with the presenting bank for the amount of the check and debits the amount of the check from the account of the payor.

Checks may be cleared cross-border through correspondent banking relationships. If a U.S. payor writes a check to the order of an offshore payee, the payee will likely deposit the check in its home country bank. The home country bank may have a correspondent relationship with a U.S. bank for check collection and deposit the check with its U.S. correspondent bank. The U.S. bank will then collect the check through the U.S. check collection system. The first banking office located in the United States that receives a check from outside the United States for forward collection inside the United States is defined as the depositary bank for that check.[12] Accordingly, if a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent for forward collection, the U.S. correspondent is the depositary bank for those checks.

4. Money Transmitting Businesses

A money transmitting business is a person (other than a depository institution) that engages as a business in the transmission of funds, including any person that engages as a business in an informal money transfer system or any network of people that engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system. Money transmitters commonly will facilitate money transmissions through agent locations, by phone, or through an Internet website and can be used for payments to some businesses as well as money transfers to individuals. This term includes networks such as Western Union and MoneyGram, on-line payment systems such as PayPal, and other electronic systems that engage in the business of transmitting funds.

Money transmitting businesses use various operational models. In networks with operations similar to Western Union and MoneyGram, the payor initiates the transaction in person at the money transmitting business's location, by phone, or through the money transmitting business's Internet site and generally can use cash, a credit card, or a debit card to fund a transfer. The money transmitter obtains identification from the payor, as well as identifying information for the intended payee and the location to which the payment should be sent. The money transmitter may provide the payor with a reference number that the payee will need in order to pick up the payment. Large money transmitters, such as Western Union or, MoneyGram, typically transmit the payment instructions through an internal proprietary system. The payor or the money transmitter notifies the payee of the availability of the payment. The payee goes to one of the money transmitting business's physical locations, provides the necessary information (such as personal identification and perhaps the transaction reference number), and receives the funds. Alternatively, some

[10] This discussion generally relates to the card processing model of Visa and MasterCard, in which the merchant acquirer, the card network, and the card issuer are separate entities. Other card companies, such as American Express, may employ a model in which one company owns the card processing network and performs all major functions involved in issuing cards and acquiring merchants to accept its cards.

[11] Check clearing houses generally provide a facility or mechanism for banks to exchange checks for collection and return. The services provided by check clearing houses vary. Some merely provide space for banks to exchange checks. Others provide the capability to exchange between banks in electronic form. A check clearing house generally also facilitates settlement of the checks exchanged through it. Check clearing houses are not considered collecting or returning banks.

[12] 12 CFR 229.2(o) commentary. Foreign offices of U.S. and foreign banks are not included in Regulation CC's definition of ''bank.'' 12 CFR 229.2(e) commentary.

money transmitting businesses will transfer money directly into a payee's bank account in certain circumstances, such as when the recipient is a business that has been approved to receive funds through the money transmitting business (a ''commercial subscriber''). Settlement between the sending and receiving accounts or locations is effected based on rules established by the money transmitting business.

Other money transmitters may follow the PayPal-type operational model and provide Internet electronic payment services to facilitate purchases over the Internet, either from vendors or through auctions. In such a model, a consumer establishes an account with the money transmitting business and uses a debit card, credit card, or ACH transfer to fund the account. In order to fund a purchase from a vendor with an account with the same money transmitting business, the consumer instructs the money transmitting business to transfer the funds to the vendor, identifying the vendor by e-mail address. The money transmitting business sends an e-mail notification to the vendor and transfers the funds from the consumer's account to the vendor's account. The vendor may keep the funds in its account with the money transmitting business (and subsequently use them to effect payments through the system) or may transfer the funds from its account to its bank account, such as through an ACH credit transaction.

Other money transmitting businesses may use operational models different than those set out above. The Agencies intend to apply the term ''money transmitting business'' to cover businesses that meet the definition of the term as used in the Act, regardless of operational model.

5. Wire Transfer Systems

A wire transfer system is a system through which the sender of a payment transmits an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt (or on a day stated in the order) by electronic or other means through a network, between banks, or on the books of a bank. Wire transfer systems are generally designed for large-value transfers between financial institutions, but financial institutions also send lower-value, consumer-initiated payment orders through wire transfer systems.

In a typical consumer-initiated wire transfer transaction, the consumer would initiate the transfer after obtaining wire transfer instructions from the intended beneficiary (such as the bank to which the beneficiary would like the funds transferred and the beneficiary's account number at the bank). The consumer provides that information in the payment order to its bank (the ''originator's bank'') to initiate the wire transfer. The originator's bank may transfer the payment directly to the beneficiary's bank if the banks have an account relationship.

Alternatively, the originator's bank may use the services of a wire transfer network, such as the Federal Reserve Banks'' Fedwire system or The Clearing House's CHIPS system, to send the transfer either to the beneficiary's bank or to an intermediary bank that has an account relationship with the beneficiary's bank. In an automated wire transfer system such as Fedwire or CHIPS, typically the information used in processing the payment order is the routing information of the sending bank, the routing information of the receiving bank, and the amount of the wire transfer. Although additional information may be, and in some cases is required to be, included in fields of the payment order message format (such as the names of the originator and the beneficiary, their account numbers, and addresses), this information is not relied upon by the intermediary bank to process the transfer.

Wire transfer transaction proceeds may be sent cross-border through correspondent banking relationships. The last U.S. bank in the outgoing transaction may either have a correspondent banking relationship with the beneficiary's foreign bank or a foreign intermediary bank for further delivery to the beneficiary's bank. Alternatively, the U.S. bank may have a branch in the home country of the beneficiary and can make an ''on-us'' transfer to the branch for further processing through the beneficiary's home country national payment system.

6. Other Payment Systems

The Agencies request comment on whether the list of designated payment systems in the proposed regulation is too broad or too narrow. In particular, the Agencies request comment on whether there are non-traditional or emerging payment systems not represented in the proposed regulation that could be used in connection with, or to facilitate, any restricted transaction. If a commenter believes that such a payment system should be designated in the final rule, the commenter should describe policies and procedures that might be reasonably designed to identify and block, or otherwise prevent or prohibit, restricted transactions through that system.

C. Exemptions

The Act directs the Agencies to exempt certain restricted transactions or designated payment systems from any requirements imposed under the regulations if the Agencies find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions. Section 4 of the proposed rule provides such an exemption for certain participants in ACH systems, check collection systems, and wire transfer systems. The proposed regulation is structured to impose requirements on participants in designated payments systems with respect to the segments of particular transactions that those participants handle. Therefore, rather than exempting entire categories of restricted transactions or entire payment systems, the Agencies have structured the exemptions to apply to particular participants in particular payment systems as described in greater detail below. The Agencies believe that this limited application of their exemption authority better serves the Act's purposes of preventing the processing of restricted transactions.

The Agencies are proposing to exempt all participants in the ACH systems, check collection systems, and wire transfer systems, except for the participant that possesses the customer relationship with the Internet gambling business (and certain participants that receive certain cross-border transactions from, or send certain such transactions to, foreign payment service providers, as discussed further below). The exemptions for these participants reflect the fact that these systems currently do not enable the exempted participants to reasonably identify and block, or otherwise prevent or prohibit, restricted transactions under the Act. While other systems, such as the card systems, have developed merchant category and transaction codes that identify the business line of the payee (e.g., the gambling business) and how the transfer was initiated (such as via the Internet), so that the systems are able to identify and block certain types of payments in real time, the ACH systems, check collection systems, and wire transfer systems do not use such codes. Moreover, as a general matter, a consumer can make payment by check, ACH, or wire transfer to any business with an account at a depository institution. This is in contrast to card systems and money transmitting businesses, in which consumers can make direct payments only to those businesses that have explicitly agreed to

participate in those payment systems. As a result, the preliminary view of the Agencies is that it is not reasonably practical for the exempted participants in ACH systems, check collection systems, and wire transfer systems discussed below to identify and block, or otherwise prevent or prohibit, restricted transactions under the Act. The Agencies intend to monitor technological developments in these payment systems and will consider amending the exemptions if, in the future, the technology prevalent in these payment systems permits such participants to identify and block, or otherwise prevent and prohibit, those restricted transactions.

No designated payment system is completely exempted by the proposed rule. The Agencies intend that the participant with the customer relationship with the Internet gambling business would have the responsibility in the ACH systems, check collection systems, or wire transfer systems to prevent or prohibit restricted transactions from being credited to the account of the gambling business through that particular payment system. The Agencies request comment on all aspects of the exemptions, but in particular, whether the exemptions for certain participants in the ACH systems, check collection systems, and wire transfer systems discussed in more detail below are appropriate. Commenters that believe that these participants should not be exempted from the requirements of the regulation should provide specific examples of policies and procedures that such participants could establish and implement that would be reasonably designed to identify and block, or otherwise prevent or prohibit, restricted transactions.

1. ACH systems

With regard to an ACH system, the proposal provides an exemption from the regulation's requirements for the ACH system operator, the originating depository financial institution (ODFI) in an ACH credit transaction, and the receiving depository financial institution (RDFI) in an ACH debit transaction (except with respect to certain cross-border transactions discussed below). The proposal does not exempt the institution serving as the ODFI in an ACH debit transaction or the RDFI in an ACH credit transaction because these institutions typically have a pre-existing relationship with the customer receiving the proceeds of the ACH transaction and could, with reasonable due diligence, take steps to ascertain the nature of the customer's business and ensure that the customer relationship is not used to receive restricted transactions.

The proposal would provide an exemption for the ACH system operator because it is not reasonably practical for the operator to identify and block a particular ACH transfer as a restricted transaction. The ACH system operator's function is to act as the central clearing facility for ACH entries. The ACH operator sorts the entries by RDFI routing information and transmits the payment information to the appropriate RDFI for posting. The ACH system operator would not have any direct interaction with either the gambler or the Internet gambling business and would not be in a position to obtain the necessary information to analyze individual transactions to determine whether they are restricted transactions. In addition, ACH operators use highly-automated systems to sort large volumes of ACH entries without manual intervention. A requirement to analyze each ACH entry manually to determine whether it is a restricted transaction would substantially increase processing times for all ACH entries, including entries that are not restricted transactions, and reduce the efficiency of the ACH system. Moreover, even if the payee information on an ACH entry is analyzed manually, it is very difficult for an ACH operator to determine whether the ACH entry is related to a restricted transaction.

The proposal also would provide an exemption for the RDFI in an ACH debit transaction. In this case, the exempted participant would not have any direct interaction with its customer prior to processing the transaction. In a restricted transaction using an ACH debit transaction, a gambler could authorize the unlawful Internet gambling business to debit his account for the restricted transaction and the RDFI would not have an opportunity to obtain information from its customer (the gambler in this case) to determine whether the entry was in connection with a restricted transaction. Also, as discussed below, information obtained from the customer may be of limited value.

In addition, the proposal would provide an exemption for the ODFI in an ACH credit transaction. The Agencies carefully considered whether such an exemption would be warranted. Typically, a consumer would initiate an ACH credit transaction on-line with the ODFI, so there could be an opportunity for the ODFI to design a procedure to obtain information on an outgoing ACH credit transaction to determine whether it is a restricted transaction. For example, for each ACH credit transaction, the ODFI could require the originator to submit a statement that the ACH credit transaction is not a restricted transaction and/or a description of the nature and purpose of the transaction.

The Agencies' preliminary view, however, is that, while it may be possible at least in some cases for an ODFI in an ACH credit transaction to obtain information from the originator regarding whether the ACH credit transaction is a restricted transaction under the Act, any associated benefits would likely be outweighed by the associated costs that would be borne by ODFIs. Specifically, any process requiring the customer to describe the nature of the transaction and/or state that the transaction does not involve unlawful Internet gambling may be of limited value, either because a customer may knowingly mischaracterize the actual nature of the transaction in order to avoid the transaction being rejected or blocked, or because the customer may not actually know whether an Internet gambling transaction is a restricted transaction under the Act. The Agencies also believe that the ODFI would generally be unable to determine whether the originator's characterization of the transaction is accurate. Moreover, the burden on ODFIs in developing the necessary systems to obtain the information and determine whether to reject or block a transaction would likely be substantial.

The Agencies specifically request comment on whether it is reasonably practical to implement policies and procedures (including, but not limited to, those discussed above) for an ODFI in an ACH credit transaction, whether such policies and procedures would likely be effective in identifying and blocking restricted transactions, and whether the burden imposed by such policies and procedures on an originator and an ODFI would outweigh any value provided in preventing restricted transactions and a description of such burdens and benefits. If a commenter believes that an ODFI in an ACH credit transaction should not be exempted, the Agencies request that the commenter provide examples of policies and procedures reasonably designed for an ODFI in an ACH credit transaction to identify and block or otherwise prevent or prohibit restricted transactions in the ACH system.

2. Check Collection Systems

With regard to check collection systems, the proposed rule would provide an exemption from the regulation's requirements for a check

clearing house, the paying bank (unless it is also the depositary bank), any collecting bank (other than the depositary bank), and any returning bank. The proposal does not exempt the institution serving as the depositary bank (i.e., the first U.S. institution to which a check is transferred, in this case the institution receiving the check deposit from the gambling business) in a check transaction. The depositary bank is typically in a position, through reasonable due diligence, to take steps to ascertain the nature of the customer's business and ensure that the customer relationship is not used for receiving restricted transactions.

The proposed rule would provide an exemption for the check clearing house because the check clearing house generally does not have a direct relationship with either the payor or the payee and would not be in a position to obtain information from either party regarding the transaction that would permit the check clearing house to determine whether a particular check was a restricted transaction.

For similar reasons, the proposal would provide an exemption for a collecting bank (other than the depositary bank) and a returning bank in a check collection transaction. Collecting banks (other than the depositary bank) and returning banks are intermediary banks that generally do not have a direct relationship with either the payor or the payee in the check transaction and would not be in a position to obtain information from either party that would permit them to determine whether a particular check was a restricted transaction.

The proposal would also provide an exemption for the paying bank (unless the paying bank is also the depositary bank). The paying bank is generally the bank by or through which a check is payable and to which the check is sent for payment or collection. In a restricted transaction, this would generally be the bank holding the gambler's checking account. While the paying bank would have a direct relationship with the payor, it would not be in a position to obtain information from the payor prior to the transaction being settled. Checks are processed and paid by a paying bank's automated systems according to the information contained in the magnetic ink character recognition (MICR) line printed near the bottom of the check. The MICR line commonly includes the bank's routing number, the customer's account number, the check number, and the check amount, but does not contain any information regarding the payee. A requirement to analyze manually each check with respect to the payee would substantially increase processing times for all checks, including checks that are not restricted transactions, and reduce the efficiency of the check collection systems. Moreover, even if the payee information on checks is analyzed manually, it is very difficult for a paying bank to determine whether the check is related to a restricted transaction. If the paying bank is also the depositary bank (i.e., an ''on-us'' transaction), the institution would still be required to comply with the regulations as a depositary bank.

3. Wire Transfer Systems

With regard to wire transfer systems, the proposal provides an exemption from the regulation's requirements for the originator's bank (i.e., the depository institution sending the wire transfer on behalf of the gambler) and intermediary banks (other than the bank that sends the transfers to a foreign respondent bank as discussed below). The proposal does not exempt the institution serving as the beneficiary's bank (i.e., the institution receiving the wire transfer on behalf of the gambling business) in a particular wire transfer system. The beneficiary's bank typically has a pre-existing relationship with the customer receiving a particular wire transfer and, accordingly, is in a position, through reasonable due diligence, to take steps to ascertain the nature of the customer's business and assess the risk that the customer may be involved in restricted transactions.

The proposal would provide an exemption for intermediary banks because it is not reasonably practical for institutions serving in this capacity in a wire transfer system to identify and block a particular wire transfer as a restricted transaction under the Act. The information normally relied upon by intermediary banks' automated systems in processing a wire transfer does not typically include information that would enable those systems to identify and block individual transfers as restricted transactions under the Act. In addition, intermediary banks process tremendous volumes of wire transfers in seconds or less on an automated basis, without manual intervention. A requirement to analyze each transaction manually to determine whether it is a restricted transaction would substantially increase processing times for all wire transfers, including transfers that are not restricted transactions, and reduce the efficiency of the wire transfer systems. Moreover, even if the beneficiary information in a wire transfer payment message is analyzed manually, it is very difficult for an intermediary bank to determine whether the wire transfer is related to a restricted transaction.

The Agencies also carefully considered whether to grant an exemption for portions of a wire transfer system involving the originator's bank. Similar to an ODFI in an ACH credit transaction, the originating customer in a particular wire transfer generally has some direct interaction with the originating institution, so there could be an opportunity for the originating institution to design a procedure to review an outgoing wire transfer to determine whether it is a restricted transaction. For example, for each wire transfer (or for each transfer originated by a consumer), the originator's bank could require the originator to submit a statement that the wire transfer is not a restricted transaction and a description of the nature and purpose of the transaction. This two-part submission could be made in writing for in-person originations, orally for phone originations, or on-line for automated originations. For the casual or impulse gambler, requiring such a statement may cause the gambler to consider carefully (or to investigate) whether the payment is legal and even whether engaging in gambling is prudent in light of the gambler's personal circumstances.

The Agencies' preliminary view is that, while it may be possible, at least in some cases, for an originating bank to obtain such a submission from the originator, any associated benefits would likely be outweighed by the associated costs for reasons similar to those described above regarding the exemption for ODFIs in ACH credit transactions.

The Agencies specifically request comment on whether it is reasonably practical for an originator's bank and an intermediary bank in a wire transfer system to implement policies and procedures (including, but not limited to, those discussed above) that would likely be effective in identifying and blocking or otherwise prevent or prohibit restricted transactions; whether the burden imposed by such policies and procedures on an intermediary bank, an originator, and an originator's bank would outweigh any value provided in preventing restricted transactions and a description of such burdens and benefits; and whether any policies and procedures could reasonably be limited only to consumer-initiated wire transfers and, if so, a description of any costs or benefits of so limiting the requirement. If a commenter believes that the originator's bank or an intermediary bank should not be exempted, the Agencies request that the commenter provide examples of

policies and procedures reasonably designed for institutions serving in those functions to identify and block or otherwise prevent or prohibit restricted transactions in a wire transfer system.

D. Processing of Restricted Transactions Prohibited

Section 5 of the proposed regulations expressly requires all non-exempt participants in the designated payment systems to establish and implement policies and procedures in order to identify and block, or otherwise prevent or prohibit, restricted transactions. In accordance with the Act, section 5 states that a participant in a designated payment system shall be considered in compliance with this requirement if the designated payment system of which it is a participant has established policies and procedures to prevent or prohibit restricted transactions and the participant relies on, and complies with, the policies and procedures of the designated payment system. In other words, the Act and the proposed rule permit non-exempt participants in a designated payment system to either (i) Establish their own policies and procedures to prevent or prohibit restricted transactions; or (ii) rely on and comply with the policies and procedures established by the designated payment system, so long as such policies and procedures comply with the regulation.

Section 5 also imports the Act's liability provisions, which state that a person that identifies and blocks, prevents, prohibits, or otherwise fails to honor a transaction is not liable to any party for such action if (i) the transaction is a restricted transaction; (ii) such person reasonably believes the transaction to be a restricted transaction; or (iii) the person is a participant in a designated payment system and prevented the transaction in reliance on the policies and procedures of the designated payment system in an effort to comply with the regulation.

Finally, section 5 implements the Act's requirement that the Agencies ensure that transactions in connection with any activity excluded from the Act's definition of unlawful Internet gambling are not blocked or otherwise prevented or prohibited by the regulations (the ''overblocking'' provision). Section 5 makes clear that nothing in the regulation requires or is intended to suggest that non-exempt participants should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of ''unlawful Internet gambling'' in the Act, such as qualifying intrastate or intratribal transactions, or a transaction in connection with any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*).[13] As noted above, it also seems clear that the Act was not intended to change the legality of any gambling-related activity in the United States.[14] Consequently, the proposed regulations neither require nor are intended to suggest that participants in designated payment systems should establish policies and procedures to prevent any Internet gambling transactions that are legal under applicable Federal and State law.

Some payment system operators have indicated that, for business reasons, they have decided to avoid processing any gambling transactions, even if lawful, because, among other things, they believe that these transactions are not sufficiently profitable to warrant the higher risk they believe these transactions pose.[15] The Agencies believe that the Act does not provide the Agencies with the authority to require designated payment systems or participants in these systems to process any gambling transactions, including those transactions excluded from the Act's definition of unlawful Internet gambling, if a system or participant decides for business reasons not to process such transactions. The Agencies request comment on the proposed approach to implementing the Act's overblocking provision.

E. Reasonably Designed Policies and Procedures

Section 6 of the proposed regulations sets out for each designated payment system examples of policies and procedures the Agencies believe are reasonably designed to prevent or prohibit restricted transactions for non-exempt participants in the system. Generally, under the proposed rule, non-exempt participants in each designated payment system should have policies and procedures that (i) Address methods for conducting due diligence in establishing and maintaining a commercial customer relationship designed to ensure that the commercial customer does not originate or receive restricted transactions through the customer relationship; and (ii) include procedures reasonably designed to prevent or prohibit restricted transactions, including procedures to be followed with respect to a customer if the participant discovers the customer has been engaging in restricted transactions through its customer relationship. These procedures are discussed in more detail below.

1. Due Diligence

The Agencies would expect non-exempt participants' policies and procedures addressing due diligence to be consistent with their regular account-opening practices. The Agencies anticipate that participants would use a flexible, risk-based approach in their due diligence procedures in that the level of due diligence performed would match the level of risk posed by the customer. The due diligence is intended to apply to a participant when the participant is directly establishing or maintaining a customer relationship, but not with respect to entities with which the participant does not have a direct relationship. For example, if a card network operator does not act as the merchant acquirer in the network, the operator would not be expected to conduct due diligence on the merchant customers. This function should be performed by the member institutions of the network that are acting as merchant acquirers. However, if a card network operator also acted as the merchant acquirer, it should conduct the appropriate due diligence on its merchants in establishing or maintaining the customer relationship. The Agencies expect that the most efficient way for participants to implement the due diligence procedures in the proposed rule would be to incorporate them into existing account-opening due diligence procedures (such as those required of depository institutions under Federal banking agencies' anti-money laundering compliance program requirements).[16]

The due diligence requirements for a participant establishing a customer relationship in an ACH system also apply to the establishment of a relationship with any third-party sender. Before establishing a relationship with a third-party sender, a participant should conduct appropriate due diligence with respect to the third-party sender. A third-party sender should conduct due diligence on its customers to ensure that it is not transmitting restricted transactions through an ODFI, and the ODFI should confirm that the third-party sender conducts such due diligence on its

[13] See the discussion of the interplay between the Interstate Horseracing Act and federal gambling statutes contained in Footnote 1.

[14] 31 U.S.C. 5361(b).

[15] Designated payment system representatives have informally indicated to the Agencies that many participants in their systems prefer not to process gambling-related transactions because they have experienced higher-than-usual losses due, for example, to assertions that gambling transactions were ''unauthorized.''

[16] *See, e.g.,* 12 CFR 208.63.

originators. In maintaining the customer relationship with the third-party sender, the participant should ensure that there is a process to monitor the operations of the third-party sender, such as by audit.

The Agencies request comment as to the appropriateness of participants incorporating into their existing account-opening procedures the due diligence provisions of the proposed rule. The Agencies also request comment on whether, and to what extent, the proposed rule's examples of due diligence methods should explicitly include periodic confirmation by the participants of the nature of their customers' business.

2. Remedial Action

The Agencies also would expect a non-exempt participant to have policies and procedures to be followed if the participant becomes aware that one of its customer relationships was being used to process restricted transactions. These policies and procedures could include a broad range of remedial options, such as imposing fines, restricting the customer's access to the designated payment system or the participant's facilities, and terminating the customer relationship by closing the account. In addition, as provided in section 5(e) of the proposed rule, nothing in the proposed rule modifies any existing legal requirement relating to the filing of suspicious activity reports with the appropriate authorities. The Agencies request comment on the appropriateness of the proposed rule's examples of a participant's procedures upon determining that a customer is engaging in restricted transactions through the customer relationship, and whether any additional such procedures should be included as examples.

A participant also would be expected to take appropriate remedial action with respect to a business engaged in unlawful Internet gambling with which it does not have a customer relationship if the participant becomes aware that the gambling business is using the participant's trademark on its website to promote restricted transactions. For example, the participant could consider taking legal action to prevent the unauthorized use of its trademark by an unlawful Internet gambling business.

3. Monitoring

The policies and procedures of non-exempt participants in card systems and money-transmitting businesses are expected to address ongoing monitoring or testing to detect possible restricted transactions. Examples of such monitoring or testing include (1) Monitoring and analyzing payment patterns to detect suspicious patterns of payments to a recipient, and (2) monitoring of Web sites to detect unauthorized use of the relevant designated payment system, including unauthorized use of the relevant designated payment system's trademarks. Unlawful Internet gambling businesses may be able to access a designated payment system (such as a money transmitting business) that would otherwise deny them a commercial subscriber account, by using individuals as agents to receive restricted transactions and may advertise the use of these systems on their website. Certain money transmitting businesses have developed monitoring procedures to detect suspicious payment volumes to an individual recipient in order to address this risk.[17] In addition, certain money transmitting businesses subscribe to a service that will search the Internet for unauthorized use of the money transmitting business's trademark.

The proposed rule does not include ongoing monitoring and testing within the examples of the policies and procedures for ACH systems, check collection systems, and wire transfer systems because these systems currently do not have the same level of functionality for analyzing patterns of specific payments being processed through the system. Moreover, as mentioned above, these three systems are open, universal systems that do not require businesses to explicitly sign up in order to receive payments through them. The Agencies request comment on whether ongoing monitoring and testing should be included within the examples for the ACH, check collection, and wire transfer systems, and, if so, how such functionality could reasonably be incorporated into those systems. As a general matter, the Agencies will continue to monitor technological developments in all payment systems, and, as those developments warrant, will engage in future rulemakings to address emerging means of identifying and blocking or otherwise preventing or prohibiting restricted transactions in the designated payment systems.

4. Coding

The policies and procedures of participants in a card system are expected to address methods for identifying and blocking restricted transactions as they are processed, such as by establishing one or more transaction codes and merchant/business category codes that are required to accompany the authorization request from the merchant for a transaction and creating the operational functionality to enable the card system or the card issuer to identify and deny authorization for a restricted transaction. Card systems may be able to develop one or more merchant category codes for gambling transactions that are not restricted transactions under the Act. For example, in certain cases it may be reasonably practical for card systems to develop merchant category codes for particular types of lawful Internet gambling transactions. The Agencies specifically seek comment on the practicality, effectiveness, and cost of developing such additional merchant codes.

The proposed rule does not include specific methods for identifying and blocking restricted transactions as they are being processed within the examples of procedures for any designated payment system other than card systems because the Agencies believe that only the card systems have the necessary capabilities and processes in place. The Agencies request comment on whether the procedural examples for the other designated payment systems should encompass identifying and blocking restricted transactions as they are being processed, and, if so, how such functionality could reasonably be incorporated into the systems. Again, the Agencies will monitor technological developments in all payment systems, and engage in future rulemakings as warranted to address emerging means of identifying and blocking or otherwise preventing or prohibiting restricted transactions in the designated payment systems.

5. Cross-Border Relationships

Based on the Agencies' research and statements by industry representatives, the Agencies believe that most unlawful Internet gambling businesses do not have direct account relationships with U.S. financial institutions. In most cases, their accounts are held at offshore locations of foreign institutions that are not subject to the Act, and restricted transactions enter the U.S. payment system through those foreign institutions. In two of the designated payment systems (card systems and money transmitting businesses), the proposed rule does not provide exemptions for any participants and the proposed rule's requirements would

[17] As provided in the Act and the proposed rule, participants that are part of a money transmitting network may be able to rely on the network's procedures in this regard if the participants determine that the network's procedures comply with the requirements of the regulation as applied to the participant.

apply to all U.S. participants in both domestic and cross-border transactions. In the case of ACH, check collection, and wire transfer systems, exemptions are provided for certain participants and examples of special policies and procedures for cross-border transactions are provided.

In general, in the case of U.S.-only transactions, for the ACH, check collection, and wire transfer systems, the proposed rule would require the participant in a particular payment system that has the direct relationship with the gambling business to have policies and procedures to prevent or prohibit restricted transactions through these systems. The other participants in each of these systems would otherwise be exempt from the requirements of the regulation. In the case of payment transactions for the benefit of offshore gambling businesses, none of the participants in the United States that process the transaction would have a direct relationship with the gambling business that receives the payment and would, under the general regulatory requirements, be exempt and not required to have policies and procedures to prevent or prohibit restricted transactions.

In the case of incoming cross-border ACH debit and check collection transactions, the proposed rule places responsibility on the first participant in the United States that receives the incoming transaction directly from a foreign institution (*i.e.*, an ACH debit transaction from a foreign gateway operator, foreign bank, or a foreign third-party processor or a check for collection directly from a foreign bank) to take reasonable steps to ensure that their cross-border relationship is not used to facilitate restricted transactions.[18] Participants in such arrangements should take steps to prevent their foreign counterparty from sending restricted transactions through the participant, such as including as a term of its contractual agreement with the foreign institution a requirement that the foreign institution have policies and procedures in place to avoid sending restricted transactions to the U.S. participant. In addition, the U.S. participant's policies and procedures would be deemed compliant with the regulation if they also include procedures to be followed with respect to a foreign bank or foreign third-party processor that is found to have transmitted restricted transactions to, or received restricted transactions through, the participant. These policies and procedures might address (i) When access through the cross-border relationship should be denied and (ii) the circumstances under which the cross-border relationship should be terminated.

In the case of outgoing wire transfers and ACH credit transactions, a transfer by a U.S. gambler to a foreign Internet gambling business would be initiated in the United States and be sent or credited to an account at the gambling business's foreign bank. In this case, the originator's bank or the intermediary bank in the U.S. that sends the wire transfer transaction, or the gateway operator that sends the ACH credit entry, directly to a foreign bank should have policies and procedures in place to be followed if such transfers to a particular foreign bank are subsequently determined to be restricted transactions.[19] For example, some Internet gambling businesses indicate on their websites the U.S. correspondent bank through which wire transfers to them must be made. In such cases, the U.S. participant should consider whether wire transfer services or the correspondent arrangement should continue.

The Agencies recognize that the issue of the extent of a bank's responsibility to have knowledge of its respondent banks' customers is a difficult one, which also arises in the context of managing money laundering and other risks that may be associated with correspondent banking operations. The Agencies specifically request comment on the likely effectiveness and burden of the proposed rule's due diligence and remedial action provisions for cross-border arrangements, and whether alternative approaches would increase effectiveness with the same or less burden.

6. List of Unlawful Internet Gambling Businesses

The Act does not mention the creation of a list of unlawful Internet gambling businesses. However, the Agencies are aware that there is some interest in exploring this idea. The Agencies considered including in the proposed rule's examples of reasonably designed policies and procedures, examination of a list that would be established by the U.S. Government of businesses known to be engaged in the business of unlawful Internet gambling. Some have suggested that the obligation of financial institutions with respect to such a list might be similar in effect to their obligations under certain other U.S. laws, such as those administered by the Office of Foreign Assets Control (OFAC), albeit in a different context.[20] Some have also suggested that the list could be either available publicly in its entirety, so that financial transaction providers could check transactions against the list themselves, or maintained confidentially at a central location, so that financial transaction providers could submit transactions to the entity operating the central database, which would inform the financial transaction providers whether the transaction involved an unlawful Internet gambling business on its list. Proponents of the list suggest that under either of these approaches, certain restricted transactions directed to unlawful Internet gambling accounts could be blocked.

Any government agency compiling and providing public access to such a list would need to ensure that the particular business was, in fact, engaged in activities deemed to be unlawful Internet gambling under the Act. This would require significant investigation and legal analysis. Such analysis could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated, and the location where the bet or wager was received. In addition, a business that engages in unlawful Internet gambling might also engage in lawful activities that are not prohibited by the Act. The government would need to provide an appropriate and reasonable process to avoid inflicting unjustified harm to lawful businesses by incorrectly including them on the list without adequate review. The high standards needed to establish and maintain such a list likely would make compiling such a list time-consuming and perhaps under-inclusive. To the extent that Internet gambling businesses can change the names they use to receive payments

[18] In an incoming cross-border ACH debit transaction, if the first participant in the United States is an ACH operator (not an ODFI), the proposed rule makes clear that, while serving in the capacity of a receiving gateway operator, the ACH operator is not exempt from the general requirement to have policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit, restricted transactions.

[19] The proposed rule makes clear that the originator's bank or the intermediary bank in the United States that directly sends a cross-border wire transfer to a foreign bank, while acting in that capacity, is not exempt from the general requirement to have policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. Similarly, in an outgoing cross-border ACH credit transaction, the ACH operator in the United States, acting as the originating gateway operator, that directly sends the transaction to a foreign gateway operator is not exempt from the general policies and procedures requirement while acting in that capacity.

[20] H. Rep. No. 109–412, Part 1, p. 11.

with relative ease and speed, such a list may be outdated quickly.

The Agencies do not enforce the gambling laws, and interpretations by the Agencies in these areas may not be determinative in defining the Act's legal coverage. As noted above, the Act does not comprehensively or clearly define which activities are lawful and which are unlawful, but rather relies on underlying substantive law.[21] In order to compile a list of businesses engaged in unlawful Internet gambling under the Act, the Agencies would have to formally interpret the various Federal and State gambling laws in order to determine whether the activities of each business that appears to conduct some type of gambling-related function are unlawful under those statutes.

The Agencies request comment on whether establishment and maintenance of such a prohibited list by the Agencies is appropriate, and whether examining or accessing such a list should be included in the regulation's examples of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The Agencies also request comment on whether, if it were practical to establish a fairly comprehensive list and a participant routinely checked the list to make sure the indicated payee of each transaction the participant processed on a particular designated payment system is not on the list, the participant should be deemed to have, without taking any other action, policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that designated payment system. Similarly, the Agencies also request comment on whether, if such a list were established and a participant routinely checked the list to make sure a prospective commercial customer was not included on the list (as well as perhaps periodically screening existing commercial customers), the participant should be deemed to have, without taking any other action, policies and procedures reasonably designed to prevent or prohibit restricted transactions. Finally, assuming such a list were established and became available to all participants in the designated payment systems, the Agencies request comment on the extent to which the exemptions provided in section 4 of the proposed rule should be narrowed.

Any commenter that believes that such a list should be included in the regulation's examples of policies and procedures is requested to address the issues discussed above regarding establishing, maintaining, updating, and using such a list. The Agencies also request comment on any other practical or operational aspects of establishing, maintaining, updating, or using such a list. Finally, the Agencies request comment on whether relying on such a list would be an effective means of carrying out the purposes of the Act, if unlawful Internet gambling businesses can change their corporate names with relative ease.

F. Regulatory Enforcement

As provided in the Act, section 7 of the proposed rule indicates that the requirements of the Agencies' rule would be subject to the exclusive regulatory enforcement of (1) The Federal functional regulators, with respect to the designated payment systems and participants therein that are subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodity Exchange Act; and (2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators.

III. Administrative Law Matters

A. Executive Order 12866

It has been determined that this regulation is a significant regulatory action as defined in E.O. 12866. Accordingly, this proposed regulation has been reviewed by the Office of Management and Budget. The Regulatory Assessment prepared by the Treasury for this regulation is provided below.

1. Description of Need for the Regulatory Action

The rulemaking is required by the Act, the applicable provisions of which are designed to interdict the flow of funds between gamblers and unlawful Internet gambling businesses. To accomplish this, the Act requires the Agencies, in consultation with the Attorney General, to jointly prescribe regulations requiring designated payment systems (and their participants) to establish policies and procedures that are reasonably designed to prevent or prohibit such funding flows (hereafter ''unlawful Internet gambling transactions'').[22]

In accordance with the Act, section 3 of the proposed rule designates five payment systems that could be used in connection with unlawful Internet gambling transactions. Sections 5 and 6 of the proposed rule require designated payment systems and participants in those payment systems to establish reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions. As required by the Act, section 4 of the proposed rule exempts certain participants in designated payment systems from the requirement to establish policies and procedures because the Agencies believe that it is not reasonably practical for those participants to prevent or prohibit unlawful Internet gambling transactions. As required by the Act, section 6 of the proposed rule also contains a ''safe harbor'' provision by including non-exclusive examples of policies and procedures which would be deemed to be reasonably designed to prevent or prohibit unlawful Internet gambling transactions within the meaning of the Act.

2. Assessment of Potential Benefits and Costs

a. Potential Benefits

Congress determined that Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.[23] Further, Congress determined that there is a need for new mechanisms for enforcing Internet gambling laws because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.[24] Sections 5 and 6 of the proposed rule address this by requiring participants in designated payment systems, which include insured depository institutions and other participants in the consumer credit industry, to establish reasonably designed policies and procedures to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions in order to stop the flow of funds to unlawful Internet gambling businesses. This funds flow interdiction is designed to inhibit the accumulation of consumer debt and to reduce debt collection problems for insured depository institutions and the consumer credit industry. Moreover, the proposed rule carries out the Act's goal of implementing new mechanisms for enforcing Internet gambling laws. The proposed rule will likely provide other benefits. Specifically, the proposed rule

[21] *See* H.R. Rep. No. 109–412, at 10 (2006).

[22] 31 U.S.C. 5364.

[23] 31 U.S.C. 5361(a)(3).

[24] 31 U.S.C. 5361(a)(4).

could restrict excesses related to unlawful Internet gambling by underage, addicted or compulsive gamblers.

The Treasury also examined the potential benefits of the establishment by the U.S. Government of a list of entities that it determines are engaged in the business of ''unlawful Internet gambling.'' While the Treasury understands that interest exists in such a list, we have tentatively concluded that the benefits of the list as an effective tool for use by regulated entities to identify and block or otherwise prevent or prohibit unlawful Internet gambling transactions is uncertain relative to the likely costs involved in creating such a list.

Establishing a list of unlawful Internet gambling businesses would be a time consuming process given the fact-finding and legal analysis that would be required. For example, the names of the businesses directly receiving unlawful Internet gambling payments are often not readily identifiable from their gambling websites. As a result, the Government would have to engage in fact-finding to identify the name of each unlawful Internet gambling business and its associated bank account numbers and bank. In addition, to avoid inflicting unjustified harm on lawful businesses by erroneously including them on the list, the Government would likely need to provide businesses with advance notice and a reasonable opportunity to contest their potential inclusion on the list. This process could result in a considerable lag time between the U.S. Government first identifying a gambling website and ultimately adding the name of an unlawful Internet gambling business to the list. Because it is possible for unlawful Internet gambling businesses, particularly those located in foreign countries with foreign bank accounts, to change with relative ease the business names and bank accounts of entities directly receiving restricted transactions, the list of unlawful Internet gambling businesses could be quickly outdated and thus have limited practical utility as an effective tool for regulated entities to prevent unlawful Internet gambling transactions.

b. Potential Costs

Treasury believes that the costs of implementing the Act and the proposed rule are lower than they would be if the Act and the proposed rule were to require a prescriptive, one-size-fits-all approach with regard to regulated entities. First, both the Act and section 5 of the proposed rule provide that a financial transaction provider shall be considered to be in compliance with the regulations if it relies on and complies with the policies and procedures of the designated payment system of which it is a participant. This means that regulated entities will not be required to establish their own policies and procedures but can instead follow the policies and procedures of the designated payment system, thereby resulting in lower costs.

Second, with regard to regulated entities that establish their own policies and procedures, both the Act and sections 5 and 6 of the proposed rule provide maximum flexibility. Specifically, neither the Act nor the proposed rule contain specific performance standards but instead require that such policies and procedures be ''reasonably designed'' to identify and block or otherwise prevent or prohibit unlawful internet gambling. In addition, the proposed rule expressly authorizes each regulated entity to use policies and procedures that are ''specific to its business'' which will enable it to efficiently tailor its policies and procedures to its needs. Because the Act and the proposed rule provide flexibility for regulated entities in crafting their policies and procedures, allowing them to tailor their policies and procedures to their individual circumstances, the costs imposed by the Act on regulated entities should be lower than if the Act and the proposed rule were to take a prescriptive one-size-fits-all approach.

Third, the ''safe harbor'' provision, with its nonexclusive examples of policies and procedures deemed to be ''reasonably designed,'' provides regulated entities with specific guidance on how to structure the policies and procedures required by the Act. As a result, costs associated with formulating policies and procedures should be lower because the safe harbor provision provides guidance on how to so structure the policies and procedures.

Because the Treasury does not have sufficient information to quantify reliably the costs of developing specific policies and procedures, the Treasury seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule. Moreover, the Treasury anticipates that the Agencies will contact trade groups representing participants, particularly those that qualify as small entities, and encourage them to provide comments during the comment period to ascertain, among other things, the costs imposed by this rulemaking.

Once the policies and procedures have been developed, however, the Treasury believes the burden of this rulemaking will be relatively low. It is estimated that the recordkeeping requirement required by the Act and the proposed rule will take approximately one hour per recordkeeper per year to maintain the policies and procedures required by this rulemaking. It is estimated that the total annual cost to regulated entities to maintain the policies and procedures will be approximately $4 million.[25]

The Treasury also considered the potential costs to the U.S. Government of establishing a list of unlawful Internet gambling businesses, and has initially determined that such costs would likely be significant. This is because establishing a list would require considerable fact-finding and legal analysis once the U.S. Government identifies a gambling website. The Government must engage in an extensive legal analysis to determine whether the gambling Web site is used, at least in part, to place, receive or otherwise knowingly transmit unlawful bets or wagers. This legal analysis would entail interpreting the various Federal and State gambling laws, which could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated and the location where the bet or wager was received. The U.S. Government would at the same time also need to identify the business name and the bank account number and bank of the entity directly receiving payments on behalf of the Internet gambling business, which is often not readily ascertainable from the Web site. Identifying the business name and bank account number of the entity directly receiving unlawful Internet gambling payments might be challenging, especially where the Internet gambling business is located in and maintains its bank accounts in a foreign country. Once the fact-finding and legal analysis are concluded successfully, the U.S. Government might then need to afford the business advance notice and an opportunity to object to its potential inclusion on the list in order to ensure that lawful businesses are not harmed by being erroneously included on the list. These due process safeguards would result in considerable added costs to the U.S. Government.

[25] This estimate is based on an estimate of 270,721 recordkeepers. The hourly cost of the person who would be responsible for maintaining the policies and procedures is estimated to be $14.60 per hour (based on the U.S. Department of Labor, Bureau of Labor Statistics' occupational employment statistics for office and administrative support occupations, dated May 2006).

3. Interference with State, Local, and Tribal Governments

The Act does not alter State, local or tribal gaming law.[26] In addition, the Act exempts from the definition of the term ''unlawful Internet gambling,'' intrastate, intratribal, and intertribal gambling transactions.[27] Because the proposed rule does not alter these defined terms, it avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Act Analysis

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities and the Agencies are sensitive to the impact their rules may impose on small entities. In this case, the Agencies believe that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The Act mandates that the Agencies jointly prescribe regulations requiring designated payment systems, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of reasonably designed policies and procedures. Comments are requested on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the Act itself, and not the proposed rule.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Agencies have reviewed the proposed regulation. While the Agencies believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Agencies do not have complete data at this time to make this determination. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. The Agencies will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

The Agencies are proposing a regulation to implement the Act, as required by the Act. The Act prohibits any person in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Section 802 of the Act (codified at 31 U.S.C. 5361 *et seq.*) requires the Agencies jointly (in consultation with the Attorney General) to designate payment systems that could be used in connection with, or to facilitate, restricted transactions and to prescribe regulations requiring designated payment systems, and financial transaction providers participating in each designated payment system, to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The proposed regulation sets out necessary definitions, designates payment systems that could be used in connection with restricted transactions, exempts participants providing certain functions in designated payment systems from certain requirements imposed by the regulation, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and reiterates the enforcement regime set out in the Act for designated payment systems and non-exempt participants therein. The Agencies believe that the proposed regulation implements Congress's requirement that the Agencies prescribe regulations that carry out the purposes of the Act.

2. Small Entities Affected by the Proposed Rule

The proposed rule would affect non-exempt financial transaction providers participating in the designated payment systems, regardless of size. The Agencies estimate that 4,792 small banks (out of a total of 8,192 banks), 420 small savings associations (out of a total of 838), 7,609 small credit unions (out of a total of 8,477), and 240,547 small money transmitting businesses (out of a total of 253,208) would be affected by this proposed rule. Pursuant to regulations issued by the Small Business Administration (13 CFR 121–201), a ''small entity'' includes a commercial bank, savings association or credit union with assets of $165 million or less. For money transmitting businesses, a ''small entity'' would include those with assets of $6.5 million or less. The Agencies propose that the requirements in this rule be applicable to all entities subject to the Act, as implemented, regardless of their size because an exemption for small entities would significantly diminish the usefulness of the policies and procedures required by the Act by permitting unlawful Internet gambling operations to evade the requirements by using small financial transaction providers. The Agencies anticipate, however, that, as provided in the Act and the proposed regulations, small non-exempt participants in some designated payment systems, to a large extent, should be able to rely on policies and procedures established and implemented by the designated payment systems of which they are participants or other existing systems. The Agencies seek information and comment on the number of small entities to which the proposed rule would apply.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Section 802 of the Act requires the Agencies to prescribe regulations requiring each designated payment system, and all financial transaction providers participating in the designated payment system, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. The proposed rule implements this requirement by requiring all non-exempt participants in designated payment systems to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. Because the Agencies do not have sufficient information to quantify reliably the effects the Act and the proposed rule would have on small entities, the Agencies seek information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule and the extent to which those costs, requirements, or changes are in addition to or different from those arising from the application of the Act generally. Moreover, the Agencies anticipate contacting trade groups representing participants that qualify as small entities and encouraging them to provide comments during the comment period to ascertain,

[26] Specifically, the Act defines the term ''unlawful Internet gambling'' as a bet or wager, which involves at least in part the use of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. 31 U.S.C. 5362(10)(A).

[27] 31 U.S.C. 5362(10)(B) and (C).

among other things, the costs imposed on regulated small entities.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Agencies have not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule. The Agencies seek comment regarding any statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

5. Significant Alternatives to the Proposed Rule

Other than as noted above, the Agencies are unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Act and that minimize any significant economic impact of the proposed rule on small entities. The Agencies request comment on additional ways to reduce regulatory burden associated with this proposed rule.

C. Paperwork Reduction Act Analysis

The collection of information requirement contained in this notice of joint proposed rulemaking has been submitted by the Agencies to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury and the Board of Governors of the Federal Reserve System, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Treasury's Office of Critical Infrastructure Protection and Compliance Policy and the Board's Secretary at the addresses previously specified. Because OMB must complete its review of the collection of information between 30 and 60 days after publication, comments on the information collection should be submitted not later than November 5, 2007. Comments are specifically requested concerning:

(1) Whether the proposed information collection is necessary for the proper performance of Agency functions, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information (see below);

(3) How to enhance the quality, utility, and clarity of the information required to be maintained;

(4) How to minimize the burden of complying with the proposed information collection, including the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collection of information in the proposed rule is in sections 5 and 6. This information is required by section 802 of the Act, which requires the Agencies to prescribe joint regulations requiring each designated payment system, and all participants in such systems, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions. The proposed rule implements this requirement by requiring all non-exempt participants in designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The proposed rule does not include a specific time period for record retention; however, non-exempt participants would be required to maintain the policies and procedures for a particular designated payment system as long as they participate in that system.

The Agencies anticipate that, as provided in the Act and the proposed regulations, small non-exempt participants in designated payment systems, for the most part, should be able to rely on policies and procedures established and implemented by the designated payment systems of which they are participants. For example, certain money transmitting business operators may have their own centralized procedures to prevent unlawful gambling transactions. Small money transmitters, acting as agents in these large systems, may be able to rely on the system's policies, and therefore would not have to create their own.

Many of the payment systems used by depository institutions, such as check clearing, do not have centralized system operators. Therefore, depository institutions would likely have to create their own policies for check clearing.

The likely recordkeepers are businesses or other for-profits and not-for-profit institutions and include commercial banks, savings associations, credit unions, card servicers, and money transmitting businesses. The Agencies have agreed to split equally for burden calculations the total number of recordkeepers not subject to examination and supervision by either the Board or the Treasury's Office of the Comptroller of the Currency and Office of Thrift Supervision.

Board:

Estimated number of recordkeepers: 134,451.

Estimated average annual burden hours per recordkeeper: 25 hours for depository institutions and card servicers, 1 hour for money transmitting businesses.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: 322,779 hours.

Treasury:

Estimated number of recordkeepers: 136,270.

Estimated average annual burden hours per recordkeeper: 25 hours for depository institutions and card servicers, 1 hour for money transmitting businesses.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: 368,254 hours.

The initial burden is imposed by the Act which requires non-exempt participants to establish policies and procedures. The Agencies estimate that this initial burden will average 24 hours per recordkeeper for depository institutions and card servicers. The Agencies also estimate that the annual burden of maintaining the policies and procedures once they are established will be 1 hour per recordkeeper. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

D. Plain Language

Each Federal banking agency, such as the Board, is required to use plain language in all proposed and final rulemakings published after January 1, 2000. 12 U.S.C. 4809. In addition, in 1998, the President issued a memorandum directing each agency in the Executive branch, such as Treasury, to use plain language for all new proposed and final rulemaking documents issued on or after January 1, 1999. The Agencies have sought to present the proposed rule, to the extent possible, in a simple and straightforward manner. The Agencies invite comment on whether there are additional steps that could be taken to make the proposed rule easier to understand, such as with respect to the organization of the materials or the clarity of the presentation.

IV. Statutory Authority

Pursuant to the authority set out in the Act and particularly section 802 (codified at 31 U.S.C. 5361 *et seq.*), the

Board and the Treasury jointly propose the common rules set out below.

V. Text of Proposed Rules

List of Subjects

12 CFR Part 233

Banks, Banking, Electronic funds transfers, Incorporation by reference, Internet gambling, Payments, Recordkeeping.

31 CFR Part 132

Banks, Banking, Electronic funds transfers, Incorporation by reference, Internet gambling, Payments, Recordkeeping.

Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Title 12, Chapter II of the Code of Federal Regulations by adding a new part 233 as set forth under Common Rules at the end of this document:

PART 233—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING (REGULATION GG)

Sec.
233.1 Authority, purpose, and incorporation by reference.
233.2 Definitions.
233.3 Designated payment systems.
233.4 Exemptions.
233.5 Processing of restricted transactions prohibited.
233.6 Policies and procedures.
233.7 Regulatory enforcement.

Authority: 31 U.S.C. 5364.

Department of the Treasury

Authority and Issuance

For the reasons set forth in the preamble, Treasury proposes to amend Title 31, Chapter I of the Code of Federal Regulations by adding a new part 132 as set forth under Common Rules at the end of this document:

PART 132—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

Sec.
132.1 Authority, purpose, and incorporation by reference.
132.2 Definitions.
132.3 Designated payment systems.
132.4 Exemptions.
132.5 Processing of restricted transactions prohibited.
132.6 Policies and procedures.
132.7 Regulatory enforcement.

Authority: 31 U.S.C. 321 and 5364.

Common Rules

The common rules that are proposed to be adopted by the Board as part 233 of Title 12, Chapter II of the Code of Federal Regulations and by Treasury as part 132 of Title 31, Chapter I of the Code of Federal Regulations follow:

§ ____.1 Authority, purpose, and incorporation by reference.

(a) *Authority.* This part is issued jointly by the Board of Governors of the Federal Reserve System (Board) and the Secretary of the Department of the Treasury (Treasury) under section 802 of the Unlawful Internet Gambling Enforcement Act of 2006 (Act) (enacted as Title VIII of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109–347, 120 Stat. 1884, and codified at 31 U.S.C. 5361–5367).

(b) *Purpose.* The purpose of this part is to issue implementing regulations as required by the Act. The part sets out necessary definitions, designates payment systems subject to the requirements of this part, exempts certain participants in designated payment systems from certain requirements of this part, provides nonexclusive examples of policies and procedures reasonably designed to identify and block, or otherwise prevent and prohibit, restricted transactions, and sets out the Federal entities that have exclusive regulatory enforcement authority with respect to the designated payments systems and non-exempt participants therein.

(c) *Incorporation by reference—relevant definitions from ACH rules.* (1) This part incorporates by reference the relevant definitions of ACH terms as published in the ''2007 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network'' (the ''ACH Rules''). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ''2007 ACH Rules'' are available from the National Automated Clearing House Association, Suite 100, 13450 Sunrise Valley Drive, Herndon, Virginia 20171 (703/561–1100).

Copies also are available for public inspection at the Department of Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, and the National Archives and Records Administration (NARA). Before visiting the Treasury library, you must call (202) 622–0990 for an appointment. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html 20002.*

(2) Any amendment to definitions of the relevant ACH terms in the ACH Rules shall not apply to this part unless the Treasury and the Board jointly accept such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the definition of a relevant ACH term in the ACH Rules that is accepted by the Treasury and the Board shall apply to this part on the effective date of the rulemaking specified by the Treasury and the Board in the joint **Federal Register** notice expressly accepting such amendment.

§ ____.2 Definitions.

(a) *Automated clearing house system* or *ACH system* means a funds transfer system, primarily governed by the ACH Rules, which provides for the clearing and settlement of batched electronic entries for participating financial institutions. When referring to ACH systems, the terms in this regulation (such as ''originating depository financial institution,'' ''operator,'' ''originating gateway operator,'' ''receiving depository financial institution,'' ''receiving gateway operator,'' and ''third-party sender'') are defined as those terms are defined in the ACH Rules.

(b) *Bet or wager.* (1) Means the staking or risking by any person of something of value upon the outcome or a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

(2) Includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(3) Includes any scheme of a type described in 28 U.S.C. 3702;

(4) Includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service); and

(5) Does not include—

(i) Any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that act (15 U.S.C. 78c(a)(10));

(ii) Any transaction conducted on or subject to the rules of a registered entity

or exempt board of trade under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Any over-the-counter derivative instrument;

(iv) Any other transaction that—

(A) Is excluded or exempt from regulation under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); or

(B) Is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) or section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a));

(v) Any contract of indemnity or guarantee;

(vi) Any contract for insurance;

(vii) Any deposit or other transaction with an insured depository institution;

(viii) Participation in any game or contest in which participants do not stake or risk anything of value other than—

(A) Personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

(B) Points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

(ix) Participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership or an actual team that is a member of an amateur or professional sports organization (as those terms are defined in 28 U.S.C. 3701) and that meets the following conditions:

(A) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

(B) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(C) No winning outcome is based—(*1*) On the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams, or

(*2*) Solely on any single performance of an individual athlete in any single real-world sporting or other event.

(c) *Card issuer* means any person who issues a credit card, debit card, pre-paid card, or stored value product, or the agent of such person with respect to such card or product.

(d) *Card system* means a system for clearing and settling transactions in which credit cards, debit cards, pre-paid cards, or stored value products, issued or authorized by the operator of the system, are used to purchase goods or services or to obtain a cash advance.

(e) *Check clearing house* means an association of banks or other payors that regularly exchange checks for collection or return.

(f) *Check collection system* means an interbank system for collecting, presenting, returning, and settling checks or intrabank system for settling checks deposited in and drawn on the same bank. When referring to check collection systems, the terms in this regulation (such as ''paying bank,'' ''collecting bank,'' ''depositary bank,'' ''returning bank,'' and ''check'') are defined as those terms are defined in 12 CFR 229.2. For purposes of this part, ''check'' also includes an electronic representation of a check that a bank agrees to handle as a check.

(g) *Consumer* means a natural person.

(h) *Designated payment system* means a system listed in § ____.3.

(i) *Electronic fund transfer* has the same meaning given the term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that act (15 U.S.C. 1693a(6)(E)), and includes any funds transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(j) *Financial institution* means a State or national bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds an account belonging to a consumer. The term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(k) *Financial transaction provider* means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(l) *Interactive computer service* means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(m) *Internet* means the international computer network of interoperable packet switched data networks.

(n) *Intrastate transaction* means placing, receiving, or otherwise transmitting a bet or wager where—

(1) The bet or wager is initiated and received or otherwise made exclusively within a single State;

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

(i) Age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State's law or regulations; and

(3) The bet or wager does not violate any provision of—

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 *et seq.*); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*).

(o) *Intratribal transaction* means placing, receiving or otherwise transmitting a bet or wager where—

(1) The bet or wager is initiated and received or otherwise made exclusively—

(i) Within the Indian lands of a single Indian tribe (as such terms are defined under the Indian Gaming Regulatory Act (25 U.S.C. 2703)); or

(ii) Between the Indian lands of two or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*);

(2) The bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

(i) The applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(ii) With respect to class III gaming, the applicable Tribal-State compact;

(3) The applicable tribal ordinance or resolution or Tribal-State compact includes—

(i) Age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(ii) Appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(4) The bet or wager does not violate any provision of—

(i) The Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*);

(ii) 28 U.S.C. chapter 178 (professional and amateur sports protection);

(iii) The Gambling Devices Transportation Act (15 U.S.C. 1171 *et seq.*); or

(iv) The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*).

(p) *Money transmitting business* and *money transmitting service* have the meanings given the terms in 31 U.S.C. 5330(d) (determined without regard to any regulations prescribed by the Secretary of the Treasury thereunder).

(q) *Participant in a designated payment system* means an operator of a designated payment system, or a financial transaction provider that is a member of or, has contracted for financial transaction services with, or is otherwise participating in, a designated payment system. This term does not include a customer of the financial transaction provider if the customer is not a financial transaction provider otherwise participating in the designated payment system on its own behalf.

(r) *Restricted transaction* means any of the following transactions or transmittals involving any credit, funds, instrument, or proceeds that the Act prohibits any person engaged in the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service) from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling—

(1) Credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) An electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; or

(3) Any check, draft, or similar instrument that is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution.

(s) *State* means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

(t) *Unlawful Internet gambling* means to place, receive, or otherwise knowingly transmit a bet or wager by any means that involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*). The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(u) *Wire transfer system* means a system through which an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt, or on a day stated in the order, is transmitted by electronic or other means through the network, between banks, or on the books of a bank. When referring to wire transfer systems, the terms in this regulation (such as ''bank,'' ''originator's bank,'' ''beneficiary's bank,'' and ''intermediary bank'') are defined as those terms are defined in 12 CFR part 210, appendix B.

§ ____.3 Designated payment systems.

The following payment systems could be used by participants in connection with, or to facilitate, a restricted transaction:

(a) Automated clearing house systems;

(b) Card systems;

(c) Check collection systems;

(d) Money transmitting businesses; and

(e) Wire transfer systems.

§ ____.4 Exemptions.

(a) *Automated clearing house systems.* The participants providing the following functions of an automated clearing house system with respect to a particular ACH transaction are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions—

(1) The ACH system operator, except as provided in § ____.6(b)(2) and § ____.6(b)(3);

(2) The originating depository financial institution in an ACH credit transaction; and

(3) The receiving depository financial institution in an ACH debit transaction.

(b) *Check collection systems.* The participants providing the following functions of a check collection system with respect to a particular check transaction are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions—

(1) A check clearing house; and

(2) The paying bank (unless it is also the depositary bank), any collecting bank (other than the depositary bank), and any returning bank.

(c) *Wire transfer systems.* The participants providing the following functions of a wire transfer system with respect to a particular wire transfer are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions—

(1) The operator of a wire transfer network; and

(2) The originator's bank and any intermediary bank, except as provided in § ____.6(f)(2).

§ ____.5 Processing of restricted transactions prohibited.

(a) All non-exempt participants in designated payment systems shall establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

(b) A non-exempt financial transaction provider participant in a designated payment system shall be considered to be in compliance with the requirements of paragraph (a) of this section if it—

(1) Relies on and complies with the written policies and procedures of the designated payment system that are reasonably designed to—

(i) Identify and block restricted transactions; or

(ii) Otherwise prevent or prohibit the acceptance of the products or services of

the designated payment system or participant in connection with restricted transactions; and

(2) Such policies and procedures of the designated payment system comply with the requirements of this part.

(c) As provided in the Act, a person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction, shall not be liable to any party for such action if—

(1) The transaction is a restricted transaction;

(2) Such person reasonably believes the transaction to be a restricted transaction; or

(3) The person is a participant in a designated payment system and blocks or otherwise prevents the transaction in reliance on the policies and procedures of the designated payment system in an effort to comply with this regulation.

(d) Nothing in this regulation requires or is intended to suggest that designated payment systems or participants therein must or should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of ''unlawful Internet gambling'' in the Act as an intrastate transaction, an intratribal transaction, or a transaction in connection with any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*).

(e) Nothing in this regulation modifies any requirement imposed on a participant by other applicable law or regulation to file a suspicious activity report to the appropriate authorities.

§ ___.6 Policies and procedures.

(a) The examples of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions set out in this section are non-exclusive. In establishing and implementing written policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions, a non-exempt participant in a designated payment system may design and use other policies and procedures that are specific to its business and may use different policies and procedures with respect to different types of restricted transactions.

(b) *Automated clearing house system examples.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the policies and procedures of the originating depository financial institution and any third-party sender in an ACH debit transaction, and the receiving depository financial institution in an ACH credit transaction, are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(i) Address methods for conducting due diligence in establishing or maintaining a customer relationship designed to ensure that the customer will not originate restricted transactions as ACH debit transactions or receive restricted transactions as ACH credit transactions through the customer relationship, such as—

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not engage in restricted transactions; and

(ii) Include procedures to be followed with respect to a customer if the originating depository financial institution or third-party sender becomes aware that the customer has originated restricted transactions as ACH debit transactions or if the receiving depository financial institution becomes aware that the customer has received restricted transactions as ACH credit transactions, such as procedures that address—

(A) When fines should be imposed;

(B) When the customer should not be allowed to originate ACH debit transactions; and

(C) The circumstances under which the account should be closed.

(2) The policies and procedures of a receiving gateway operator and third-party sender that receives instructions to originate an ACH debit transaction directly from a foreign sender (which could include a foreign bank, a foreign third-party processor, or a foreign originating gateway operator) are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(i) Address methods for conducting due diligence in establishing or maintaining the relationship with the foreign sender designed to ensure that the foreign sender will not send instructions to originate ACH debit transactions representing restricted transactions to the receiving gateway operator or third-party sender, such as including as a term in its agreement with the foreign sender requiring the foreign sender to have reasonably designed policies and procedures in place to ensure that the relationship will not be used to process restricted transactions; and

(ii) Include procedures to be followed with respect to a foreign sender that is found to have sent instructions to originate ACH debit transactions to the receiving gateway operator or third-party sender that are restricted transactions, which may address—

(A) When ACH services to the foreign sender should be denied; and

(B) The circumstances under which the cross-border arrangements with the foreign sender should be terminated.

(3) The policies and procedures of an originating gateway operator that receives an ACH credit transaction containing instructions to send or credit a transaction to a foreign bank directly or through a foreign receiving gateway operator are deemed to be reasonably designed to prevent or prohibit restricted transactions, if they include procedures to be followed with respect to a foreign bank that is found to have received from the originating gateway operator either directly or indirectly transactions that are restricted transactions, which may address—

(i) When ACH credit transactions for the foreign bank or through the foreign gateway operator should be denied; and

(ii) The circumstances under which the cross-border arrangements with the foreign bank should be terminated.

(c) *Card system examples.* The policies and procedures of a card system operator, a merchant acquirer, and a card issuer, are deemed to be reasonably designed to prevent or prohibit restricted transactions, if they—

(1) Address methods for conducting due diligence in establishing or maintaining a merchant relationship designed to ensure that the merchant will not receive restricted transactions through the card system, such as—

(i) Screening potential merchant customers to ascertain the nature of their business; and

(ii) Including as a term of the merchant customer agreement that the merchant may not receive restricted transactions through the card system;

(2) Include procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions, such as—

(i) Establishing transaction codes and merchant/business category codes that are required to accompany the authorization request for a transaction and creating the operational functionality to enable the card system or the card issuer to identify and deny authorization for a restricted transaction;

(ii) Ongoing monitoring or testing to detect potential restricted transactions, including—

(A) Conducting testing to ascertain whether transaction authorization requests are coded correctly;

(B) Monitoring of web sites to detect unauthorized use of the relevant card system, including its trademark; or

(C) Monitoring and analyzing payment patterns to detect suspicious payment volumes from a merchant customer; and

(3) Include procedures to be followed with respect to a merchant customer if the card system, card issuer, or merchant acquirer becomes aware that a merchant has received restricted transactions through the card system, such as—

(i) When fines should be imposed; and

(ii) When access to the card system should be denied.

(d) *Check collection system examples.* (1) Except as provided in paragraph (d)(2) of this section, the policies and procedures of a depositary bank are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(i) Address methods for conducting due diligence in establishing or maintaining a customer relationship designed to ensure that the customer will not receive restricted transactions through the customer relationship, such as—

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not deposit checks that constitute restricted transactions; and

(ii) Include procedures to be followed with respect to a customer if the depositary bank becomes aware that the customer has deposited checks that are restricted transactions, such as procedures that address—

(A) When checks for deposit should be refused; and

(B) The circumstances under which the account should be closed.

(2) The policies and procedures of a depositary bank that receives a check for collection directly from a foreign bank are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(i) Address methods for conducting due diligence in establishing or maintaining the correspondent relationship with the foreign bank designed to ensure that the foreign bank will not send checks representing restricted transactions to the depositary bank for collection, such as including as a term in its agreement with the foreign bank requiring the foreign bank to have reasonably designed policies and procedures in place to ensure that the correspondent relationship will not be used to process restricted transactions; and

(ii) Include procedures to be followed with respect to a foreign bank that is found to have sent checks to the depositary bank that are restricted transactions, which may address—

(A) When check collection services for the foreign bank should be denied; and

(B) The circumstances under which the correspondent account should be closed.

(e) *Money transmitting business examples.* The policies and procedures of a money transmitting business are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(1) Address methods for conducting due diligence in establishing or maintaining commercial subscriber relationships designed to ensure that the commercial subscriber will not receive restricted transactions through the money transmitting business, such as—

(i) Screening potential commercial subscribers to ascertain the nature of their business; and

(ii) Including as a term of the commercial subscriber agreement that the subscriber may not receive restricted transactions; and

(2) Include procedures regarding ongoing monitoring or testing to detect potential restricted transactions, such as—

(i) Monitoring and analyzing payment patterns to detect suspicious payment volumes to any recipient; or

(ii) Monitoring web sites to detect unauthorized use of the relevant money transmitting business, including their trademarks; and

(3) Include procedures to be followed with respect to recipients that are found to have engaged in restricted transactions, that address—

(i) When fines should be imposed;

(ii) When access should be denied; and

(iii) The circumstances under which an account should be closed.

(f) *Wire transfer system examples.* (1) The policies and procedures of the beneficiary's bank in a wire transfer are deemed to be reasonably designed to prevent or prohibit restricted transactions if they—

(i) Address methods for conducting due diligence in establishing or maintaining a commercial customer relationship designed to ensure that the commercial customer will not receive restricted transactions through the customer relationship, such as—

(A) Screening potential commercial customers to ascertain the nature of their business; and

(B) Including as a term of the commercial customer agreement that the customer may not receive restricted transactions.

(ii) Include procedures to be followed with respect to a commercial customer if the beneficiary's bank becomes aware that the commercial customer has received restricted transactions, such as procedures that address—

(A) When access to the wire transfer system should be denied; and

(B) The circumstances under which an account should be closed.

(2) An originator's bank or intermediary bank that sends or credits a wire transfer transaction directly to a foreign bank is deemed to have policies and procedures reasonably designed to identify and block, or otherwise prevent or prohibit restricted transactions, if the policies and procedures include procedures to be followed with respect to a foreign bank that is found to have received from the originator's bank or intermediary bank wire transfers that are restricted transactions, which may address—

(i) When wire transfer services for the foreign bank should be denied; and

(ii) The circumstances under which the correspondent account should be closed.

§ ____.7 Regulatory enforcement.

The requirements under this regulation are subject to the exclusive regulatory enforcement of—

(a) The Federal functional regulators, with respect to the designated payment systems and participants therein that are subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) and section 5g of the Commodity Exchange Act (7 U.S.C. 7b–2); and

(b) The Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (a) of this section.

By order of the Board of Governors of the Federal Reserve System, October 1, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated: October 1, 2007.

By the Department of the Treasury.

Valerie A. Abend,

Deputy Assistant Secretary for Critical Infrastructure Protection and Compliance Policy.

[FR Doc. 07–4914 Filed 10–3–07; 8:45 am]

BILLING CODE 6210–01–P, 4811–42–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28980; Directorate Identifier 2007–CE–071–AD]

RIN 2120–AA64

Airworthiness Directives; Aircraft Industries, a.s. (Type Certificate No. G24EU Formerly Held by LETECKÉ ZÁVODY a.s. and LET Aeronautical Works) Model L–13 Blanik Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is prompted by the discovery of cracks on L13 BLANIK sailplanes in zones where the forward and aft control sticks are attached to the connecting rod, designated as ''control bridge'' in the relevant Illustrated Parts Catalogues (IPC). If left uncorrected, cracks could propagate and lead to failure of the connecting rod with subsequent loss of control of the sailplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 5, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28980; Directorate Identifier 2007–CE–071–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2007–0212 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted by the discovery of cracks on L13 BLANIK sailplanes in zones where the forward and aft control sticks are attached to the connecting rod, designated as ''control bridge'' in the relevant Illustrated Parts Catalogues (IPC). If left uncorrected, cracks could propagate and lead to failure of the connecting rod with subsequent loss of control of the sailplane.

For the reasons described above, this AD requires an inspection of the control bridge to detect cracks and replacement, if necessary. In addition, this AD requires an update of the aircraft Maintenance Manual (MM) to incorporate repetitive inspections of the control bridge.

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

Relevant Service Information

LET Aircraft Industries, a.s. has issued Mandatory Bulletin MB No.: L13/105a, dated May 22, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 190 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $30,400, or $160 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $2,000, for a cost of $2,560 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Aircraft Industries, a.s. (Type Certificate No. G24EU formerly held by LETECKÉ ZÁVODY a.s. and LET Aeronautical Works): Docket No. FAA–2007–28980; Directorate Identifier 2007–CE–071–AD.

Comments Due Date

(a) We must receive comments by November 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model L–13 Blanik gliders, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

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

This Airworthiness Directive (AD) is prompted by the discovery of cracks on L13 BLANIK sailplanes in zones where the forward and aft control sticks are attached to the connecting rod, designated as ''control bridge'' in the relevant Illustrated Parts Catalogues (IPC). If left uncorrected, cracks could propagate and lead to failure of the connecting rod with subsequent loss of control of the sailplane.

For the reasons described above, this AD requires an inspection of the control bridge to detect cracks and replacement, if necessary. In addition, this AD requires an update of the aircraft Maintenance Manual (MM) to incorporate repetitive inspections of the control bridge.

Actions and Compliance

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

(1) Within the next 3 months after the effective date of this AD and repetitively thereafter at intervals not to exceed 12 months, inspect the control bridge for cracks. Follow the procedures in LET Aircraft Industries, a.s. Mandatory Bulletin MB No.: L13/105a, dated May 22, 2007, except use a 10× magnifier and do a dye penetrant inspection following the procedures in chapter 5, section 5, of FAA Advisory Circular AC 43.13–1B CHG 1, dated September 27, 2001.

(2) If cracks are found during any inspection in paragraph (f)(1) of this AD, before further flight, install a new control bridge Dwg. No. (part number (P/N)) A740 370 N or Dwg. No. (P/N) A401 001N following the procedures in LET Aircraft Industries, a.s. Mandatory Bulletin MB No.: L13/105a, dated May 22, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The service information requires a visual inspection with a 6× magnifier. We are requiring a dye penetrant inspection and a 10× magnifier to detect cracks that could go undetected using only a 6× magnifier.

(2) The MCAI requires updating the maintenance manuals to add ''type A based'' repetitive inspections of the control bridge. Since the maintenance manual is only one way of establishing a maintenance program, the only way we can mandate these repetitive inspections is through an AD action.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2007–0212, dated August 7, 2007; and LET Aircraft Industries, a.s. Mandatory Bulletin MB No.: L13/105a, dated May 22, 2007, for related information.

Issued in Kansas City, Missouri, on September 28, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19619 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 2007N–0308]

Medical Devices; Cardiovascular Devices; Electrocardiograph Electrode; Designation of Special Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the classification regulation for the electrocardiograph electrode device to establish special controls and to exempt the device from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act (the act). The agency is taking this action on its own initiative. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance document that would serve as the special control for the device if the rule is finalized. The agency believes that special controls, when followed and combined with the general controls, will provide reasonable assurance of the safety and effectiveness of these devices, if this proposal becomes final.

DATES: Submit written or electronic comments by January 2, 2008. See section VI of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0308, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this paragraph under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Lappalainen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4095, *Sharon.Lappalainen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. Under the 1976 amendments, class II devices are identified as those devices in which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of the device, but for which there is sufficient information to establish a performance standard to provide such assurance.

SMDA broadened the definition of class II devices to include those devices for which general controls would not provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. The special controls include performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary to provide such assurance. (See section 513(a)(1)(B) of the act.)

FDAMA added, among other sections, section 510(m) to the act (21 U.S.C. 360(m)). Under section 510(m) of the act, FDA may exempt a class II device from premarket notification requirements (510(k)), if the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device and provide a comment period.

II. Regulatory History of the Device

In the **Federal Register** of February 5, 1980 (45 FR 7926), FDA issued a final rule classifying the electrocardiograph electrode into class II, under the 1976 amendments. An electrocardiograph electrode is the electrical conductor which is applied to the surface of the body to transmit the electrical signal at the body surface to a processor that produces an electrocardiogram or vectorcardiogram.

III. Proposed Rule

FDA is proposing to amend the classification regulation of the electrocardiograph electrode device in order to designate a special control for the device. The device was classified before the provisions of SMDA broadened the definition of class II devices to establish special controls beyond performance standards. Therefore, designating a special controls guidance document as a means to provide reasonable assurance of the safety and effectiveness of the device was not a regulatory option at the time of the original classification.

Under the authority provided by SMDA, FDA is now able to propose the designation of a draft guidance

document as a special control the agency believes will, together with the general controls, reasonably assure the safety and effectiveness of the device. FDA is identifying the draft guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes'' as the proposed special control for the electrocardiograph electrode device. This draft guidance document describes means by which the device may comply with the requirement of special controls for class II devices. The draft guidance document identifies the issues associated with the device and recommends measures to address the issues.

Under section 510(m)(2) of the act, FDA is proposing to exempt the device from premarket notification, subject to the limitations of § 870.9 (21 CFR 870.9), if the device addresses the issues identified in the special controls guidance by following the specific measures recommended in the special controls guidance.

IV. Risks to Health

FDA has identified the following risks to health associated with these devices: Adverse tissue reaction to the skin-contacting electrode materials and misdiagnosis.

A. Adverse Tissue Reaction to the Skin-Contacting Electrode Materials

Some of the skin contacting materials of the electrode may not be biocompatible. Inadequate biocompatibility may result in adverse tissue reactions such as redness, burning sensation, and rash.

B. Misdiagnosis

Inadequate electrical performance may result in poor signal measurement. Inadequate labeling regarding proper electrical performance may result in improper use and cause poor signal measurement. Poor signal measurement may result in misdiagnosis of cardiac conditions.

V. Special Controls

FDA believes that, in addition to general controls, the class II special controls draft guidance document entitled ''Class II Special Controls Guidance: Electrocardiograph Electrodes'' is an adequate special control to help address the risks to health described in section IV of this document. The class II special controls draft guidance document provides information on how to mitigate the risks to health of adverse tissue reaction to skin contacting electrode materials and misdiagnosis, by recommending testing and labeling.

Several consensus standards describe electrical performance testing and properties to address the risk of misdiagnosis. Another consensus standard recommends biocompatibility testing, which can address the risk of adverse tissue reaction by ensuring that the device materials are sufficiently biocompatible for use on the skin.

The labeling recommendations in the draft guidance document address the risk of improper use by recommending that manufacturers, consistent with the general labeling provisions of 21 CFR part 801, include the duration of application to the skin, instructions for skin preparation, and instructions for electrode preparation, cleaning, and maintenance in their labeling.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document that would serve as the special control for these devices.

VI. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**. If finalized, following the effective date of a final rule, any firm intending to market the device will need to address the issues covered in the special controls guidance. The firm must show in its 510(k) that its device meets the requirements of 21 CFR 807.87 and complies with the special controls, either by following the recommendations of the special controls guidance or, in some other way, providing equivalent assurances of safety and effectiveness. Manufacturers who follow the specific measures recommended to address the issues identified in the special controls guidance will be able to market their devices without being subject to the premarket notification requirements of section 510(k) of the act, subject to the limitations of § 870.9. Manufacturers who choose alternative means to address one or more of the issues identified in the special controls guidance will remain subject to the premarket notification requirements of section 510(k) and must obtain marketing clearance for their device.

VII. Environmental Impact

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

VIII. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that manufacturers are already substantially in compliance with the recommendations in the draft guidance document and exemption from the premarket notification requirements for devices following the specific measures recommended in the special control will simplify the entry to market for other manufacturers, including small manufacturers, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

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

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has tentatively concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

FDA also tentatively concludes that the draft special control guidance document does not contain new information collection provisions that are subject to review and clearance by OMB under the PRA. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes;'' the notice contains an analysis of the paperwork burden for the draft guidance.

XI. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

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

2. In § 870.2360, paragraph (b) is revised to read as follows:

§ 870.2360 Electrocardiograph electrode.

* * * * *

(b) *Classification.* Class II (special controls). The special control for the device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes.'' See § 870.1(e) for the availability of this guidance document. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 870.9, if it addresses the issues identified in the special controls guidance by following the specific measures recommended in the special controls guidance.

Dated: September 26, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–19580 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–149036–04]

RIN 1545–BG75

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations for the suspension of interest, penalties, additions to tax, or additional amounts under section 6404(g) of the Internal Revenue Code. The proposed regulations explain the general rules for suspension as well as exceptions to those general rules.

DATES: The public hearing, originally scheduled for October 11, 2007, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Thursday, June 21, 2007 (72 FR 34199), announced that a public hearing was scheduled for October 11, 2007, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6404(g) of the Internal Revenue Code.

The public comment period for these regulations expired on September 19, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, September 21, 2007, no one has requested to speak. Therefore, the public hearing scheduled for October 11, 2007, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–19570 Filed 10–3–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 034–2007]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Bureau of Investigation (FBI), a component agency of the Department of Justice (DOJ), proposes to exempt a new Privacy Act system of records entitled Law Enforcement National Data Exchange (N-DEx) from certain provisions of the Privacy Act. As explained in the proposed rule, the exemption is necessary to avoid interference with the law enforcement functions and responsibilities of the FBI and the N-DEx system. Public comment is invited.

DATES: Comments must be received by November 13, 2007.

ADDRESSES: Address all comments to Joo Chung, Counsel, Privacy and Civil Liberties Office, Office of the Deputy Attorney General, 950 Pennsylvania Avenue, NW., Washington, DC 20530, or facsimile 202–616–9627. To ensure proper handling, please reference the AAG/A Order No. in your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to the Privacy and Civil Liberties Office at *DOJPrivacy ACTProposedRegulations@usdoj.gov;* or by using the comment form for this regulation at *http://www.regulations.gov.* Please include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, Federal Bureau of Investigation, (202) 324–3396.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the FBI proposes a new Privacy Act system of records, the ''Law Enforcement National Data Exchange (N-DEx), FBI–020.'' The N-DEx is a scalable information sharing system, operating under the aegis of the Criminal Justice Information Services (CJIS) Division, which will provide the capability to make potential linkages between crime incidents, criminal investigations, arrests, bookings, incarcerations, and parole and/or probation in order to help solve, deter, and prevent crimes and, in the process, enhance homeland security.

In this rulemaking, the FBI proposes to exempt this Privacy Act system of records from certain provisions of the Privacy Act because the system contains investigatory material compiled for law enforcement purposes.

Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 et seq., requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule.

Analysis of Regulatory Impacts

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12886. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Attorney General certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

The FBI has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. This action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore will not have federalism implications.

Environmental Analysis

The FBI has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6362. This rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

Subpart E—Exemption of Records Systems Under the Privacy Act

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 524; 31 U.S.C. 3717, 9701.

2. Section 16.96 is amended to add new paragraphs (t) and (u) as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(t) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act:

(1) Law Enforcement National Data Exchange (N-DEx), (JUSTICE/FBI–020).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system, or the overall law enforcement process, the applicable exemption may be waived by the FBI in its sole discretion.

(u) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information may thus compromise ongoing law enforcement efforts. Revealing this information may also permit the record subject to take measures to impede the investigation, such as destroying evidence, intimidating potential witnesses or fleeing the area to avoid the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4), because these provisions

concern individual access to and amendment of investigatory records, compliance with which could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of the FBI and other law enforcement agencies; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing investigations and other law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes and, in fact, a major tenet of the N-DEx information sharing system is that the relevance of certain information may not always be evident in the absence of the ability to correlate that information with other existing law enforcement data.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to efforts to solve crimes and improve homeland security in that it would put the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(6) From subsection (e)(3) because disclosure would put the subject of an investigation on notice of that fact and would permit the subject to engage in conduct intended to thwart that activity.

(7) (i) From subsection (e)(5) because many of the records in this system are records contributed by other agencies and the restrictions imposed by (e)(5) would limit the utility of the N-DEx system. All data contributors are expected to ensure that information they share is relevant, timely, complete and accurate. In fact, rules for use of the N-DEx system will require that information be updated periodically and not be used as a basis for action or disseminated beyond the recipient without the recipient first obtaining permission from the record owner/contributor. These rules will be enforced through robust audit procedures. The existence of these rules should ameliorate any perceived concerns about the integrity of the information in the N-DEx system. Nevertheless, exemption from this provision is warranted in order to reduce the administrative burden on the FBI to vouch for compliance with the provision by all N-DEx data contributors and to encourage those contributors to share information the significance of which may only become apparent when combined with other information in the N-DEx system.

(ii) The FBI is also exempting the N-DEx from subsection (e)(5) in order to block the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the N-DEx. The FBI has exempted these records from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of law enforcement investigations. Exempting the N-DEx system from subsection (e)(5) complements this exemption and will provide the FBI with the ability to prevent the assertion of challenges to a record's accuracy, timeliness, completeness and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8), because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and may alert the subjects of law enforcement investigations to the fact of those investigations, when not previously known.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 25, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. E7–19458 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0835–200740(b); FRL–8475–3]

Approval of Implementation Plans of Kentucky: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP) submitted on July 19, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is proposing to determine that the SIP revision fully implements the CAIR requirements for Kentucky. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (FIPs) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for Kentucky. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO_2 and NO_X that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is proposing to approve, Kentucky would meet CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions.

In the Final Rules Section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0835, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: LeSane.Heidi@epa.gov.*

3. *Fax:* 404–562–9019.

4. *Mail:* ''EPA–R04–OAR–2007–0835'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Heidi Lesane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

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

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: September 21, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–19328 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0794; FRL–8478–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of VOC Emissions From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This SIP revision pertains to the control of volatile organic compound (VOC) emissions from consumer products. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0794 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: powers.marilyn@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0794, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0794. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 18, 2007, the Maryland Department of Environment (MDE) submitted a revision to its SIP. The SIP revision (Maryland SIP #07–08) includes amendments to the control of VOC emissions from consumer products (COMAR 26.11.32).

I. Background

Consumer and commercial products are defined as products sold to retail customers for personal, household, or automotive use, and products marketed by wholesale distributors for use by commercial or institutional organizations. VOC emissions from these products come from the evaporation of propellant and organic solvents during use. Consumer and commercial products comprise a variety of goods, including personal care products, household products,

automotive aftermarket products, insecticides, coatings, and other miscellaneous products.

Maryland adopted the consumer products regulation based on the 2001 Ozone Transport Commission (OTC) model rule in 2003 that was based on the California Air Resources Board (CARB) rule. EPA approved the Maryland consumer products regulation on December 9, 2003 (68 FR 68523). In July 2005, CARB amended the 2001 OTC model rule adding 14 new categories. In 2006, the OTC developed an updated model rule based on the 2005 CARB amendments. Maryland adopted the updated 2006 OTC model rule on June 8, 2007 with an effective date of June 18, 2007 to incorporate the changes in the 2005 CARB rule.

II. Summary of SIP Revision

Maryland's amended consumer products regulation incorporates the changes made by CARB. These amendments affect 18 categories of consumer products. Fourteen categories are new, including subcategories with new product category definitions and VOC limits; one previously regulated category with a more restrictive VOC limit, and two previously regulated categories with additional requirements. The compliance date for the new standards is January 1, 2009.

The new categories are the following: (1) Adhesive remover with four subcategories: Floor or wall covering, gasket or thread locking, general purpose, and specialty; (2) anti-static product; (3) electrical cleaner; (4) electronic cleaner; (6) fabric refresher; (7) footwear or leather care product; (8) hair styling product that will incorporate hair styling gel and include additional forms of hair styling products (i.e., liquid, semi-solid, and pump spray) but does not include hair spray product or hair mousse; (9) graffiti remover; (10) shaving gel; (11) toilet/urinal care product; and (12) wood cleaner. The previously regulated category with a more restrictive limit is contact adhesive that has been separated into 2 subcategories: general purpose and special purpose. The previously regulated categories with additional requirements are air fresheners and general purpose degreasers.

III. Proposed Action

EPA is proposing to approve the Maryland SIP revision for the control of VOC emissions from consumer products (COMAR 26.11.32) submitted on June 18, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule pertaining to the amendments of Maryland's consumer products regulation, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 25, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–19626 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516, 1533, and 1552

[Docket ID No. EPA–HQ–OARM–2003–0001; FRL–8477–9]

RIN 2030–AA89

Acquisition Regulation: Guidance on Use of Award Term Incentives; Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add policy, procedures, and contract clauses for the use of award term incentives. This rule makes two

administrative changes to the EPAAR. One change is to reflect the General Services Board of Contract Appeals as EPA's new forum for appeals under the Contract Disputes Act of 1978. The other change corrects a numbering error in Subpart 1516.4.

DATES: Comments must be received on or before December 3, 2007.

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

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov*.
- *Fax:* (202) 566–0224.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies.
- *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2003–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Chambers, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4398; fax number: (202) 565–2474; e-mail address: *chambers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

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

II. Background

Award terms are a form of incentive, offering additional periods of performance rather than additional profit or fee as a reward for achieving prescribed performance measures. Award term incentives were introduced by the Department of the Air Force in 1997. While they have become increasingly popular, the Federal Acquisition Regulation (FAR) has yet to provide any coverage on their use. Accordingly, in order to assist EPA contracting officers seeking to use award term incentives, it is necessary to amend the EPAAR to incorporate guidance on their use.

The administrative amendments are necessary because of two matters. First, the numbering of the sections under Subpart 1516.4 of the EPAAR does not align with the corresponding sections in the FAR. Second, EPA has changed its forum for appeals under the Contract Disputes Act of 1978 from the Department of Interior Board of Contract Appeals to the General Services Board of Contract Appeals. However, the EPAAR still references the Department of Interior Board of Contract Appeals as this forum.

III. Proposed Rule

This proposed rule would amend the EPAAR to add coverage on the use of award term incentives, and to make the administrative changes discussed above. The award term incentives coverage consists of a clause prescription and three clauses, one of which includes an alternate.

The first clause, entitled ''Award Term Incentive,'' sets forth the overall framework of the incentive including

the incentive period(s) of performance for which a contractor may become eligible by achieving prescribed performance measures, e.g., acceptable quality levels. The second clause, entitled ''Award Term Incentive Plan,'' sets forth the performance criteria and evaluation periods which will serve as the basis for the Government's decision on whether the contractor is eligible for an award term incentive. An alternate to this clause is provided for contracting officers to use ratings entered into the National Institutes of Health Contractor Performance System for the contract at hand as the basis for a contractor's eligibility for an award term incentive. The last clause, entitled ''Award Term Availability of Funds,'' informs contractors that funds are not presently available for any award term, and that the Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. The ''Award Term Incentive'' clause, and the ''Award Term Incentive Plan'' clause including its alternate, are prescribed for use on substantially the same basis.

In preparing this guidance, EPA was concerned that some contractors may believe that their achievement of prescribed performance measures conferred an absolute entitlement to award term(s), notwithstanding the absence of need or funds for such term(s). Accordingly, the guidance provides that any award terms are contingent upon a need for the services and the availability of funds.

The administrative amendments involve the renumbering of sections under Subpart 1516.4 of the EPAAR to be consistent with the numbering of their corresponding sections in the FAR, and a change to EPAAR 1533.2 to reflect the substitution of the General Services Board of Contract Appeals for the Department of the Interior Board of Contracts Appeals as EPA's forum for appeals under the Contract Disputes Act of 1978.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impact of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since award term incentives will be available equally to large and small entities, this rule will not have a significant economic impact on small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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

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

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

Executive Order 13132: Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides

the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would amend the EPAAR to provide guidance on the use of award term incentives and make other administrative changes. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

National Technology Transfer and Advancement Act of 1995

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

This proposed rule does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 48 CFR Parts 1516, 1533 and 1552

Government procurement.

Dated: September 27, 2007.

Denise Benjamin Sirmons,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1516—TYPES OF CONTRACTS

1. The authority citation for part 1516 continues to read as follows:

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Add section 1516.401–1 to read as follows:

1516.401–1 General.

3. Add section 1516.401–170 to read as follows:

1516.401–70 Award Term Incentives.

(a) Award term incentives enable a contractor to become eligible for additional periods of performance under a current contract by achieving prescribed performance measures under that contract.

(b) Award term incentives are designed to motivate contractors to superior performance. Accordingly, the prescribed performance measures, i.e., acceptable quality levels (AQL) which must be achieved by a contractor to become eligible for an award term typically will be in excess of the AQLs necessary for Government acceptance of contract deliverables.

(c) The Award Term Incentive Plan sets forth the evaluation process, including the evaluation criteria and performance measures, and serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government.

(d) Award term incentives may be used in conjunction with options. The Federal Acquisition Regulation does not prescribe a level of performance for the exercise of options, as contrasted with award term incentives, which should require superior performance as discussed in paragraph (b) of this subsection. Award term incentive periods will follow any option periods.

(e) (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period, or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(f) Award term incentives may be appropriate for any type of service contract.

4. Add section 1516.401–270 to read as follows:

1516.401–270 Definition.

Acceptable quality level (AQL) as used in this subpart means the minimum percent of deliverables which are compliant with a given performance

standard that would permit a contractor to become eligible for an award term incentive. Because the performance necessary for eligibility for the award term incentive may be in excess of that necessary for the Government acceptance of contract deliverables, the AQLs associated with the award term incentive may exceed the AQLs associated with the acceptance of contract deliverables. For example, under contract X, acceptable performance is 75 percent of reports submitted to the Government within five days. However, to be eligible for an award term incentive, 85 percent of reports must be submitted to the Government within five days.

1516.405 [Redesignated as 1516.406]

5. Redesignate section 1516.405 as section 1516.406.

1516.404–2 [Redesignated as 1516.405–2]

6. Redesignate section 1516.404–2 as section 1516.405–2.

1516.404–272 [Redesignated as 1516.405–270]

7. Redesignate section 1516.404–272 as section 1516.405–270.

1516.404–273 [Redesignated as 1516.405–271]

8. Redesignate section 1516.404–273 as section 1516.405–271.

1516.404–274 [Redesignated as 1516.405–272]

9. Redesignate section 1516.404–274 as section 1516.405–272.

10. Amend newly designated section 1516.406 to add new paragraphs (c) and (d) to read as follows:

1516.406 Contract clauses.

* * * * *

(c) The Contracting Officer shall insert the clauses at 1552.216–77, Award Term Incentive, 1552.216–78, Award Term Incentive Plan, and 1552.216–79 Award Term Availability of Funds in solicitations and contracts when award term incentives are contemplated. The clauses at 1552.216–77 and 1552.216–78 may be used on a substantially the same basis.

(d) If the Contracting Officer wishes to use the ratings set forth in the National Institutes of Health (NIH) Contractor Performance System (CPS) on the contract at hand as the basis for contractor eligibility for an award term incentive, the Contracting Officer shall insert the clause at 1552.216–78 with its Alternate I.

PART 1533—PROTESTS, DISPUTES AND APPEALS

11. The authority citation for part 1533 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

12. Revise section 1533.203 to read as follows:

1533.203 Applicability.

Pursuant to an interagency agreement between the EPA and the General Services Board of Contract Appeals (GSBCA), the GSBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contracts Disputes Act. The rules and regulations of the GSBCA appear in 48 CFR Chapter 61.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

14. Add section 1552.216–77 to read as follows:

1552.216–77 Award term incentive.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

AWARD TERM INCENTIVE (XXX 2007)

(a) *General.* This contract may be extended as set forth in paragraph (b) based on overall contractor performance as evaluated in accordance with the Clause entitled ''Award Term Incentive Plan,'' provided the Agency has a need for the effort at or before the time an award term is to commence, and if the contractor receives notice of the availability of funding for an award term period pursuant to the ''Award Term Availability of Funds'' clause. The Contracting Officer is responsible for the overall award term evaluation and award term decision. The Contracting Officer will unilaterally decide whether or not the contractor is eligible for an award term extension, and in conjunction with the Contracting Officer's Representative, will determine the need for continued performance and funding availability.

(b) *Period of performance.* Provided the contractor has achieved the performance measures , e.g., acceptable quality levels, set forth in the clause ''Award Term Incentive Plan,'' the Contracting Officer may extend the contract by exercising _____[insert the total award term incentive periods] additional award term incentive period(s) of_____[insert the award term incentive period] months each. The total maximum period of performance under this contract, if the Government exercises any option periods and all award term incentive periods is_____ [insert the total of the base period, option periods (if any), and award term incentive periods] years.

(c) *Right not to grant or cancel the award term incentive.* (1) The Government has the unilateral right not to grant or to cancel award term incentive periods and the associated award term incentive plans if—

(i) The Contracting Officer has failed to initiate an award term incentive period, regardless of whether the contractor's performance permitted the Contracting Officer to consider initiating the award term incentive period; or

(ii) The contractor has failed to achieve the performance measures for the corresponding evaluation period, or

(iii) The Government notifies the contractor in writing it does not have funds available for the award term incentive periods; or

(iv) The Government no longer has a need for the award term incentive period at or before the time an award term incentive period is to commence.

(2) When an award term incentive period is not granted or cancelled, any—

(i) Prior award term incentive periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term incentive periods are thereby also cancelled.

(d) Cancellation of an award term incentive period that has not yet commenced for any of the reasons set forth in paragraph (c) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the contractor to any termination settlement or any other compensation. If the award term incentive is cancelled, a unilateral modification will cite this clause as the authority.

(e) *Award term incentive administration.* The award term incentive evaluation(s) will be completed in accordance with the schedule in the Award Term Incentive Plan. The contractor will be notified of the results and their eligibility to be considered for the respective award term incentive no later than 120 days after an evaluation period.

(f) *Review process.* The contractor may request a review of an award term incentive evaluation which has resulted in the contractor being ineligible for the award term incentive. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(end of clause)

15. Add section 1552.216–78 to read as follows:

1552.216–78 Award Term Incentive Plan.

As prescribed in 1515.406(c), insert a clause substantially the same as follows:

AWARD TERM INCENTIVE PLAN (XXX 2007)

(a) The Award Term Incentive Plan provides for the evaluation of performance, and, together with Agency need and availability of funding, serves as the basis for award term decisions. The Award Term Incentive Plan may be unilaterally revised by the Government. Any changes to the Award

Term Incentive Plan will be made in writing and incorporated into the contract through a unilateral modification citing this clause. The Government will consult with the contractor prior to the issuance of a revised Award Term Incentive Plan, but is not required to obtain the contractor's consent to the revisions.

(b) [describe the evaluation periods and associated award term incentive periods, e.g., months 1–18 for award term incentive period I, and months 19–36 for award term incentive period II]

(c) [describe the evaluation schedule, e.g., 90 days after the end of the evaluation period]

(d) In order to be eligible for an award term incentive period the contractor must achieve all of the acceptable quality levels (AQL) for the evaluated tasks, both individual and aggregate, for that evaluation period. Failure to achieve any AQL renders the contractor ineligible for the associated award term incentive period. [identify the most significant tasks. Describe the AQL for each task as well as an overall AQL for the associated evaluation periods, e.g., an AQL of 90% each for tasks 1 and 3, and an AQL of 85% for task 7, and an overall AQL of 90% for the months 1–18 evaluation period]

(e) [If the contract will contain a quality assurance surveillance plan (QASP), reference the QASP, e.g., attachment 2. Typically, the performance standards and AQLs will be defined in the QASP]

(end of clause)

Alternate 1 (XXX 2007). As prescribed in 1516.406(d), substitute paragraphs substantially the same as following paragraphs (b) through (e) for paragraphs (b) through (e) in the basic clause:

(b) At the conclusion of each contract year, an average contract rating shall be determined by using the numerical ratings entered into the National Institutes of Health (NIH) Contractor Performance System (CPS) for this contract. The NIHCPS is an interactive database located on the Internet which EPA uses to record contractor performance evaluations.

(c) The contract year average rating shall be obtained by dividing the combined ratings by the number of ratings, for example:

Criteria	Rating
Quality of Product or Service	5.
Cost Control	4.
Timeliness of Performance	4.
Business Relations	5.
	18 (combined rating).
	÷ 4 (number of ratings).
	= 4.5 contract year average rating.

(d) The contractor shall be evaluated for performance from the start of the contract through Year _____[identify the evaluation period, e.g., year three]. The average rating for each contract year (as derived in paragraph (c) above) will be combined and divided by [insert the number of evaluation periods] to obtain an overall average rating, for example:

Evaluation period	Average rating
Year One	4.5.
Year Two	4.75.
Year Three	*4.75.*
	14 (combined average rating).
	÷ 3 (number of evaluation periods).
	= 4.66 overall average rating.

(e) Based on the overall average rating as determined under paragraph (d), provided that no individual rating, i.e., *Quality of Product or Service, Cost Control, Timeliness of Performance, or Business Relations* is below a 3, the contractor shall be eligible for the following award term periods:

(1) Overall average rating of 4.6 to 5.0—Two award term incentive periods of _____[insert the number of months] months.

(2) Overall average rating of 4.0 to 4.6—One award term incentive period of _____[insert the number of months] months.

16. Add section 1552.216–79 to read as follows:

1552.216–79 Award Term Availability of Funds.

As prescribed in 1515.406(c), insert the following clause:

AWARD TERM AVAILABILITY OF FUNDS (XXX 2007)

Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(end of clause)

[FR Doc. E7–19632 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2007–29272]

RIN 2127–AK04

Federal Motor Vehicle Safety Standards; Controls, Telltales and Indicators

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In an August 2005 final rule, we updated our standard regulating motor vehicle controls, telltales and indicators. The standard specifies requirements for the location, identification, and illumination of these items.

In May 2006, we published a response to four petitions for reconsideration, including one asking us to reconsider a requirement for color contrast between identifiers and their backgrounds. We denied this petition for reconsideration.

We received another petition for reconsideration from the Alliance of Automobile Manufacturers (the Alliance) of the color contrast requirement, specifically for the horn control identifier. In this document, we grant the Alliance's petition in part. We propose to amend the standard to provide that an identifier is not required if the horn control is placed in the middle of the steering wheel. If the horn control is placed elsewhere in the motor vehicle, the control would be required to be identified by the specified horn symbol in a color that stands out clearly against the background.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than December 3, 2007.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Operations, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www. regulations.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Ms. Gayle Dalrymple, Office of Crash Avoidance Standards at (202) 366–5559. Her FAX number is (202) 366–7002. For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820. You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA issued Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays,* in 1967 (32 FR 2408) as one of the initial FMVSSs. The standard applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses. The purpose of FMVSS No. 101 is to assure the accessibility and visibility of motor vehicle controls and displays under daylight and nighttime conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

At present, FMVSS No. 101 specifies requirements for the location (S5.1), identification (S5.2), and illumination (S5.3) of various controls and displays. It specifies that those controls and displays must be accessible and visible to a driver properly seated wearing his or her safety belt. Table 1, ''Controls, Telltales and Indicators with Illumination or Color Requirements,'' and Table 2, ''Identifiers for Controls, Telltales and Indicators with No Color or Illumination Requirements,'' indicate which controls and displays are subject to the identification requirements, and how they are to be identified, colored, and illuminated.

A. August 2005 Final Rule

In a final rule published in the **Federal Register** (70 FR 48295) on August 17, 2005, NHTSA amended FMVSS No. 101 by extending the standard's telltale and indicator requirements to vehicles of Gross Vehicle Weight Rating (GVWR) 4,536 kilograms (10,000 pounds) and over, updating the standard's requirements for multi-function controls and multi-task displays to make the requirements appropriate for advanced systems, and reorganizing the standard to make it easier to read. Table 1 and Table 2 continue to include only those symbols and words previously specified in the controls and displays standard or in another applicable FMVSS.

The final rule specified an effective date of February 13, 2006 for requirements applicable to passenger cars, multipurpose passenger vehicles, trucks and buses under 4,536 kg GVWR (10,000 pounds).[1]

II. May 2006 Final Rule; Response to Petitions for Reconsideration

NHTSA received petitions for reconsideration of the August 17, 2005 final rule, from the Truck Manufacturers Association (TMA), the Association of International Automobile Manufacturers (AIAM) and the Alliance. In the August 17, 2005 final rule, the requirement that the identifier for each telltale must be in a color that stands out clearly against the background was extended to identifiers for controls and indicators (see S5.4.3). The Alliance asked for reconsideration of this requirement, stating that not all identifiers are in a color that stands out clearly against the background. The Alliance further stated that it is not needed, citing as an example the horn identifier.

Most vehicle models use the horn symbol as the identifier, which is molded into the air bag cover, without a color ''that stands out clearly against the background'' filled in. The Alliance commented that: ''The symbol is the same color as the background, but it can still be recognized because the embossment stands out against the background.'' The Alliance petitioned for the regulatory text at S5.4.3 to be changed to: ''The identification required by Table 1 or Table 2 for a telltale, control or indicator shall contrast with the background.''

In the May 15, 2006 final rule, response to petitions for reconsideration (71 FR 27964), we noted that over the years, the agency had received numerous complaints regarding the inability to locate the horn control. NHTSA's Office of Defects Investigation's ARTEMIS database has recorded 120 complaints in the past ten years from consumers reporting trouble locating the horn control. Of these 120 complaints, consumers reported 12 crashes, nine near misses, and an allegation of a fatality. In the response, NHTSA explained that filling in the horn symbol with a color ''that stands out clearly against the background'' would make the horn control more visible and would help drivers to find the control more readily. For these

[1] The effective date was subsequently extended to September 1, 2006 (71 FR 3786, January 24, 2006).

reasons, we denied this part of the Alliance's petition.

To minimize costs on industry resulting from this requirement, NHTSA delayed the compliance date to meet S5.4.3 for five years, to September 1, 2011 to ''allow manufacturers to implement the necessary changes on most products during the planned product changes in normal product development cycles.''

III. Petition for Reconsideration of the Color Contrast Requirement

In a submission dated June 29, 2006, the Alliance petitioned for a reconsideration of the color contrast requirement for the horn symbol. This was the only issue raised in the petition. Again, the Alliance petitioned for the regulatory text at S5.4.3 to be changed to: ''The identification required by Table 1 or Table 2 for a telltale, control or indicator shall contrast with the background.'' In support of its petition, the Alliance stated that:

- NHTSA denied the Alliance's previous petition based on a previously undisclosed analysis of complaints;
- ''[I]t is unclear and cannot be evaluated whether the complaints referred to by NHTSA were related to actual horn symbol identification,''
- The complaint information should be submitted to the DOT Docket;
- ''[S]ignificant cost and investment will still be required across the industry,'' to accomplish color contrast of the horn symbol on the background of the steering wheel, despite the fact that the Alliance agrees that the lead time afforded by the May 2006 final rule is adequate ''for compliance with this section in order to minimize the associated financial impact * * *'';
- A ''significant concern'' is the ''compatibility of materials that may be used to assure long term symbol identification durability and contrast * * *'' and that this new combination of materials may ''adversely affect airbag cover performance, requiring further engineering development. Environmental and manufacturing issues related to providing horn symbol contrast cannot be assessed until the materials and processes are defined'' and;
- The UN working group considering a GTR [2] on controls and displays is the appropriate forum to understand and discuss horn identification problems.

Furthermore, on October 17, 2006, the Alliance presented a data analysis to NHSTA staff of complaints regarding horn control identification on various member companies' vehicles. (The presentation has been placed in The DOT Docket at NHTSA–2006–23651.) The analysis revealed that as manufacturers have adopted membrane switches in the center of the steering wheel to activate the horn, consumer complaints about horn identification have decreased substantially.

IV. Grant of Petition for Reconsideration and Notice of Proposed Rulemaking

NHTSA has been persuaded by the Alliance's petition and accompanying data, and grants its petition for reconsideration regarding S5.4.3. We believe the Alliance's analysis provided on October 17, 2006 has merit. Driver confusion as to the location of the horn control has decreased as the horn control is returned where drivers intuitively expect to find it to the center of the steering wheel hub on more vehicles. If the horn control is located where most drivers expect it, the agency believes there is little safety benefit from the presence of the horn identifier. In fact, requiring the identifier on or adjacent to the control, may contribute to driver confusion as manufacturers opt to place the identifier adjacent to the control, rather than too close to the large, multi-colored, company logo displayed on many vehicles at the center of the wheel.

At present, S5. *Requirements* of FMVSS No. 101 states: ''Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale or an indicator listed in Table 1 or Table 2 must meet the requirements of this standard for the location, identification, color, and illumination of the control, telltale, or indicator.'' The horn control indicator is specified in Table 2. So that horn controls that are in the middle of the steering wheel would not have to meet S5., in this NPRM, we propose to amend S5.4.3 of FMVSS No. 101 to read:

> Each identifier used for the identification of a telltale, control or indicator must be in a color that stands out clearly against the background. However, no identifier is required for a horn control activated by the driver pressing on the center of the face plane of the steering wheel. For vehicles with a GVWR of under 4,536 kg (10,000 pounds), the compliance date for this provision is September 1, 2011.

The word ''symbol'' is proposed to be changed to ''identifier'' to more accurately include words and abbreviations as identifiers which are required to contrast with their backgrounds, as was done in the previous final rules to other sections of the standard. This was pointed out by the Alliance in its current petition.

We are not proposing the Alliance's suggested language (''The identification required by Table 1 or Table 2 for a telltale, control or indicator shall contrast with the background.'') because we believe it is too broad. It would allow non-contrasting identifiers for telltales, indicators and controls whenever they appear in the vehicle (such as the instrument panel).

At present, S5.2.1 states in part: ''* * * No identification is required for any horn (i.e. audible warning signal) that is activated by a lanyard or for a turn signal * * *'' To make S5.2.1 consistent with the changes to S5.4.3, in this NPRM, we are proposing to revise the fourth sentence in S5.2.1 to state in part: ''* * * No identification is required for any horn (i.e., audible warning signal) that is activated by a lanyard or by the driver pressing on the center of the face plane of the steering wheel * * *''.

V. Proposed Leadtime

We propose for vehicles under 10,000 pounds that the compliance date for S5.4.3 would continue to be September 1, 2011. The compliance date for the extension of the standard's control, indicator, and telltale requirements to vehicles with at GVWR of 4, 536 kg (10,000 pounds) or greater would continue to be September 1, 2013. If this NPRM is made final, optional early compliance would be permitted as of the date the final rule is published.

VI. Public Comments

How Do I Prepare and Submit Comments?

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

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

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

[2] The United States participates in the United Nations/Economic Commission for Europe World Forum for Harmonization of Vehicle Regulations (also known as Working Party 29 or WP.29) under a 1990 agreement known as the 1998 Global Agreement. The 1998 Global Agreement provides for the establishment of global technical regulations (GTRs) regarding, among other things, the safety of motorized wheeled vehicles, equipment and parts. The Agreement contains procedures for establishing GTRs by either harmonizing existing regulations or developing new ones.

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. Each electronic filer will receive electronic confirmation that his or her submission has been received.

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 delineating that information, as specified in our confidential business information regulation. (See 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 will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read Comments Submitted By Other People?

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

You may also review filed public comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

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

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one 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 or 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.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, NHTSA tentatively concludes that if made final, this proposed rule will not have any quantifiable cost effect on motor vehicle manufacturers. The proposed rule would not impose any new requirements but would instead relieve a restriction. In this document, NHTSA proposes to exclude horn controls activated by the driver pressing on the center of the face plane of the steering wheel from the standard's requirement that an identifier be provided. We believe that if this proposal is made final, there will be no measurable effect on safety. As discussed above, driver confusion as to the location of the horn control decreases as the horn control returns to the center of the steering wheel hub where drivers intuitively expect to find it. If the horn control is located where drivers expect it, there is little safety benefit from the presence of the horn identifier.

Because the economic effects of this proposal are so minimal, no further regulatory evaluation is necessary.

B. 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 rulemaking for any proposed 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 that the rule will not have a significant economic impact on a substantial number of small entities. The 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.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new requirements but would instead relieve a restriction.

For these reasons, and for the reasons described in our discussion on Executive Order 12866 and DOT Regulatory Policies and Procedures, NHTSA concludes that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. 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.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that it does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. If made final, this proposed rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule does not require any collections of information, or recordkeeping or retention requirements as defined by the OMB in 5 CFR Part 1320.

G. National Technology Transfer and Advancement Act

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

After conducting a search of available sources, we have determined that there is no applicable voluntary consensus standard for this proposed rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

If made final, this proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as set forth below:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

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

2. Amend § 571.101 by revising the last sentence in S5.2.1, and by revising S5.4.3, to read as follows:

§ 571.101 Standard No. 101, Controls, telltales, and indicators.

* * * * *

S5.2.1 * * * No identification is required for any horn (*i.e.*, audible warning signal) that is activated by a lanyard or by the driver pressing on the center of the face plane of the steering wheel, or for a turn signal control that is operated in a plane essentially parallel to the face plane of the steering wheel in its normal driving position and which is located on the left side of the steering column so that it is the control on that side of the column nearest to the steering wheel face plane.

* * * * *

S5.4.3 Each identifier used for the identification of a telltale, control or indicator must be in a color that stands out clearly against the background. However, no identifier is required for a horn control activated by the driver pressing on the center of the face plane of the steering wheel. For vehicles with a GVWR of under 4,536 kg (10,000 pounds), the compliance date for this provision is September 1, 2011.

* * * * *

Issued on: September 21, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7–19365 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 72, No. 192

Thursday, October 4, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 1, 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.

Rural Housing Service

Title: Form RD 1940–59, Settlement Statement.

OMB Control Number: 0575–0088.

Summary of Collection: The real Estate Settlement Procedures Act (RESPA), as amended, requires the disclosure of real estate settlement costs to real estate buyers and sellers. Disclosure of the nature and costs of a mortgage transaction enables the borrower to be a more informed customer and protects the public from unnecessarily high settlement charges.

Need and Use of the Information: Form RD 1940–49 is completed by Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of RHS loans and credit sales use to purchase or refinance Section 502 Housing, Rural Rental Housing, and Farm Laboring Housing. The same parties performing the closing of FSA Farm Ownership loans and credit sales complete the form. The information is collected to provide the buyer and the seller with a statement detailing the actual costs of the settlement services involved in certain Agency financed real estate transactions. Failure to collect the information and disclose the information would be a violation of the RESPA.

Description of Respondents: Business or for-profit.

Number of Respondents: 11,928.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,530.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–19628 Filed 10–3–07; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0089]

Notice of Request for Extension of Approval of an Information Collection; Pine Shoot Beetle; Host Material From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of pine nursery stock and various pine products from Canada to prevent the spread of pine shoot beetle into noninfested areas of the United States.

DATES: We will consider all comments that we receive on or before December 3, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0089 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0089, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0089.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading

room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of pine nursery stock and various pine products from Canada, contact Mr. David Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–4312. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Pine Shoot Beetle; Host Material from Canada.

OMB Number: 0579–0257.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

APHIS regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products (7 CFR 319.37 through 319.37–14) restricts, among other things, the importation of living plants, plant parts, and seeds for propagation; and Subpart–Logs, Lumber, and Other Unmanufactured Wood Articles (7 CFR 310.40–1 through 319.40–11) governs the importation of various logs, lumber, and other unmanufacturerd wood products into the United States. The regulations in both subparts help prevent the introduction and spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States and contain several information collection requirements, including permits, additional declarations on certificates and phytosanitary certificates, statements of origin and movement, compliance agreements, and information on designation of products.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

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

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0401 hour per response.

Respondents: Growers and shippers of pine trees and pine tree products.

Estimated annual number of respondents: 2,340.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 2,340.

Estimated total annual burden on respondents: 94 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 27th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19651 Filed 10–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0122]

Notice of Availability of a Pest Risk Analysis for Importation of Arugula Leaves With Stems From Panama Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of arugula leaves with stems from Panama. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of arugula leaves with stems from Panama. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 3, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0122 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0122, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD

20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0122.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Panama to allow the importation of arugula leaves with stems from Panama into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that arugula leaves with stems can be safely imported into the continental United States from Panama using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of arugula leaves with stems from Panama in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of arugula leaves with stems from Panama into the continental United States subject to the requirements specified in the risk management analysis.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of September, 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19652 Filed 10–3–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0060]

Emerald Ash Borer; Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release of three insect parasitoid species for the biological control of the emerald ash borer (*Agrilus planipennis*). The environmental assessment documents our review and analysis of environmental impact associated with, and alternatives to, the release of these biological control agents. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Juli Gould, Entomologist, Otis Pest Survey, Detection, and Exclusion Laboratory, PPQ, APHIS, Building 1398, Otis ANGB, MA 02542–5008; (508) 563–9303 ext. 220.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive woodboring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB into noninfested areas of the United States. The States of Illinois, Indiana, and Ohio; Prince George's County, MD; and portions of the State of Michigan are currently designated as quarantined areas.

Despite State and Federal quarantines designed to contain EAB, the lack of effective methods to detect EAB-infested trees and the large area of EAB infestation has resulted in a shift in strategy by regulatory agencies from

area-wide eradication to eradication in outlying areas and containment in the core infestation areas. In the United States, EAB eradication efforts involve the removal of all ash trees within a specified radius around known infestations. However, by the time an infestation is discovered and treated, EAB has usually already dispersed outside the eradication zone. Besides natural dispersal, the spread of EAB has been accelerated through human-assisted movement of infested ash firewood, timber, solid wood packing materials, and nursery stock. As EAB spreads in North America, regulatory agencies, land managers, and the public are seeking sustainable management tools such as biological control to reduce EAB population densities and to slow its spread.

On May 23, 2007, we published in the **Federal Register** (72 FR 28947–28948, Docket No. APHIS–2007–0060) a notice [1] in which we announced the availability for public review and comment of an environmental assessment, entitled ''Proposed Release of Three Parasitoids for the Biological Control of the Emerald Ash Borer (Agrilus planipennis) in the Continental United States'' (April 2, 2007), that examined the potential effects on the quality of the human environment that may be associated with the release of three specific biological control agents to control infestations of EAB within the continental United States. APHIS and the Forest Service proposed to release the three parasitoids into the environment of the continental United States for the purpose of reducing EAB populations. These parasitoids are known to attack EAB consistently in its native habitat in China. Post-release monitoring of the spread and establishment of each parasitoid species and impacts on EAB and non-target wood-boring beetles will also be conducted.

We solicited comments on the environmental assessment for 30 days ending June 22, 2007. We received 41 comments by that date, of which 30 supported the release of the biological control agents to control infestations of EAB. The 11 comments that opposed the release are addressed at length in the updated environmental assessment.

In this document, we are advising the public of our decision and finding of no significant impact regarding the release of three insect parasitoid species for the biological control of the emerald ash borer. This decision is based upon the updated environmental assessment, entitled ''Proposed Release of Three Parasitoids for the Biological Control of the Emerald Ash Borer (*Agrilus planipennis*) in the Continental United States'' (July 2007).

The updated environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site [2] or in our reading room at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to view the updated environmental assessment and finding of no significant impact are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may request paper copies of the updated environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 27th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19647 Filed 10–3–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the environmental assessment, the finding of no significant impact, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0060*.

[2] See footnote 1.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, October 12, 2007; 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda.
II. Approval of Minutes of September 21, Meeting.
III. Announcements.
IV. Staff Director's Report.
V. Management and Operations.
- Strategic Plan.
- Establishment of Briefing and Meeting Schedule for 2008.
- Celebration of Commission's 50th Anniversary.
- Information Quality Guidelines.
- Involvement of Commissioners in Staff Activities.

VI. Program Planning.
- Consideration of Proposed Debate on Race and Intelligence.

VII. State Advisory Committee Issues.
- South Carolina SAC.
- Involvement of Commissioners on State Advisory Committees.

VIII. Future Agenda Items.
IX. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Manuel Alba, Press and Communications, (202) 376–8582.

Dated: October 2, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–4949 Filed 10–2–07; 12:32 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1527]

Approval of Expansion of Authority for Subzone 133D; Deere & Company (Construction Equipment); Davenport, IA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Deere & Company, operator of FTZ Subzone 133D, has requested authority to expand the scope of manufacturing under zone procedures within Subzone 133D at the company's facility in Davenport, Iowa (FTZ Docket 49–2006, filed 12/28/06);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 1317, 1/11/07); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the expansion of the scope of manufacturing authority under zone procedures within Subzone 133D to include the manufacture of articulated dump trucks at the Deere & Company

plant located in Davenport, Iowa, as described in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of September 2007.

Stephen J. Claeys,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19653 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1526]

Grant of Authority for Subzone Status, MAPE USA, Inc., (Crankshafts), Cambridge, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Duluth Seaway Port Authority, grantee of Foreign-Trade Zone 51, has made application for authority to establish special-purpose subzone status at the warehousing and distribution facility of MAPE USA, Inc., located in Cambridge, Minnesota (Docket 50–2006, filed 12–29–2006);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 1318, 1–11–2007); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to testing, balancing, and calibration of crankshafts and related engine components at the warehousing and distribution facility of MAPE USA, Inc., located in Cambridge, Minnesota (Subzone 51A), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of September 2007.

Stephen J. Claeys,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19643 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2007, Docket 29–2007, Docket 30–2007]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Requests for Manufacturing Authority; Extension of Comment Period; Lane Furniture Industries, Inc.; H.M. Richards, Inc.; Bauhaus USA, Inc. (Upholstered Furniture)

Based on a request from an interested party, the comment period for the applications submitted to the Foreign-Trade Zones Board (the Board) by Greater Mississippi Foreign-Trade Zone, Inc. (72 FR 43232–43233, 8–3–2007), grantee of FTZ 158, on behalf of Lane Furniture Industries, Inc., H.M. Richards, Inc., and, Bauhaus USA, Inc., requesting authority to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158 has been extended to November 1, 2007 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until November 16, 2007.

Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. For further information, contact Pierre Duy, examiner, at: *pierre_duy@ita.doc.gov*, or (202) 482–1378.

Dated: September 28, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19658 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1529]

Reorganization and Expansion of Foreign-Trade Zone 106; Oklahoma City, OK, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign-Trade Zone 106, submitted an application to the Board for authority to reorganize and expand the zone to include sites at the ICON Center Industrial Park (Site 12) in Ada and within the Guthrie/Edmond Regional Airport (Site 13) in Guthrie and to delete Sites 5, 6, 9 and 11 from the zone plan, adjacent to the Oklahoma City Customs and Border Protection port of entry (FTZ Docket 2–2006; filed 1/30/06; amended 7/31/06, 5/16/07 and 8/9/07);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 6752, 2/9/06) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the amended proposal is in the public interest;

Now, therefore, the Board hereby orders:

The amended application to reorganize and expand FTZ 106 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to sunset provisions that would terminate authority on October 31, 2010, for Sites 3, 4, 7 & 10 and would terminate authority on October 31, 2012, for Site 12, where no activity has occurred under FTZ procedures before those dates.

Signed at Washington, DC, this 28th day of September 2007.

Stephen J. Claeys,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19657 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1528]

Expansion of Foreign-Trade Zone 61; San Juan, PR, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Trade and Export Company, grantee of Foreign-Trade Zone 61, submitted an application to the Board for authority to expand Site 1 and to include 11 additional sites in the San Juan, Puerto Rico, area, incorporating temporary sites T–2, T–3 and T–4 on a permanent basis, adjacent to the San Juan Customs and Border Protection port of entry (FTZ Docket 42–2006; filed 11/03/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 66499, 11/15/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 61 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to sunset provisions that would terminate authority on October 31, 2012, for proposed Sites 2, 3, 5, 6, 7, and 10 and would terminate authority on October 31, 2014, for proposed Sites 4, 8, and 9, where no activity has occurred under FTZ procedures before those dates.

Signed at Washington, DC, this 28th day of September 2007.

Stephen J. Claeys,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19654 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Forged Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) has received a request for a new shipper review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India issued on February 9, 1994. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2005), we are initiating an antidumping new shipper review of Hot Metal Forge (India) Pvt., Ltd. (Hot Metal). The period of review (POR) of this new shipper review is February 1, 2007 through July 31, 2007.

EFFECTIVE DATE: October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Michael 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) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), the Department received a timely request from Hot Metal, a producer and exporter of flanges, for a new shipper review of the antidumping duty order on flanges from India. *See* August 31, 2007, letter from Hot Metal to the Secretary of Commerce requesting a new shipper review.

Pursuant to section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b), Hot Metal certified that it is both an exporter and producer of the subject merchandise, that it did not export subject merchandise to the United States during the period of the investigation (POI) (July 1, 1992 through December 31, 1992), and that since the investigation was initiated, it has not been affiliated with any producer or exporter who exported the subject merchandise to the United States during the POI. It also submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that shipment, and the date of its first sale to an unaffiliated customer in the United States. It also certified it had no shipments to the United States during the period subsequent to its first shipment.

The Department conducted a Customs database query in an attempt to confirm that Hot Metal's shipments of subject merchandise entered the United States for consumption and that liquidation of such entries had been suspended for antidumping duties. *See* October 1, 2007 New Shipper Review Initiation Checklist, question 18. The Department also examined whether the U.S. Customs and Border Protection (CBP) confirmed that such entries were made during the new shipper review POR.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we find that the request Hot Metal submitted meets the threshold requirement for initiation of a new shipper review. Accordingly, we are initiating a new shipper review of the antidumping duty order on flanges from India manufactured and exported by Hot Metal. This review covers the period February 1, 2007, through July 31, 2007. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of

forged stainless steel flanges manufactured and exported by Hot Metal must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise (*i.e.*, forged stainless steel flanges) at the current all–others rate of 162.14 percent.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are issued and published in accordance with section 751(a)(2)(B) of the Act and sections 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: September 28, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19660 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review

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

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC'') on March 26, 2007. The period of review (''POR'') is June 1, 2005, through May 31, 2006. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our preliminary results. Therefore, the final results differ from the preliminary results. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2007, the Department published its preliminary results. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part*, 72 FR 14078 (March 26, 2007) (''*Preliminary Results*''). On March 30, 2007, the Timken Company (i.e., Petitioner) submitted a case brief. On April 25, 2007, Peer Bearing Company–Changshan (''CPZ'') submitted a case brief. On April 30, 2007, Petitioner and CPZ each submitted a rebuttal brief.[1] Yantai Timken Company Limited (''Yantai''), Chin Jun Industrial Ltd. (''Chin Jun''), and Hebei Longsheng Metals & Minerals Trade Co., Ltd. (''Hebei'') did not submit case briefs or rebuttal briefs. In the *Preliminary Results* we preliminarily rescinded the review with respect to Chin Jun and Hebei. No interested party requested a hearing.

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

Merchandise covered by the order is TRBs from the PRC; flange, take–up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45[2], 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review

In our *Preliminary Results*, we stated we preliminarily rescinded the review with respect to Chin Jun in accordance with 19 CFR 351.213(d)(3) and with respect to Heibei in accordance with 19 CFR 351.213(d)(1). Chin Jun reported that it had no sales or exports of subject merchandise to the United States during the POR. Hebei withdrew its request for review within the applicable deadline. No other party requested a review of Hebei. *See Preliminary Results*, 72 FR at 14078. We reviewed customs import data and found no evidence that Chin Jun had any shipments of subject merchandise during the POR. In addition, on February 28, 2007, we made a ''No Shipments Inquiry'' to U.S. Customs and Border Protection (''CBP'') stating that records at the Department did not evidence exports of subject merchandise by Chin Jun during the POR. We asked CBP to notify us within ten days if CBP ''has contrary information and is suspending liquidation'' of subject merchandise exported by Chin Jun. CBP did not reply with contrary information.

Therefore, we are rescinding the administrative review with respect to Chin Jun and Hebei.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the 19th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated September 24, 2007 (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public

[1] Yantai withdrew its request for review within the applicable deadline on September 6, 2006, stating that it did not intend to participate further in the review. However, Koyo Corporation of U.S.A., a U.S. producer of TRBs, also requested a review of Yantai. Therefore, the Department did not rescind the review of Yantai.

[2] In the preceding POR, Petitioner argued that in 1995 HTSUS subheading 8482.99.30, included in the scope description, was split and replaced by HTSUS 8482.99.15 for cups and other rings (cones), and HTSUS 8482.99.45 for other TRBs parts. The Department agreed and stated that '' . . . for the final results, the Department will use HTSUS 8482.99.15 for cups and other rings (cones) and HTSUS 8482.99.45 for other parts of TRBs. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review*, 71 FR 75936 (December 19, 2006), and accompanying Issues and Decision Memorandum at Comment 1. The Department inadvertently failed to reflect this change in the Preliminary Results and in these final results is replacing HTSUS 8482.99.30 with HTSUS 8482.99.15 and HTSUS 8482.99.45 in the scope description. *See* the concurrent Issues and Decision Memorandum at Comment 1 for further discussion.

document which is on file in the Central Records Unit in room B–099 in the main Department building, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Application of Total Adverse Facts Available

CPZ and Yantai did not submit responses to the Department's questionnaires issued in this segment of the proceeding. In the *Preliminary Results*, the Department stated that because CPZ and Yantai failed to submit questionnaire responses, they had not demonstrated their entitlement to a separate rate and were therefore subject to the PRC–wide rate. *See Preliminary Results*, 72 FR 14079. Furthermore, we found in the *Preliminary Results* that because the PRC–wide entity failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, or otherwise impeded the proceeding, it was appropriate to apply a dumping margin for the PRC–wide entity using facts otherwise available on the record and that an adverse inference was appropriate. *See Preliminary Results* 72 FR at 14079. We continue to find that the application of the country–wide rate of 60.95 percent, as total adverse facts available (''AFA''), is appropriate. See the Issues and Decision Memorandum at Comment 3 for further discussion.

Corroboration of Secondary Information

Section 776(c) of the Act requries that the Department corroborate, to the extent practicable, a figure which it applies as facts available. The Department corroborated the AFA country–wide rate of 60.95 percent in the *Preliminary Results*. The Department found that this rate has probative value because it is reliable and relevant. In the *Preliminary Results*, we found the 60.95 percent rate to be reliable because it was calculated for a respondent company in the final results of redetermination on remand from the Court of International Trade, for the seventh administrative review of TRBs (covering the period June 1, 1993, to May 31, 1994). *See Preliminary Results*, 72 FR at14080 (*citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 79902 (December 31, 2002), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 69 FR 10423 (March 5, 2004)). In the *Preliminary Results*, the Department determined the 60.95 percent rate was relevant because no record evidence called it into question. *See Preliminary Results*, 72 FR at 46963. Further, in our recently completed final results for the 2003–2004 review of TRB's, we corroborated and applied the 60.95 percent rate to the PRC–wide entity as AFA. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Amended Final Results of Administrative Review*, 71 FR 9521 (February 24, 2006). For the final results, we continue to find that the 60.95 percent rate is reliable and relevant and therefore corroborated. See the Issues and Decision Memorandum at Comment 3 for further discussion.

Changes Since the Preliminary Results

Based on our analysis of comments received, we revised the scope description to account for updated HTSUS numbers. See the Issues and Decisoin Memorandum at Comment 1 for further discussion.

Final Results of Review

We determine that the following dumping margin exists for the period June 1, 2005, through May 31, 2006:

TRBs FROM THE PRC

Exporter	Weighted–Average Margin (Percent)
PRC–Wide Entity	60.95

Assessment Rates

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of administrative review.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for previously investigated or reviewed PRC and non–PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding; (2) the cash deposit rate for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 60.95 percent; and (3) the cash deposit rate for all non–PRC exporters of subject merchandise which have not received their own rate, will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These requirements shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

Dated: September 24, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Outdated TRBs Tariff Classification

Comment 2: CPZ's Separate Rate Status

Comment 3: The Country–wide Rate

[FR Doc. E7–19659 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review from Global Express Trading, LLC.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 07–00003.'' A summary of the application follows.

Summary of the Application

Applicant: Global Express Trading, LLC. (''GET''), 13572 Turtle Marsh Loop Suite 224, Orlando, Florida 32837.

Contact: Josilyn Mosquera, General Manager, Telephone: (407) 575–0104.

Application No.: 07–00003.

Date Deemed Submitted: September 24, 2007.

Members (in addition to applicant): None.

GET seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All Products.

2. Services

All Services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. Export Trade Facilitation Services (as they Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, Applicant, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. Applicant and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated

by Applicant with its distributors in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operations, Applicant will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. Applicant will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standard of Section 303(a) of the act.

Definition

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Dated: September 27, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–19562 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Correction to Notice of Application To Amend the Export Trade Certificate of Review Issued to U.S. Shippers Association.

SUMMARY: This document contains correction to the notice of application to amend the Export Trade Certificate of Review Issued to U.S. Shippers Association published in the **Federal Register** on Friday, September 14, 2007 (72 FR 52552). The notice of application should have also included the removal of Bayer CropScience from the Export Trade Certificate.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–13A18.'' The U.S. Shippers Association's original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on April 6, 2006 (71 FR 18721, April 12, 2006). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association (''USSA''), 3715 East Valley Drive, Missouri City, Texas 77459.

Contact: John S. Chinn, Project Director, Telephone: (734) 927–4328.

Application No.: 85–13A18.

Date Deemed Submitted: September 4, 2007.

Proposed Amendment: USSA seeks to amend its Certificate to:

Add each of the following companies and persons as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

(a.) Taminco, Inc.; Taminco Higher Amines, Inc.; and Taminco Methylamines, Inc., each located in Allentown, PA, and

(b.) Salvatore Di Paola and Carrie M. Bowden, both of Missouri City, TX.

Delete the following company which has elected to leave the USSA as a ''Member'' of the certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)):

(a) Bayer CropScience, located in Research Triangle Park, NC.

Dated: September 28, 2007.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–19585 Filed 10–3–07; 8:45 am]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, October 23, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07–4948 Filed 10–2–07; 11:22 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 1993 Defense Base Closure and

Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

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

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

California

Installation Name: Former Naval Air Station Alameda ''North Housing'' Parcel.

LRA Name: Alameda Reuse and Redevelopment Authority.

Point of Contact: Debbie Potter, Base Reuse and Community Development Manager, Development Services Department, City of Alameda.

Address: 950 West Mall Square, Suite 215, Alameda, CA 94501–7552.

Phone: (510) 749–5833.

Dated: September 28, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4912 Filed 10–3–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0025]

Federal Acquisition Regulation; Information Collection;Trade Agreements Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning trade agreements certificate. The clearance currently expires on February 29, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

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

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Contract Policy Division, GSA (202) 208–6925.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States, a designated country, Caribbean Basin country or Free Trade Agreement Country.

B. Annual Reporting Burden

Respondents: 1,140.
Responses Per Respondent: 10.
Total Responses: 11,400.
Hours Per Response: .167.
Total Burden Hours: 1,238.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0025, Trade Agreements Certificate, in all correspondence.

Dated: September 17, 2007.

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. 07–4908 Filed 10–3–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice To Amend an Existing System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) and the National Nuclear Security Administration (herein referred to collectively as ''DOE'') are publishing notice of a proposed amendment to an existing system of records. DOE proposes to amend the system of records DOE–11 ''Emergency Operations Notification Call List.'' This notice will increase the categories of individuals covered by the Emergency Operations Notification Call List, expand the categories of information to be collected, and ensure that the Emergency Operations Notification Call List is applicable to all DOE facilities and activities.

DATES: The proposed amendment to this existing system of records will become effective without further notice on November 19, 2007 unless DOE receives adverse comments and determines that this amendment should not become effective on that date.

ADDRESSES: Written comments should be directed to the following address: U.S. Department of Energy, Alan J. Cerrone, Continuity Programs Manager, Office of Emergency Operations, National Nuclear Security Administration, NA–40, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Director, Freedom of Information Act and Privacy Group, MA–74, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955; Isiah Smith, Deputy Assistant General Counsel for General Law, GC–77, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–5000; David S. Jonas, Office of the General Counsel, National Nuclear Security Administration, NA–3.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–5000; and Alan J. Cerrone, Continuity Programs Manager, Office of Emergency Operations, National Nuclear Security Administration, NA–40, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–5886.

SUPPLEMENTARY INFORMATION: The events of September 11, 2001, and the threat of nuclear terrorism have resulted in an increased impetus for ensuring that such Federal Government emergency response capabilities are ready to respond on short notice. To rapidly and effectively respond, DOE plans to amend its system of records to maintain additional information about emergency response resources.

Since September 11, 2001, DOE's emergency response mission has expanded to include continuity of Government programs. In the case of a terrorist attack, weather related emergency, or accidental release of radiological materials, DOE will be able to use the information in this system of records to locate employees, to notify personnel of the event, to deploy responders, and/or to move operations to an alternate location. DOE also will be able to use the information in this system of records to mobilize personnel. The Homeland Security Act of 2002 delineates DOE's responsibilities for managing the readiness of capabilities and assets that may be called upon to respond to a nuclear or radiological incident. Homeland Security Presidential Directive-5, (HSPD–5), ''Management of Domestic Incidents'' mandated the development of an intergovernmental agency National Response Plan (NRP) to direct Federal Government agency capabilities and resources into a coordinated, unified domestic catastrophic incident management and response system. DOE has several responsibilities and functions under the NRP.

The amendment to this system will increase the categories of individuals covered by the Emergency Operations Notification Call List, expand the categories of information to be collected, and ensure that the Emergency Operations Notification Call List is applicable to all DOE facilities and activities.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC, on September 28, 2007.

Ingrid A.C. Kolb,

Director, Office of Management.

DOE–11

SYSTEM NAME:

Emergency Operations Notification Call List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, NNSA Service Center, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Idaho Falls, ID 83401.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, Pittsburgh, PA 15236–0940.

U.S. Department of Energy, Office of Naval Reactors, Crystal City, VA 22202.

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–4578.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy and National Nuclear Security Administration (hereinafter referred to collectively as ''DOE'') senior officials, office directors, managers, key support staff, and DOE contractors involved in DOE emergency management and operations activities, Continuity of Government activities and Continuity of Operations activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, home telephone number, home address, pager numbers, cellular telephone numbers, and electronic mail addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 42, United States Code (U.S.C.), Section 7101 *et seq.* 50 U.S.C. 2401 *et seq.*; The Homeland Security Act of 2002; and the Homeland Security Presidential Directive-5, (HSPD–5), ''Management of Domestic Incidents.''

PURPOSE(S):

The records are maintained and used by DOE to create a list that will enable 24 hour contact with DOE personnel and contractors in the event of an emergency in order to marshal a coordinated, unified response to catastrophic events that may impact DOE facilities or activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use when (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

3. A record from the system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to a (1) Person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records may be retrieved by name of the individual.

SAFEGUARDS:

Paper records are maintained in a secure area and are locked in cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security). Passwords are protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Deputy Administrator for Defense Nuclear Nonproliferation in the National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation, implementing the Privacy Act, in Title 10, Code of Federal Regulations, Part 1008.6, any individual may request whether a system of records maintained by DOE contains records about him/her and request access to those records. The request should be directed to the Director, Headquarters Freedom of Information Act and Privacy Act Group, U.S. Department of Energy, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by a Laboratory, Area or Site Office, the request should be directed to the Privacy Act Officer at the Office that has jurisdiction over that site. The request should include the requester's complete name, time period for which records are sought, and the office locations(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–19608 Filed 10–3–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Correction

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request; Correction.

SUMMARY: The EIA published a notice in the issue of Friday, September 28, 2007, (72 FR 55193) regarding the submission of the Electric Power Program to the Office of Management and Budget (OMB) for review and a three-year extension. The form EIA–826 was omitted from this notice. In FR Doc. E7–19256, beginning on page 55193, make the following correction: In the third column, **SUPPLEMENTARY INFORMATION**, the second paragraph is corrected to read: ''1. Forms EIA–411, 826, 860, 860M, 861 and 923, ''Electric Power Program.''

Issued in Washington, DC, September 28, 2007.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E7–19614 Filed 10–3–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–66–002]

Port Barre Investments, LLC. (d/b/a Bobcat Gas Storage); Notice of Amendment Application

September 27, 2007.

On September 25, 2007, in Docket No. CP06–66–002, Port Barre Investments, LLC. (d/b/a Bobcat Gas Storage (Bobcat)), pursuant to section 7(c) of the Natural Gas, Act, as amended, and section 157 Subparts A of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate issued on April 19, 2007 in Docket No. CP06–66–001, 119 FERC ¶61,057. The requested amendment would increase the working

gas capacity of each of two authorized storage caverns from 6.75 billion cubic feet (Bcf) to 7.8 Bcf, increasing the total project working gas capacity to 15.6 Bcf. Bobcat seeks no change to its authorized maximum daily deliverability or daily injection rate. Further, Bobcat asks that the Commission issue requested authorizations on an expedited basis by March 31, 2008.

Questions concerning the application should be directed to Paul W. Bieniawski (*pbieniawski@bobcatstorage.com*) or Thomas R. Dill (*tdill@bobcatstorage.com*) at Bobcat Gas Storage, 1500 City West Boulevard, Suite 560, Houston, Texas 77042, or by calling (713) 800–3535, Facsimile: (713) 800–3540 or Lisa M. Tonery (*ltonery@kslaw.com*) or Tania S. Perez (*tperez@kslaw.com*) at King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 or by calling 212–556–2307, Facsimile: (212) 556–2222.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail: *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19592 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–448–000]

El Paso Natural Gas Company; Notice of Application

September 27, 2007.

Take notice that on September 18, 2007, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP07–448–000, an application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of public convenience and necessity authorizing the construction and operation of a new compression facility to be located at its East Valley Lateral in Pinal County, Arizona. The proposed Picacho Compressor Station will be comprised of three gas-fired reciprocating compressor units totaling 8,290 horsepower.

El Paso's proposal is more fully described as set forth in the application that is on file with the Commission and open to public inspection. The instant filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to: Richard Derryberry, Director of Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3782 or by fax at (719) 667–7534.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 24, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19588 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–450–000]

MoGas Pipeline LLC; Notice of Request Under Blanket Authorization

September 27, 2007.

Take notice that on September 21, 2007, MoGas Pipeline LLC (MoGas), 110 Algana Court, St. Peters, Missouri, 63386, filed in Docket No. CP07–450–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to construct and operate certain natural gas pipeline facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

MoGas proposes to construct and operate a 4,920 horsepower mainline natural gas compressor station in Pike County, Missouri at its interconnection with the Panhandle Eastern Pipe Line Company. MoGas states that the proposed facilities are designed to increase the capacity on its pipeline system by 100,804 Dth per day. MoGas states that the estimated cost of the proposed facilities is $6,580,000. MoGas also says that earlier in the year, it conducted an open season for the capacity created by this project and that the project is supported by precedent agreements covering all of the capacity initially created by the project.

Any questions regarding the application should be directed to David J. Ries, President, MoGas Pipeline LLC, 10 Algana Court, St. Peters, Missouri 63386, phone (636) 926–3668.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest.

If a protest is filed and not withdrawn within 30 days, the time allowed for the resolution of issues raised in the protest, then this prior notice request shall be treated as an application for authorization pursuant to section 7 of the NGA (18 CFR 157.205(f)).

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19589 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–19–000]

National Fuel Gas Distribution Corporation; Notice of Petition for Rate Approval

September 27, 2007.

Take notice that on September 20, 2007, National Fuel Gas Distribution Corporation (Distribution) filed a petition for NGPA section 311 to amend the transportation rate currently in effect, pursuant to section 284.123(b)(2) of the Commission's regulations. Distribution requests that the Commission approve: (1) The reduction in maximum transportation rate for transportation provided in New York from currently effective $0.6725 per Mcf to $0.5784 per Mcf; (2) the reduction in maximum transportation rate, for transportation provided in Pennsylvania, from currently effective $0.4655 per Mcf to $0.3590 per Mcf; and (3) the same currently effective minimum transportation rate of $0.10 per Mcf for transportation provided in New York and Pennsylvania, pursuant to NGPA section 311.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Monday, October 15, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19587 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 26, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–87–000.

Applicants: Tatanka Wind Power, LLC.

Description: Exempt Wholesale Generator Notice of Self Certification of Tatanka Wind Power, LLC.

Filed Date: 09/25/2007.

Accession Number: 20070925–5046.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 16, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1150–010.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Company and UNS Electric, Inc submits an amended tariff sheet impacted by the supplement which is a new tariff sheet—Original Sheet 3 under ER98–1150.

Filed Date: 09/24/2007.

Accession Number: 20070924–0281.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 3, 2007.

Docket Numbers: ER98–6–010; ER99–2387–003; ER96–2585–005; ER02–1470–003; ER02–1573–003; ER05–1249–003.

Applicants: New England Power Service Company; KeySpan Ravenswood, Inc.; Niagara Mohawk Power Corporation; KeySpan-Glenwood Energy Center, LLC; KeySpan-Port Jefferson Energy Center, LLC; Granite State Electric Company; National Grid plc and Keyspan Corporation.

Description: National Grid USA submits a Notice of Change in Status for Niagara Mohawk Power Corp.

Filed Date: 09/21/2007.

Accession Number: 20070925–0198.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER99–3077–005.

Applicants: Colorado Power Partners.

Description: Colorado Power Partners submits Substitute Original Sheet 2 to its 8/9/07 filing of a notice of change in status with a revised tariff designated as FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/21/2007.

Accession Number: 20070925–0187.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER99–3197–005.

Applicants: BIV Generation Company, LLC.

Description: BIV Generation Co, LLC submits Substitute Original Sheet 2 to its 8/9/07 filing of a notice of change in status with a revised tariff designated as FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/21/2007.

Accession Number: 20070925–0186.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER01–751–009.

Applicants: Mountain View Power Partners, LLC.

Description: Mountain View Power Partners, LLC submits Substitute Original Sheet 1 et al to its 8/9/07 filing of a notice of change in status with a revised tariff designated as FERC Electric Tariff, First Revised Volume 1.

Filed Date: 09/21/2007.

Accession Number: 20070925–0189.

Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER03–563–063; EL04–102–018.

Applicants: Devon Power, LLC.

Description: Devon Power, LLC, *et al.* submit an Eleventh Compliance Report of ISO New England, Inc.

Filed Date: 09/24/2007.

Accession Number: 20070924–5041.

Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ER04–157–023; ER04–714–013; EL05–89–003.

Applicants: Central Vermont Public Service Corporation.

Description: Central Vermont Public Service Corporation submits its refund report in compliance with Commission's Opinion 489 Order as revised on 7/26/07.

Filed Date: 09/20/2007.

Accession Number: 20070924–0317.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Docket Numbers: ER07–282–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Exhibit I to correct the 6/27/07 filing of the Firm Point-to-Point Transmission Service with Kansas Municipal Energy Agency.

Filed Date: 09/12/2007.

Accession Number: 20070914–0121.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 03, 2007.

Docket Numbers: ER07–1094–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits information in response to FERC's 8/21/07 letter.

Filed Date: 09/20/2007.

Accession Number: 20070924–0307.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Docket Numbers: ER07–1096–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits information in response to FERC's 8/21/07 letter.

Filed Date: 09/20/2007.

Accession Number: 20070924–0306.

Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Docket Numbers: ER07–1103–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation dba National Grid submits additional information to FERC's letter dated 8/21/07.

Filed Date: 09/20/2007.
Accession Number: 20070924–0330.
Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Docket Numbers: ER07–1125–001.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp dba National Grid submits information in response to FERC's 8/21/07 letter.
Filed Date: 09/20/2007.
Accession Number: 20070924–0308.
Comment Date: 5 p.m. Eastern Time on Thursday, October 11, 2007.

Docket Numbers: ER07–1187–001.
Applicants: Louisville Gas & Electric Company.
Description: Louisville Gas & Electric Company, *et al.* submits Exhibit A—First Amended & Restated Service Agreement under the Tariff for Cost-Based Sales of Capacity & Energy between LG&E/KU & Illinois Municipal Electric Agency.
Filed Date: 09/24/2007.
Accession Number: 20070926–0103.
Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ER07–1238–001.
Applicants: E. ON U.S., LLC.
Description: E. ON US, LLC, *et al.* requests leave to amend its 8/3/07 filing by withdrawing the Letter Agreement designated as Original Sheet 570a to the LG&E/KU OATT.
Filed Date: 09/21/2007.
Accession Number: 20070924–0309.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1249–001.
Applicants: Lockport Energy Associates, LP.
Description: Lockport Energy Associates, LP submits FERC Electric Tariff, First Revised Volume 1 and revisions to its proposed market-based rate tariff filed on 8/6/07 pursuant to the requirements of Order 697.
Filed Date: 09/24/2007.
Accession Number: 20070925–0184.
Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ER07–1258–001.
Applicants: Rocky Mountain Power, LLC.
Description: Rocky Mountain Power, LLC submits Substitute Original Sheet 2 to its 8/9/07 filing of a notice of succession with a revised tariff designated as FERC Electric Tariff, First Revised Volume 1.
Filed Date: 09/21/2007.
Accession Number: 20070925–0188.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1259–001.
Applicants: San Joaquin Cogen, LLC.
Description: San Joaquin Cogen, LLC submits Substitute Original Sheet 1 et al to its 8/9/07 filing of a notice of succession with a revised tariff designated as FERC Electric Tariff, Original Volume 1.
Filed Date: 09/21/2007.
Accession Number: 20070925–0190.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1269–001.
Applicants: PacifiCorp.
Description: PacifiCorp submits updated tariff sheets and supporting calculation charts that reflect the use of the correct figure.
Filed Date: 09/24/2007.
Accession Number: 20070926–0101.
Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ER07–1372–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits proposed amendments to the 9/14/07 filing in order to correct minor typographical errors and inadvertently omitted language in certain definitions & EMT sections.
Filed Date: 09/19/2007.
Accession Number: 20070925–0180.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 10, 2007.

Docket Numbers: ER07–1388–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed amendments to clarifiy & correct the recently submitted 6/18/07 compliance revisions to the Emergency Markets Tarrif re the ARR, etc.
Filed Date: 09/12/2007.
Accession Number: 20070913–0083.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 03, 2007.

Docket Numbers: ER07–1391–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corp dba National Grid submits a Notice of Termination of the First Amended and Restated Termination Agreement with City of Jamestown Board of Public Utilities.
Filed Date: 09/21/2007.
Accession Number: 20070924–0310.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1392–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits an executed service agreements for Firm Point-to-Point Transmission Service with Powerex Corp, etc.
Filed Date: 09/21/2007.
Accession Number: 20070925–0183.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1393–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corporation submits its proposed revisions to the Station Agreement dated 1/1/68 as amended among Ohio Power Company, *et al.*
Filed Date: 09/21/2007.
Accession Number: 20070925–0185.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1394–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement with Ameresco Stafford, LLC and Virginia Electric and Power Company.
Filed Date: 09/21/2007.
Accession Number: 20070925–0182.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1395–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits a revised interconnection service agreement among PJM, PSEG Nuclear LLC, *et al.*
Filed Date: 09/21/2007.
Accession Number: 20070925–0181.
Comment Date: 5 p.m. Eastern Time on Friday, October 12, 2007.

Docket Numbers: ER07–1396–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corporation agent for Ohio Power Company et al submits and requests acceptance of Exhibit A–10 (Repair Agreement) Facilities Construction, Operation, Maintenance & Repair Agreement.
Filed Date: 09/24/2007.
Accession Number: 20070926–0104.
Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ER07–1397–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits Service Agreement for Wholesale Distribution Service & the Ehrenberg Wholesale Distribution Load Interconnection Facilities Agreement with Arizona Public Service Co.
Filed Date: 09/25/2007.
Accession Number: 20070926–0105.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 16, 2007.

Docket Numbers: ER07–1398–000.

Applicants: Southwest Reserve Sharing Group.

Description: Tucson Electric Power Company on behalf of members of Southwest Reserve Group submits an amendment to the SRG Participation Agreement reflecting the termination of the membership of PPL Enregy Plus, LLC.

Filed Date: 09/25/2007.

Accession Number: 20070926–0102.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 16, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–26–003.

Applicants: Entergy Gulf States, Inc.

Description: Entergy Services, Inc and Entergy Gulf States, Inc et al submit additional information with respect to their request for authorization re proposed jurisdictional separation plan.

Filed Date: 09/24/2007.

Accession Number: 20070926–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, October 4, 2007.

Docket Numbers: ES07–64–000.

Applicants: Commonwealth Edison Company.

Description: Application of Commonwealth Edison Company Under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.

Filed Date: 09/24/2007.

Accession Number: 20070924–5045.

Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Docket Numbers: ES07–65–000.

Applicants: PECO Energy Company.

Description: Application of PECO Energy Company Under Section 204 of the Federal Power Act for Authorization of the Issuance of Securities.

Filed Date: 09/24/2007.

Accession Number: 20070924–5049.

Comment Date: 5 p.m. Eastern Time on Monday, October 15, 2007.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–32–001; OA07–17–001.

Applicants: Entergy Services Inc.

Description: Entergy Operating Companies submits corrected Second Substitute First Revised Sheet 142 to its Open Access Transmission Tariff, adopting the terms and conditions of Order 890 pro forma Schedule 4 etc under ER07–17, *et al.*

Filed Date: 09/13/2007.

Accession Number: 20070917–0130.

Comment Date: 5 p.m. Eastern Time on Thursday, October 4, 2007.

Docket Numbers: OA07–60–001.

Applicants: Idaho Power Company.

Description: Substitute Tariff Sheets to Order No. 890 OATT of Idaho Power Company under OA07–60.

Filed Date: 09/18/2007.

Accession Number: 20070917–5093.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 9, 2007.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM07–5–000.

Applicants: Xcel Energy Services Inc. and American E.

Description: Southwestern Public Service Co, *et al.* submits an application to terminate the requirement to enter into new contracts or obligations with qualifying facilities under QM07–5.

Filed Date: 09/25/2007.

Accession Number: 20070926–0118.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail: *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Director.

[FR Doc. E7–19586 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–8–006]

Revised Public Utility Filing Requirements for Electric Quarterly Reports

September 24, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Adopting Electric Quarterly Report Data Dictionary.

SUMMARY: The Federal Energy Regulatory Commission is adopting an Electric Quarterly Report (EQR) Data Dictionary that collects in one document the definitions of certain terms and values used in filing EQR data, in conformance with Commission Order No. 2001, which established revised public utility filing requirements.

DATES: *Effective Date:* This order will become effective October 4, 2007.

FOR FURTHER INFORMATION CONTACT:

Mark A. Blazejowski, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Gary D. Cohen, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order Adopting Electric Quarterly Report Data Dictionary

Issued September 24, 2007.

1. In this order, after consideration of the comments filed in response to our

notice seeking comments,[1] we are adopting an Electric Quarterly Report (EQR) Data Dictionary that collects in one document the definitions of certain terms and values used in filing EQR data (previously provided in Commission orders and in guidance materials posted at the Commission's Web site) and are issuing formal definitions for those fields that were previously undefined.

I. Background

2. On April 25, 2002, the Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements.[2] This rule revised the Commission's filing requirements to require companies subject to the Commission's regulation under section 205 of the Federal Power Act (FPA) to file quarterly reports that: (1) Provide data identifying the utility on whose behalf the report is being filed (ID Data); (2) summarize pertinent data about the utility's currently effective contracts (Contract Data); and (3) summarize data about wholesale power sales the utility made during the reporting period (Transaction Data). The requirement to file EQRs replaced the requirement to file quarterly transaction reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

3. In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs are to be prepared in conformance with the Commission's software and guidance posted and available from the Commission Web site. This obviates the need to revise section 35.10b to implement revisions to the software and guidance. Since the issuance of Order No. 2001, as need has arisen, the Commission has issued orders to resolve questions raised by EQR users and has directed Staff to issue additional guidance.[3]

4. Likewise, on December 23, 2003, the Commission issued Order No. 2001–E, to resolve some recurring issues faced by EQR filers, to help filers better understand the requirements of Order No. 2001, and to improve the quality and consistency of EQR data.[4] To this end, the Commission: (1) Ordered standard formats to be used for certain location fields; (2) established an EQR Refiling Policy; and (3) streamlined and defined allowable data entries in certain data fields. The Commission instructed Staff to issue filing guidance to address these changes.[5] This guidance was posted on the EQR page of the Commission's Web site on March 25, 2004.[6] Commission Staff posted additional guidance on the Internet at the *http://www.ferc.gov* Web site, and several EQR Users Group meetings have been held to address the questions of EQR filers.

5. After issuance of Order No. 2001–E, the Commission recognized that rapid change in the electric industry may require flexibility in adding or changing the entries allowed in restricted fields in the EQR. The North American Electric Reliability Corporation (NERC), for example, frequently adds and deletes balancing authorities (previously ''control areas'') from its Transmission System Information Network (TSIN) rolls. In an order issued on March 25, 2004, the Commission directed Staff to alert EQR users of any future changes to allowable entries for restricted fields by e-mail, and to post these changes on the EQR page of the Commission's Web site.[7]

6. Since 2004, the Commission has performed outreach to the industry to determine which current EQR definitions are sufficient and understandable and which should be revised.[8] The Commission has concluded that, to improve the quality of EQR filings, it would be appropriate to place in a single document the definitions of certain terms and values used in filing EQR data and to issue formal definitions for those fields that are currently undefined. Thus, the Commission issued a notice (i.e., the EQR Notice) proposing the adoption of a formal EQR Data Dictionary. The EQR Notice was published in the **Federal Register** and, in it, the Commission invited comment on the proposed definitions.[9] A total of seven comments were filed in response to the EQR Notice.[10]

II. Discussion

7. With one exception, the comments in response to the EQR Notice were generally supportive of the proposal for the Commission to adopt an EQR Data Dictionary;[11] however, they made a number of suggestions on possible revisions to the definitions. We will now separately discuss each of these suggestions.

A. Field Nos. 2, 15 and 47—Seller Company Name

8. The EQR Notice proposed defining Seller Company Name as ''The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.''

9. EEI suggests that the definition of Company Name for the Seller be changed to add ''or its agent as specified in the tariff (if the full name is over 70 characters).'' EEI explains that this change is necessary to provide flexibility when there are multiple parties to a contract, exceeding the field's 70-character limit.

Commission Conclusion

10. Only companies that are authorized to sell power under Part 35 of the Commission's regulations should make sales in the wholesale power market. The EQR is intended to report the activities of those specific companies. The Seller information is used to identify those companies.

11. The Commission is not persuaded to revise the definition proposed in the EQR Notice as suggested by EEI. We find this suggestion unnecessary, because under the definition proposed in the EQR Notice, the agent may be identified as the Seller if the company's tariff authorizes the agent to make the sales, even without the language change suggested by EEI. However, we will expand the size of the Seller Company

[1] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, 72 FR 26091 (May 8, 2007), FERC Stats. & Regs. ¶ 35,050 (2007) (EQR Notice).

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002), Order No. 2001–D, *order directing filings*, 102 FERC ¶ 61,334, Order No. 2001–E, *order refining filing requirements*, 105 FERC ¶ 61,352 *(2003), clarification order,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004).

[3] Examples cited in EQR Notice at P 3.

[4] Order No. 2001–E, 105 FERC ¶ 61,352 at P 2.

[5] *Id.* at P 8.

[6] Posted at *http://www.ferc.fed.us/docs-filing/eqr/com-order.asp.*

[7] *Revised Public Utility Filing Requirements*, 106 FERC ¶ 61,281 (2004).

[8] Examples cited in EQR Notice at P 6.

[9] *Notice Seeking Comments on Proposed Electric Quarterly Report Data Dictionary,* 72 FR 26091 (May 8, 2007).

[10] Timely comments on the EQR notice were filed by: Edison Electric Institute (EEI); Transalta Energy Marketing (U.S.) Inc. (Transalta); The Midwest Independent Transmission System Operator, Inc. (MISO); Reliant Energy, Inc. (Reliant); Occidental Power Services, Inc. (Occidental); and Powerex Corp. (Powerex). In addition, Central Vermont Public Service (CVPS) submitted late-filed comments that included a request that the Commission accept them. The Commission will consider all the comments filed in response to the EQR Notice, including the late-filed comments of CVPS.

[11] The one exception is CVPS, which filed comments arguing that the EQR Data Dictionary should either (1) *Not* apply to small entities or (2) not be adopted. We will separately discuss this comment below.

Name field to 100 characters to allow filers to identify those contracts where more than one party is involved as seller and/or where one party is acting as agent for (or on behalf of) one or more other parties.

B. Field Nos. 16 and 48—Customer Company Name

12. The EQR Notice proposed defining Customer Company Name as ''The name of the counterparty to the contract.''

13. EEI suggests the phrase ''to the contract'' be deleted from the proposed definition of Customer Company Name to account for multi-lateral membership agreements where no bilateral contract is necessary.

Commission Conclusion

14. The suggested change meets the Commission's goal of further clarifying the intended meaning of the field. Thus, this order adopts this suggested revision to these fields.

C. Field Nos. 19 and 50—FERC Tariff Reference

15. The EQR Notice proposed defining FERC Tariff Reference as ''The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales or power sales at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.''

16. EEI suggests the phrase ''or sales of related jurisdictional services'' be added to the definition of FERC Tariff Reference to clarify that jurisdictional services other than transmission or power sales should also be reported in the EQR. In addition, EEI requests that the Commission confirm that cost-based sales made under the Western Systems Power Pool (WSPP) Agreement should cite the WSPP tariff, and market-based sales made under the WSPP Agreement should cite the Seller's market-based rate tariff.

Commission Conclusion

17. We will adopt EEI's suggestion to add the phrase ''or sales of related jurisdictional services'' to the definition of FERC Tariff Reference because we agree that this phrase helps clarify that jurisdictional services other than transmission or power sales should be reported in the EQR. In addition, as requested by EEI, we confirm that cost-based sales made under the WSPP Agreement should cite the WSPP tariff, and market-based sales made under the WSPP Agreement should cite the Seller's market-based rate tariff. This interpretation is consistent with the proposed definition.

D. Field Nos. 20 and 51—Contract Service Agreement ID

18. The EQR Notice proposed defining Contract Service Agreement ID as ''Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.''

19. Transalta suggests a change to the proposed Contract Service Agreement ID definition so that the field need not be unique in itself but only unique when combined with the Customer Company Name (Field Nos. 16 and 48). Transalta explains that it does not assign unique identifiers to each of its service agreements. Instead, it has an identification number that may be assigned to multiple service agreements but which, when combined with the counterparty designation, allows Transalta to identify separate transactions within its system.

Commission Conclusion

20. In adopting the initial definition for this field in Order No. 2001, the Commission provided considerable latitude for this field. The company can use the number assigned by FERC to those service agreements that had previously been filed or the number could be assigned from an internal system.[12] The one requirement in the original definition was that the identifier be unique. The changes in the proposed definition were intended to clarify that the identifier may include alphabetical characters.[13]

21. The Contract Service Agreement ID serves the dual purpose of being a unique method for identifying a particular contract when it is requested and a means of tracking a contract and the activity under a contract from quarter to quarter. Adding a second free form text field to this method of identification decreases our ability to do this tracking. We will, therefore, not adopt Transalta's suggested change. Companies whose current Contract Service Agreement IDs are not compliant with this longstanding EQR requirement may consider using some type of customer identifier in their Contract Service Agreement ID to make it unique.

E. Field No. 21—Contract Execution Date

22. The EQR Notice proposed defining Contract Execution Date as ''The date the contract was signed. If the parties signed on different dates, or there are contract amendments, use the most recent date signed.''

23. Both Reliant and EEI suggest that the Contact Execution Date should not change because of a minor amendment to the contract. Both commenters note that, frequently, contract amendments are minor changes such as changes in an address or payment terms that do not affect the key operational parameters of the agreement.

Commission Conclusion

24. We agree with Reliant and EEI that the usefulness of the data may be increased with a single execution date for each contract across all periods. However, if there are material amendments to the contract, then the contract execution date must be changed.

F. Field No. 23—Contract Termination Date

25. The EQR Notice proposed defining Contract Termination Date as ''The date that the contract expires.''

26. Transalta expresses concern that this field requires filers to provide a Contract Termination Date even if none exists.

Commission Conclusion

27. We find Transalta's concern misplaced. As indicated in the EQR Notice, a Contract Termination Date is only required ''if specified in the contract.'' EQR filers, therefore, may continue leaving Field No. 23 blank for contracts without termination dates. Thus, we have not changed the proposed definition.

G. Field Nos. 26 and 58—Class Name

28. The EQR Notice proposed defining Class Name in the Contract Data section of the EQR as ''F–Firm: For transmission sales, service or product that always has priority over non-firm service. For power sales, service or product that is not interruptible for economic reasons. NF–Nonfirm: For transmission sales, service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to firm service. An energy sale for which delivery or receipt of the energy may be interrupted for any

[12] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 12.

[13] EQR Notice, FERC Stats. & Regs. ¶ 35,050 at P 13.

reason or no reason, without liability on the part of either the buyer or seller. UP–Unit Power Sale: Designates a dedicated sale of energy and capacity from one or more than one generation unit(s). N/A–Not Applicable: To be used only when the other available Class Names do not apply.''

29. In addition, the Transaction Data section of the EQR Notice proposes to define the Class Name ''BA–Billing Adjustment'' (Field No. 58 only) as: ''Incremental positive or negative material change to previous EQR totals.''

30. In its comments on the Class Name fields, EEI suggested some editorial changes to clarify the respective meanings of ''Firm'' and ''Non-Firm.'' EEI also recommends adding the word ''specified'' to clarify that the Class Name ''UP–Unit Power Sale'' is not intended to refer to general system firm sales.

31. Occidental suggests that the use of the Class Name ''BA–Billing Adjustment'' should be expanded to reflect changes that become available after a quarterly filing has been made, but before the next quarterly filing is due. Order No. 2001–E allowed the ''BA'' class name to be used for material changes after the next quarterly filing is due.[14] Occidental cites the effort required in truing up estimated California ISO sales data received prior to the EQR filing deadline with actual sales data received after the filing deadline.

Commission Conclusion

32. We will adopt EEI's suggested editorial changes to the terms ''Firm'' and ''Non-Firm'' and its suggestion to add the word ''specified'' to the Class Name ''UP–Unit Power Sale'' because we agree these changes add clarity.

33. As to Occidental's suggestion to expand the use of the Class Name ''BA–Billing Adjustment'' to include changes that become available after a quarterly filing has been made, the Commission already considered and rejected these arguments in developing the ''BA'' class name in Order No. 2001–E. The EQR is the Commission's primary means of fulfilling its statutory obligation to have entities' rates on file in a market where prices do not receive prior regulatory approval.[15] Changes in the EQR that would affect the accuracy of the rates provided must be carefully considered.

34. The ''BA'' class name is intended to be an option allowing EQR filers to reflect material price changes long after the settled prices were considered final. Occidental's observation that RTO/ISO sales data are likely to change after the EQR filing deadline strengthens the Commission's conviction that the data must be refiled to reflect the actual rates charged and that simply reflecting these changes as a single ''BA'' entry is insufficient. Given our finding on this issue, we believe that it would be helpful to revise the definition of ''BA–Billing Adjustment'' proposed in the EQR Notice to clarify the intended nature of the ''BA'' class name. Thus, we have revised the definition for ''BA–Billing Adjustment'' in the EQR Data Dictionary that we are adopting in this order to provide this clarification.

H. Field Nos. 28 and 60—Increment Name

35. The EQR Notice proposed defining Increment Name in the Contract Data section of the EQR as ''H–Hourly: Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (≤6 consecutive hours). D–Daily: Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 36 consecutive hours (>6 and ≤36 consecutive hours). W–Weekly: Terms of the contract (if specifically noted in the contract) set for over 36 consecutive hours and up to 168 consecutive hours (>36 and ≤168 consecutive hours). M–Monthly: Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to one month (>168 consecutive hours and ≤1 month). Y–Yearly: Terms of the contract (if specifically noted in the contract) set for one year or more (≤1 year). S–Seasonal: Terms of the contract (if specifically noted in the contract) set for greater than one month and less than 365 consecutive days (> 1 month and < 1 year). N/A–Not Applicable: Terms of the contract do not specify an increment.'' The definitions in the Transaction Data section are the same except that they refer to the ''particular sale'' rather than the ''contract'' as a whole.

36. Reliant, EEI, Occidental, and MISO each commented on the Increment Name definitions. Reliant recommends reverting to the definitions used as the basis for discussion at the EQR Users Group meeting on November 29, 2006.[16] Reliant appears to be interpreting the change from the discussion draft terminology of ''one month or the balance of a month if longer than one week'' to ''more than 168 consecutive hours up to one month'' as confusing the meaning of the definition because a peak-only sale for the course of a month would involve power flowing during no more than 16 consecutive hours.

37. MISO, EEI, and Occidental each offer alternative numbers of hours to define the increment names. For example, EEI and Occidental suggest different numbers to differentiate ''D–Daily'' and ''W–Weekly'' and MISO, EEI and Reliant request the deletion of the proposed increment name ''S–Seasonal.''

Commission Conclusion

38. The Commission finds Reliant's suggested reading of the Increment Name definition to be problematic. The definition proposed in the EQR Notice used specific numbers of hours for the terms in order to simplify the process of implementing the definition and ensure consistency in the data. These specific numbers were not intended to change the meaning of the definition.

39. The Increment Name field is intended to provide information regarding the duration of the terms agreed upon in the contract or transaction. If completed correctly, this field provides information about whether a sale at a given price for a full day was the result of a daily sale or, possibly, a monthly sale with a daily index.

40. The proposed definitions expressly refer to the ''terms of the contract'' (Field No. 28) and the ''terms of the particular sale'' (Field No. 60). The definitions do not refer to the characteristics of the sales themselves. For example, a monthly peak-only sale priced on a daily index would be designated as ''M'' in Field No. 60 because the quantity sold, the hours of flow, and the pricing method are set for the entire month.

41. MISO, EEI, and Occidental each comment on the numbers of hours used to define the increment names. While MISO's suggested numbers are the simplest, they do not address the purpose of the field. For example, a single-day, peak-only sale would be classified as ''H—Hourly'' under MISO's definition even though industry practice would commonly refer to the deal as daily. We are not persuaded to make this change.

42. EEI and Occidental suggest different numbers to differentiate ''D—Daily'' and ''W—Weekly.'' The Commission proposed a break point at 36 hours. Occidental recommends 60

[14] Order No. 2001–E, 105 FERC ¶ 61,352 at P 9.

[15] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 44–46

[16] See Notice of Electric Quarterly Reports Users Group Meeting, November 8, 2006. The discussion version of the data dictionary was posted on the Commission calendar (http://www.ferc.gov/EventCalendar/Files/20061117145410-Staff%20Draft%20of%20EQR%20Data%20Dictionary.xls), and a transcript of the meeting is posted online.

hours, explaining that sales with terms lasting over a long weekend are typically designated as ''D'' consistent with industry practice. EEI recommends 104 hours citing, but not expounding upon, industry practice. We find Occidental's explanation compelling and adopt 60 hours as the break point between ''D'' and ''W.''

43. MISO, EEI and Reliant request the deletion of the proposed increment name ''S—Seasonal'' with adjustments in the ''M—Monthly'' and ''Y—Yearly'' definitions in light of the proposed changes to the other Increment Name definitions. We find this suggestion adds clarity and, thus, we will adopt this suggested revision.

I. Field No. 29—Increment Peaking Name

44. The EQR Notice proposed defining Increment Peaking Name as ''FP—Full Period: The product described may be sold during all hours under the contract. OP—Off-Peak: The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery. P—Peak: The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery. N/A—Not Applicable: To be used only when the increment peaking name is not specified in the contract.''

45. EEI suggests that the definition for the Increment Peaking Name ''FP—Full Period'' be changed to clarify that sales under a contract need not occur around the clock to qualify as Full Period.

Commission Conclusion

46. The suggested change meets the Commission's goal of clarifying the definition of the field. Thus, the Commission will adopt this suggested change.

J. Field No. 30—Product Type Name

47. The EQR Notice proposed defining Product Type Name as ''CB—Cost Based: Energy or capacity sold under a FERC-approved cost-based rate tariff. MB—Market Based: Energy sold under the seller's FERC-approved market-based rate tariff. T—Transmission: The product is sold under a FERC-approved transmission tariff. Other: The product cannot be characterized by the other product type names.''

48. EEI suggests that the words ''or Capacity'' be added to the definition of ''MB-Market-Based'' to clarify that capacity may be sold under a market-based tariff.

Commission Conclusion

49. EEI makes a valid point in identifying the proposed definition of ''MB'' as too restrictive. Accordingly, we will adopt EEI's suggested revision to the definition.

50. Under Order No. 890, all transmission capacity reassignments must ''be accomplished by the assignee executing a service agreement with the transmission provider that will govern the provision of reassigned service'' and those agreements must be reported in the providers' EQRs.[17] In preparing the EQR Data Dictionary, the term ''Capacity Reassignment'' was inadvertently included as a Product Name (Field Nos. 31 and 62, Appendix B) not a Product Type Name (Field No. 30) as described in Order 890.[18] This has been corrected in the attached EQR Data Dictionary that we are adopting in this order.

K. Field Nos. 31 and 62—Product Name

51. The EQR Notice proposed defining Product Name as ''Description of product being offered.'' See Appendix A for more specific definitions of product names.

52. Transalta requests clarification regarding whether a trade in which it sells power into an RTO/ISO's day ahead market at one point and simultaneously buys it back in the day ahead market at another point constitutes an ''Exchange'' as it has been defined. Because the proposed definition stipulates the return of energy ''later at times, rates, and in amounts as mutually agreed,'' [19] Transalta asks whether the definition applies to a simultaneous action.

Commission Conclusion

53. It was not the Commission's intention to exclude simultaneous trades at different locations from the definition of ''Exchanges.'' By including the word ''later,'' the definition also appears to be incorrectly excluding half the exchange activity—those sales that occur on the ''return'' side of the transaction. To clarify and correct the definition, the word ''later'' has been dropped.

54. The specific example that Transalta raises, where the counterparty is an ISO, is a special case. In Order No. 2001, the Commission exempted ISOs from transactional reporting where title does not pass to the ISO.[20] Further, several ISOs (New York Independent System Operator, Inc. (NYISO), MISO, and ISO New England, Inc. (ISO–NE) have created systems that provide their members' data files in an EQR compatible format. Identifying specific sales as exchanges in those files that match with simultaneous trades may be problematic and unnecessarily delay implementation of the data dictionary. Therefore, the definition of ''Exchange'' has been changed to exclude organized markets; EQR filers will continue to be allowed to report sales in organized markets as the product settled. Thus, the EQR Data Dictionary that we are adopting in this order (in Appendix A—''Product Names'') defines an ''Exchange'' as a ''Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and in amounts as mutually agreed if the receiver is not an RTO/ISO.''

55. The change in the definition should not be interpreted as excluding activities in Real-Time markets that offset sales in Day-Ahead markets. These trades will continue to be considered the organized markets' equivalent to bookouts and should be reported using the conventions adopted to ease the reporting process.[21]

L. Field No. 37—Rate Description

56. The EQR Notice proposed defining Rate Description as ''Text description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm.''

57. EEI requests that filers be allowed to enter the tariff location into the rate description field in lieu of a detailed description of the rate itself. EEI cites the difficulty of putting complex rates into the 150-character field.

Commission Conclusion

58. The EQR fulfills the Commission's statutory obligation under the FPA to have companies' rates on file. The Commission relies on the EQR to satisfy the FPA requirement that rates provided in a contract be publicly disclosed and on file. Thus, it is imperative that the information reported in EQRs provide an adequate level of detail and transparency.

59. A tariff reference alone, instead of the actual rate description, does not meet that standard. Allowing filers to

[17] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266, FERC Stats. & Regs. ¶ 31,241 at P 816–817 (2007).

[18] *Id.* at n. 499.

[19] Transalta Comments on EQR Notice at 3.

[20] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 335.

[21] A description of these conventions may be found in the EQR section of the Commission's *Web* site at Day Ahead/Real Time Reporting in the EQR (*http://www.ferc.gov/docs-filing/eqr/news-help/real-time.pdf*).

substitute a tariff reference in place of an actual rate description would force EQR users seeking this information to conduct further research to track down the contents of the tariff on file. This is clearly less transparent than a rate description that actually describes the rate.

60. If the tariff reference is coupled with a descriptive summary of the rate, where the rate is the function of a complex algorithm, the standard is met. Rate information will continue to be available to the public at a level sufficient to explain the bases and methods of calculation with additional detail available upon request to interested persons. Thus, the EQR Data Dictionary that we are adopting in this order defines ''Rate Description'' as ''Text description of rate. Include algorithm if rate is calculated. If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section.''

M. Field No. 39—Point of Receipt Balancing Authority (PORBA) and Field Nos. 41 and 56—Point of Delivery Balancing Authority (PODBA)

61. The EQR Notice proposed defining Point of Receipt Balancing Authority (PORBA) as ''The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or 'Hub' if point of receipt is at a restricted trading hub.'' The EQR Notice proposed defining Point of Delivery Balancing Authority (PODBA) as ''The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or 'Hub' if point of receipt is at a restricted trading hub.''

62. Powerex notes that when it sends power sourced in the United States to British Columbia for use by British Columbia Hydro and Power Authority (BC Hydro), the PODBA is British Columbia Transmission Corporation (BCTC). BCTC is not included as an option for the fields in the EQR. Powerex suggests that BCTC was inadvertently omitted as a Balancing Authority and asks the Commission to clarify the steps filers should take if the field cannot be completed because the correct value is not available.

Commission Conclusion

63. We agree with Powerex that the EQR does not currently include the BCTC balancing authority. While, as explained below, this balancing authority would only be used in a narrow set of instances, we will modify the dictionary to include BCTC as well as other balancing authorities located outside the United States.

64. For purposes of EQR reporting, we can categorize sales from the United States heading towards Canada into three categories: (1) Sales originating in the United States that are delivered in the United States; (2) sales originating in the United States where title changes on the United States' side of the United States-Canada border; and (3) sales originating in the United States where title changes in Canada. In the first instance, the sale is reported in the EQR with the PODBA being a balancing authority within the United States.[22] In the second instance, the sale is reported in the EQR with a PODBA on the United States' side of the United States-Canada border. In the third instance, the sale, which is not jurisdictional, would not be reported in the EQR.

65. In the case of sales from Canada, for purposes of EQR reporting we can likewise divide these sales into three categories: (1) Sales originating in Canada that are delivered within Canada; (2) sales originating in Canada where title changes on the Canadian side of the United States-Canada border; and (3) sales originating in Canada where title changes in the United States. In the first instance, the sale, which is not jurisdictional, would not be reported in the EQR. Likewise, sales in the second instance would not be jurisdictional and would not be reported in the EQR; however, if there is a subsequent resale that takes that power from the border into the United States, that resale would be reported with a PODBA within the United States. In the third instance, the sale would be reported using a United States' PODBA.

66. Powerex's comment also reveals a weakness in the proposed PODBA/PORBA definitions. As presented, the definitions focus on the list of acceptable entries without classifying what characterizes those entries. Field Nos. 39 and 41, for example, are defined identically in the EQR Notice, which provides:—''The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications or 'Hub' if point of receipt is at a restricted trading hub''—even though the former refers to a receipt point and the latter refers to a delivery point. We have changed the field definitions to address this issue. Thus, the EQR Data Dictionary that we are adopting in this order defines ''PORBA'' as ''The registered NERC Balancing Authority (formerly called NERC Control Area) where service begins for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If receipt occurs at a trading hub specified in the EQR software, the term 'Hub' should be used.'' In addition, the EQR Data Dictionary that we are adopting in this order defines ''PODBA'' as ''The registered NERC Balancing Authority (formerly called NERC Control Area) where a jurisdictional product is delivered and/or service ends for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If delivery occurs at the interconnection of two control areas, the control area that the product is entering should be used. If delivery occurs at a trading hub specified in the EQR software, the term 'Hub' should be used.''

67. Regarding Powerex's more general comment requesting clarification on the steps filers should take if data needed to make an entry is not available, the Commission stated in Order No. 2001–E that it would use the list ''kept current as part of the Transmission Service Information Network (TSIN) by the North American Electric Reliability Council (NERC)'' as the source for the abbreviations in this field.[23] Commission staff reviews this list each quarter to identify any changes, additions and deletions. Changes to the list are implemented and filers notified using procedures authorized after Order No. 2001–E.[24] When the final EQR Data Dictionary is issued, any changes in the list will be posted in a revised Appendix B. If, for some reason, a TSIN-identified Balancing Authority where jurisdictional sales may occur is not included in the EQR software, interested parties may send an e-mail to *EQR@ferc.gov* to alert staff to the omission.

68. Regarding the specific Balancing Authority identified as ''MISO'' in Appendix B, MISO seeks to clarify that MISO is not yet a certified NERC balancing authority. MISO asks the Commission to indicate in Appendix B that this is an ''administrative classification.''

[22] The PORBA, if specified, would be reported in the EQR's Contract Data section and not in Transaction Data. If a contract is jurisdictional and reported in the EQR, a Canadian PORBA or PODBA would be reported in instances where provided by the contract.

[23] Order No. 2001–E, 105 FERC ¶ 61,352 at P 4.

[24] *See Revised Public Utility Filing Requirements*, 106 FERC ¶ 61,281 (2004).

69. The Commission recognizes that at present there are multiple balancing authorities with responsibilities within the Midwest ISO footprint. The Midwest ISO provides settlement and EQR reporting detail at the balancing authority level. When a sale occurs in one of the balancing authorities, the particular PODBA should be identified in the EQR. Nevertheless, TSIN.com, the OASIS registration Web site chosen by the Commission in Order No. 2001–E to determine balancing authorities, identifies ''MISO'' as a balancing authority. Further, there are certain system-wide products offered in MISO such as ''Uplift'' that cannot be linked to a single PODBA. Therefore, ''MISO'' will be included in the list of available balancing authorities for system-wide products.

N. Field Nos. 40 and 42—Point of Receipt Specific Location (PORSL) and Point of Delivery Specific Location (PODSL)

70. The EQR Notice proposed defining Point of Receipt Specific Location (PORSL) as ''The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.'' The EQR Notice proposed defining Point of Delivery Specific Location (PODSL) as ''The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.''

71. EEI recommends that the Commission allow contracts with numerous Points of Receipt to be reported as ''Various'' for the Point of Receipt Specific Location. In its comments, EEI identifies two hubs in Appendix C that no longer exist, ''AEP (into)'' and ''ComEd (into).'' In addition, EEI suggests that the definition of the Palo Verde Hub in Appendix C be changed to include the Hassayampa switchyard 2 miles south of Palo Verde.

Commission Conclusion

72. EEI's suggestion to report Points of Receipt as ''Various'' would undermine the usefulness of this field by allowing various points defined in the contract to be described using the same nomenclature as points defined as ''Various'' in the contract. However, EEI's concern about fitting several distinct points within the limited space provided is well founded. To balance the limitations of this EQR field with the requirement for contract information to be provided, the definition has been changed to allow for a descriptive summary of the points listed in the contract.

73. As to EEI's suggestion that the ''AEP (into)'' and ''ComEd (into)'' hubs be removed from Appendix C, we agree that this is appropriate since these two hubs are no longer in operation. In addition, we will adopt EEI's suggestion to revise the definition of the Palo Verde Hub in Appendix C to include the Hassayampa switchyard 2 miles south of Palo Verde. This change is intended to make the definition consistent with Commission policy since 2001 treating Palo Verde and the Hassayampa switchyard as a common bus.[25]

O. Field No. 46—Transaction Unique ID

74. The EQR Notice proposed defining Transaction Unique ID as ''An identifier beginning with the letter 'T' and followed by a number (e.g., 'T1', 'T2') used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.''

75. Transalta requests that the Commission clarify that, for index priced deals only, a new unique ID is not required each time the price changes so long as each new price is reported. Transalta also seeks confirmation that a single transaction using a single Transaction Unique ID may contain multiple records.

Commission Conclusion

76. Transalta is correct that filers must enter a new record each time the price changes in a sale. Transalta is also correct in that a single transaction using a single Transaction Unique ID may contain multiple records. This is not a departure from definitions or guidance that the Commission has given in the past.

P. Field Nos. 53, 54 and 64—Transaction Begin Date, Transaction End Date and Price

77. The EQR Notice proposed defining Transaction Begin Date as ''First date and time the product is sold during the quarter at the specified price.'' The EQR Notice proposed defining Transaction End Date as ''Last date and time the product is sold during the quarter at the specified price.'' The EQR Notice proposed defining Price as ''Price charged for the product per unit.''

78. EEI recommends changing the definition for the beginning and ending dates. This change makes the date entered unique to the transaction reported while eliminating the uniqueness of price.

Commission Conclusion

79. The Commission will adopt EEI's suggested revisions. The removal of the phrase ''at the specified price'' from the date fields should not be interpreted to mean that the Commission intends to allow aggregation of prices. To fulfill the Commission's FPA obligations, the prices reported must reflect the actual prices charged. Each price change will continue to require a new record to be reported. To ensure that this requirement is clear, the definition of ''Price'' has been changed to specify that the price reported cannot be averaged or otherwise aggregated.

Q. Field No. 61—Increment Peaking Name

80. The EQR Notice proposed defining Increment Peaking Name as ''FP–Full Period: The product described may be sold during all hours under the contract. OP–Off-Peak: The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery. P–Peak: The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery. N/A–Not Applicable: To be used only when the other available increment peaking names do not apply.''

81. EEI suggests that the words ''Peak'' and ''Off-Peak'' be used in the definition of ''FP–Full Period'' instead of ''all'' to clarify that full period sales need not last 24 hours. EEI also suggests that the phrase ''under the contract'' be deleted to clarify that this field refers to Transaction Data. EEI further recommends changing the verb tense in all the Increment Peaking Name definitions to clarify that the transactions being reported occurred in the past.

Commission Conclusion

82. The Commission finds that EEI's suggestions—to use the words ''Peak'' and ''Off-Peak'' instead of ''all'' in the definition of ''FP–Full Period''—add clarity and we will revise this definition accordingly. In addition, we will also adopt EEI's suggestion to change the verb tense in all the Increment Peaking Name definitions to clarify that the transactions being reported occurred in the past.

[25] *Arizona Public Service Co.,* 96 FERC ¶ 61,156 (2001).

III. Implementation Issues

83. EEI requests that changes requiring additional programming be kept to a minimum and adequate time be provided to implement any changes. The proposed changes to the EQR are minimal. Over the past five years, Commission staff has given filing guidance based on Order No. 2001 and related issuances. Little in this order goes beyond or changes that guidance, so this order should raise minimal implementation concerns.

84. Nonetheless, to minimize any impact on filers, the Commission is making the EQR Data Dictionary we are adopting in this order effective for the first quarter of 2008, rather than immediately. This effective date provides companies until the April 30, 2008 filing deadline to make their internal filing processes compliant with the EQR Data Dictionary. The new date has the additional benefit of creating a consistent data set across the calendar year.

85. CVPS requests that the Commission consider a size threshold for implementing new definitions or, if new definitions are to be adopted for all, that implementation be phased-in to allow smaller companies additional time to comply. In other words, CVPS is requesting that smaller companies would make their EQR filings based on one set of definitions, while everyone else would make their EQR filings based on a different set of definitions.[26]

86. In Order No. 2001, the Commission indicated that it would ''consider granting waivers in appropriate circumstances.'' While several waivers have been issued, the Commission has found, over time, that the amount of effort to complete the EQR tends to correspond with the size of the company. Thus, small companies with few sales tend to have smaller EQRs and a correspondingly smaller filing burden. However, because the EQR is one of the foundations of the market-based rate program, the Commission has granted waivers sparingly and always in regard to a company's entire filing and not to particular parts of the filing.

87. The proportion of company size to filing size may not apply if the small entity sells to an RTO/ISO. A company making a single baseload energy sale into an ISO will have over 2,000 lines of transaction data during any given quarter. Three of the organized markets, NYISO, ISO-NE, and MISO, however, provide their participants data files intended to simplify the filing process.

88. The Commission will not waive compliance with the EQR Data Dictionary definitions for particular companies. It would be confusing and hinder the transparency provided by the EQR if some filers made their filings based on one set of definitions, while others made their filings based on another understanding of those terms. Moreover, it would undermine the purpose of adopting a standard set of definitions. The Commission will, however, entertain requests for extension of time to file Q1 2008 EQR filings in cases where companies' implementation of the Data Dictionary definitions is incomplete.

89. EEI's requests that the Commission clarify that the changes in filing requirements associated with the EQR Data Dictionary are prospective only and will not be applied to past filings. Of course, this is true. Nonetheless, the Commission will continue to expect that those companies that have been filing EQRs since 2002 comply with the then-effective filing requirements.

90. Finally, EEI notes that some ISO/RTOs have documented how they map their settlement billing elements to EQR products to generate their EQR-ready data files. EEI asks that the Commission review and endorse or correct these mappings.

91. The Commission is on record as endorsing this effort and encouraging Commission staff to work with the ISOs and their members to develop these maps so that the ISOs can provide EQR-ready data files to their members.[27] Commission staff has worked closely with the three ISOs that are providing this service as well as with the California Independent System Operator Corporation and PJM Interconnection, LLC, which have not yet competed these tasks. Commission staff has reviewed these maps for the ISOs and participated in long, detailed discussions at ISO Committee meetings to ensure their consistency with Commission policy.

92. Nonetheless, the task of the instant proceeding is to create an EQR Data Dictionary. It is not the appropriate forum in which to address the specific issue of ISO data mappings for EQR-ready reports. Our finding here is without prejudice to this matter subsequently being raised in another proceeding.

IV. Implementation Dates

93. This order will become effective upon publication in the **Federal Register.** The definitions adopted in this order shall be used in filing the Q1 2008 EQR due on April 30, 2008 and in subsequent filings of the EQR.

V. Document Availability

94. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

95. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM01–8'' in the docket number field. User assistance is available for eLibrary and the Commission's website during the Commission's normal business hours. For assistance contact the Commission's Online Support services at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The Commission orders:

(A) The Commission hereby adopts the EQR Data Dictionary shown in the Attachment, as discussed in the body of this order.

(B) The definitions adopted in this order shall be applied to EQR filings beginning with the Q1 2008 EQR (due on April 30, 2008) and in subsequent EQR filings due thereafter.

By the Commission.

Kimberly D. Bose,

Secretary.

Attachment—Electric Quarterly Report Data Dictionary Version 1.0 (Issued September 24, 2007)

[26] CVPS is not arguing here that small entities be excused from making EQR filings; rather, it is arguing that small entities be permitted to continue to make those filings under the Commission's prior guidance, without regard to the clarifications provided in the EQR Data Dictionary we are adopting in this order.

[27] Order No. 2001–E, 105 FERC ¶ 61,352 at P 11.

EQR DATA DICTIONARY

Field No.	Field	Required	Value	Definition
			ID DATA	
1	Filer Unique Identifier	✓	FR1	(Respondent)—An identifier (i.e., "FR1") used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	✓	FS# (where "#" is an integer).	(Seller)—An identifier (e.g., "FS1", "FS2") used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	✓	FA1	(Agent)—An identifier (i.e., "FA1") used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.
2	Company Name	✓	Unrestricted text (100 characters).	(Respondent)—The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.
2	Company Name	✓	Unrestricted text (100 characters).	(Seller)—The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.
2	Company Name	✓	Unrestricted text (100 characters).	(Agent)—The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of the company under Commission jurisdiction.
3	Company DUNS Number.	For Respondent and Seller.	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 2.
4	Contact Name	✓	Unrestricted text (50 characters).	(Respondent)—Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.
4	Contact Name	✓	Unrestricted text (50 characters).	(Seller)—The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Contact Name of the Respondent.
4	Contact Name	✓	Unrestricted text (50 characters).	(Agent)—Name of the contact for the Agent, usually the person who prepares the filing.
5	Contact Title	✓	Unrestricted text (50 characters).	Title of contact identified in Field Number 4.
6	Contact Address	✓	Unrestricted text	Street address for contact identified in Field Number 4.
7	Contact City	✓	Unrestricted text (30 characters).	City for the contact identified in Field Number 4.
8	Contact State	✓	Unrestricted text (2 characters).	Two character state or province abbreviations for the contact identified in Field Number 4.
9	Contact Zip	✓	Unrestricted text (10 characters).	Zip code for the contact identified in Field Number 4.
10	Contact Country Name	✓	CA—Canada MX—Mexico US—United States UK—United Kingdom	Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.
11	Contact Phone	✓	Unrestricted text (20 characters).	Phone number of contact identified in Field Number 4.
12	Contact E-Mail	✓	Unrestricted text	E-mail address of contact identified in Field Number 4.
13	Filing Quarter	✓	YYYYMM	A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g., 2007). The last 2 numbers represent the last month of the quarter (e.g., 03=1st quarter; 06=2nd quarter, 09=3rd quarter, 12=4th quarter).
			CONTRACT DATA	
14	Contract Unique ID	✓	An integer proceeded by the letter "C" (only used when importing contract data).	An identifier beginning with the letter "C" and followed by a number (*e.g.*, "C1", "C2") used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
15	Seller Company Name	✓	Unrestricted text (100 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field Number 2 of the ID Data (Seller Data).
16	Customer Company Name.	✓	Unrestricted text (70 characters).	The name of the counterparty.
17	Customer DUNS Number.	✓	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 16.
18	Contract Affiliate	✓	Y (Yes) N (No)	The customer is an affiliate if it controls, is controlled by or is under common control with the seller. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.
19	FERC Tariff Reference	✓	Unrestricted text (60 characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
20	Contract Service Agreement ID.	✓	Unrestricted text (30 characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.
21	Contract Execution Date.	✓	YYYYMMDD	The date the contract was signed or materially amended. If the parties signed on different dates use the most recent date signed.
22	Contract Commencement Date.	✓	YYYYMMDD	The date the contract was effective. If it is not specified in the contract, the first date of service under the contract.
23	Contract Termination Date.	If specified in the contract.	YYYYMMDD	The date that the contract expires.
24	Actual Termination Date.	If contract terminated.	YYYYMMDD	The date the contract actually terminates.
25	Extension Provision Description.	✓	Unrestricted text	Description of terms that provide for the continuation of the contract.
26	Class Name	✓		See definitions of each class name below.
26	Class Name	✓	F—Firm	For transmission sales, a service or product that always has priority over non-firm service. For power sales, a service or product that is not interruptible for economic reasons.
26	Class Name	✓	NF—Non-firm	For transmission sales, a service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm service. For an energy sale, a service or product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
26	Class Name	✓	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
26	Class Name	✓	N/A—Not Applicable	To be used only when the other available Class Names do not apply.
27	Term Name	✓	LT-Long Term ST-Short Term N/A-Not Applicable	Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.
28	Increment Name	✓	 H-Hourly	See definitions for each increment below. Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (≤ 6 consecutive hours).

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
28	Increment Name	✓	D-Daily	Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 60 consecutive hours (>6 and ≤60 consecutive hours).
28	Increment Name	✓	W—Weekly	Terms of the contract (if specifically noted in the contract) set for over 60 consecutive hours and up to 168 consecutive hours (>60 and ≤168 consecutive hours).
28	Increment Name	✓	M—Monthly	Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to one month (>168 consecutive hours and ≤1 month).
28	Increment Name	✓	Y—Yearly	Terms of the contract (if specifically noted in the contract) set for one year or more (≥1 year).
28	Increment Name	✓	N/A—Not Applicable	Terms of the contract do not specify an increment.
29	Increment Peaking Name.	✓		See definitions for each increment peaking name below.
29	Increment Peaking Name.	✓	FP—Full Period	The product described may be sold during those hours designated as on-peak and off-peak in the NERC region of the point of delivery.
29	Increment Peaking Name.	✓	OP—Off-Peak	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
29	Increment Peaking Name.	✓	P—Peak	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
29	Increment Peaking Name.	✓	N/A—Not Applicable	To be used only when the increment peaking name is not specified in the contract.
30	Product Type Name	✓		See definitions for each product type below.
30	Product Type Name	✓		CB—Cost Based Energy or capacity sold under a FERC-approved cost-based rate tariff.
30	Product Type Name	✓	CR—Capacity Reassignment.	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer.
30	Product Type Name	✓	MB—Market Based	Energy or capacity sold under the seller's FERC-approved market-based rate tariff.
30	Product Type Name	✓	T—Transmission	The product is sold under a FERC-approved transmission tariff.
30	Product Type Name	✓	Other	The product cannot be characterized by the other product type names.
31	Product Name	✓	See Product Name Table, Appendix A.	Description of product being offered.
32	Quantity	If specified in the contract.	Number with up to 4 decimals.	Quantity for the contract product identified.
33	Units	If specified in the contract.	See Units Table, Appendix E.	Measure stated in the contract for the product sold.
34	Rate	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	The charge for the product per unit as stated in the contract.
35	Rate Minimum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Minimum rate to be charged per the contract, if a range is specified.
36	Rate Maximum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.
37	Rate Description	One of four rate fields (34, 35, 36, or 37) must be included.	Unrestricted text	Text description of rate. Include algorithm if rate is calculated. If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section.
38	Rate Units	If specified in the contract.	See Rate Units Table, Appendix F.	Measure stated in the contract for the product sold.
39	Point of Receipt Balancing Authority (PORBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where service begins for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If receipt occurs at a trading hub specified in the EQR software, the term "Hub" should be used.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
40	Point of Receipt Specific Location (PORSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PORCA, see Hub Table, Appendix C.	The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. If more points of receipt are listed in the contract than can fit into the 50 character space, a description of the collection of points may be used. 'Various,' alone, is unacceptable unless the contract itself uses that terminology.
41	Point of Delivery Balancing Authority (PODBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where a jurisdictional product is delivered and/or service ends for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If delivery occurs at the interconnection of two control areas, the control area that the product is entering should be used. If delivery occurs at a trading hub specified in the EQR software, the term ''Hub'' should be used.
42	Point of Delivery Specific Location (PODSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PODCA, see Hub Table, Appendix C.	The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
43	Begin Date	If specified in the contract.	YYYYMMDDHHMM	First date for the sale of the product at the rate specified.
44	End Date	If specified in the contract.	YYYYMMDDHHMM	Last date for the sale of the product at the rate specified.
45	Time Zone	✓	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
			Transaction Data	
46	Transaction Unique ID	✓	An integer proceeded by the letter ''T'' (only used when importing transaction data).	An identifier beginning with the letter ''T'' and followed by a number (e.g., ''T1'', ''T2'') used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.
47	Seller Company Name	✓	Unrestricted text (100 Characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field 2 of the ID Data (Seller Data).
48	Customer Company Name.	✓	Unrestricted text (70 Characters).	The name of the counterparty.
49	Customer DUNS Number.	✓	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the counterparty to the contract.
50	FERC Tariff Reference	✓	Unrestricted text (60 Characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
51	Contract Service Agreement ID.	✓	Unrestricted text (30 Characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.
52	Transaction Unique Identifier.	✓	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction.
53	Transaction Begin Date	✓	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	First date and time the product is sold during the quarter.
54	Transaction End Date ..	✓	YYYYMMDDHHMM (csv import). MMDDYYYYHHMM (manual entry).	Last date and time the product is sold during the quarter.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
55	Time Zone	✓	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
56	Point of Delivery Balancing Authority (PODBA).	✓	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications.
57	Point of Delivery Specific Location (PODSL).	✓	Unrestricted text (50 characters). If ''HUB'' is selected for PODBA, see Hub Table, Appendix C.	The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used.
58	Class Name	✓	—	See class name definitions below.
58	Class Name	✓	F—Firm	A sale, service or product that is not interruptible for economic reasons.
58	Class Name	✓	NF—Non-firm	A sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
58	Class Name	✓	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
58	Class Name	✓	BA—Billing Adjustment	Designates an incremental material change to one or more transactions due to a change in settlement results. ''BA'' may be used in a refiling after the next quarter's filing is due to reflect the receipt of new information. It may not be used to correct an inaccurate filing.
58	Class Name	✓	N/A—Not Applicable	To be used only when the other available class names do not apply.
59	Term Name	✓	LT—Long Term ST—Short Term N/A—Not Applicable	Power sales transactions with durations of one year or greater are long-term. Transactions with shorter durations are short-term.
60	Increment Name	✓	—	See increment name definitions below.
60	Increment Name	✓	H—Hourly	Terms of the particular sale set for up to 6 consecutive hours (≤ 6 consecutive hours) Includes LMP based sales in ISO/RTO markets.
60	Increment Name	✓	D—Daily	Terms of the particular sale set for more than 6 and up to 60 consecutive hours (>6 and ≤ 60 consecutive hours) Includes sales over a peak or off-peak block during a single day.
60	Increment Name	✓	W—Weekly	Terms of the particular sale set for over 60 consecutive hours and up to 168 consecutive hours (>60 and ≤ 168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
60	Increment Name	✓	M—Monthly	Terms of the particular sale set for set for more than 168 consecutive hours up to one month (>168 consecutive hours and ≤ 1 month). Includes sales for full month or multi-week sales during a given month.
60	Increment Name	✓	Y—Yearly	Terms of the particular sale set for one year or more (≤ 1 year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or index).
60	Increment Name	✓	N/A—Not Applicable	To be used only when other available increment names do not apply.
61	Increment Peaking Name.	✓	—	See definitions for increment peaking below.
61	Increment Peaking Name.	✓	FP—Full Period	The product described was sold during Peak and Off-Peak hours.
61	Increment Peaking Name.	✓	OP—Off-Peak	The product described was sold only during those hours designated as off-peak in the NERC region of the point of delivery.
61	Increment Peaking Name.	✓	P—Peak	The product described was sold only during those hours designated as on-peak in the NERC region of the point of delivery.
61	Increment Peaking Name.	✓	N/A—Not Applicable	To be used only when the other available increment peaking names do not apply.
62	Product Name	✓	See Product Names Table, Appendix A.	Description of product being offered.
63	Transaction Quantity	✓	Number with up to 4 decimals.	The quantity of the product in this transaction.
64	Price	✓	Number with up to 6 decimals.	Actual price charged for the product per unit. The price reported cannot be averaged or otherwise aggregated.
65	Rate Units	✓	See Rate Units Table, Appendix F.	Measure appropriate to the price of the product sold.
66	Total Transmission Charge.	✓	Number with up to 2 decimals.	Payments received for transmission services when explicitly identified.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
67	Total Transaction Charge.	✓	Number with up to 2 decimals.	Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES

Product name	Contract product	Transaction product	Definition
BLACK START SERVICE	✓	✓	Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service).
BOOKED OUT POWER	.....	✓	Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
CAPACITY	✓	✓	A quantity of demand that is charged on a $/KW or $/MW basis.
CUSTOMER CHARGE	✓	✓	Fixed contractual charges assessed on a per customer basis that could include billing service.
DIRECT ASSIGNMENT FACILITIES CHARGE.	✓	.....	Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.
EMERGENCY ENERGY	✓	.....	Contractual provisions to supply energy or capacity to another entity during critical situations.
ENERGY	✓	✓	A quantity of electricity that is sold or transmitted over a period of time.
ENERGY IMBALANCE	✓	✓	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation.
EXCHANGE	✓	✓	Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and in amounts as mutually agreed if the receiver is not an RTO/ISO.
FUEL CHARGE	✓	✓	Charge based on the cost or amount of fuel used for generation.
GRANDFATHERED BUNDLED	✓	✓	Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.
INTERCONNECTION AGREEMENT	✓	.....	Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.
MEMBERSHIP AGREEMENT	✓	.....	Agreement to participate and be subject to rules of a system operator.
MUST RUN AGREEMENT	✓	.....	An agreement that requires a unit to run.
NEGOTIATED-RATE TRANSMISSION.	✓	✓	Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).
NETWORK	✓	.....	Transmission service under contract providing network service.
NETWORK OPERATING AGREEMENT.	✓	.....	An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.
OTHER	✓	✓	Product name not otherwise included.
POINT-TO-POINT AGREEMENT	✓	.....	Transmission service under contract between specified Points of Receipt and Delivery.
REACTIVE SUPPLY & VOLTAGE CONTROL.	✓	✓	Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).
REAL POWER TRANSMISSION LOSS.	✓	✓	The loss of energy, resulting from transporting power over a transmission system.
REGULATION & FREQUENCY RESPONSE.	✓	✓	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service).
REQUIREMENTS SERVICE	✓	✓	Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)
SCHEDULE SYSTEM CONTROL & DISPATCH.	✓	✓	Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).
SPINNING RESERVE	✓	✓	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service).

EQR DATA DICTIONARY—APPENDIX A. PRODUCT NAMES—Continued

Product name	Contract product	Transaction product	Definition
SUPPLEMENTAL RESERVE	✓	✓	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service).
SYSTEM OPERATING AGREEMENTS.	✓		An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.
TOLLING ENERGY	✓	✓	Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.
TRANSMISSION OWNERS AGREEMENT.	✓		The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.
UPLIFT	✓	✓	A make-whole payment by an RTO/ISO to a utility.

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY

Balancing authority	Abbreviation	Outside U.S.*
AESC, LLC—Wheatland CIN	AEWC	
Alabama Electric Cooperative, Inc	AEC	
Alberta Electric System Operator	AESO	✓
Alliant Energy Corporate Services, LLC—East	ALTE	
Alliant Energy Corporate Services, LLC—West	ALTW	
Ameren Transmission	AMRN	
Ameren Transmission. Illinois	AMIL	
Ameren Transmission. Missouri	AMMO	
American Transmission Systems, Inc	FE	
Aquila Networks—Kansas	WPEK	
Aquila Networks—Missouri Public Service	MPS	
Aquila Networks—West Plains Dispatch	WPEC	
Arizona Public Service Company	AZPS	
Associated Electric Cooperative, Inc	AECI	
Avista Corp	AVA	
Batesville Balancing Authority	BBA	
Big Rivers Electric Corp	BREC	
Board of Public Utilities	KACY	
Bonneville Power Administration Transmission	BPAT	
British Columbia Transmission Corporation	BCTC	✓
California Independent System Operator	CISO	
Carolina Power & Light Company—CPLW	CPLW	
Carolina Power and Light Company—East	CPLE	
Central and Southwest	CSWS	
Central Illinois Light Co	CILC	
Chelan County PUD	CHPD	
Cinergy Corporation	CIN	
City of Homestead	HST	
City of Independence P&L Dept	INDN	
City of Tallahassee	TAL	
City Water Light & Power	CWLP	
Cleco Power LLC	CLEC	
Columbia Water & Light	CWLD	
Comision Federal de Electricidad	CFE	✓
Constellation Energy Control and Dispatch—Arkansas	PUPP	
Constellation Energy Control and Dispatch—City of Benton, AR	BUBA	
Constellation Energy Control and Dispatch—City of Ruston, LA	DERS	
Constellation Energy Control and Dispatch—Conway, Arkansas	CNWY	
Constellation Energy Control and Dispatch—Gila River	GRMA	
Constellation Energy Control and Dispatch—Harquehala	HGMA	
Constellation Energy Control and Dispatch—North Little Rock, Arkansas	DENL	
Constellation Energy Control and Dispatch—West Memphis, Arkansas	WMUC	
Dairyland Power Cooperative	DPC	
DECA, LLC—Arlington Valley	DEAA	
Duke Energy Corporation	DUK	
East Kentucky Power Cooperative, Inc	EKPC	
El Paso Electric	EPE	
Electric Energy, Inc	EEI	
Empire District Electric Co., The	EDE	

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside U.S.*
Entergy	EES	
ERCOT ISO	ERCO	
Florida Municipal Power Pool	FMPP	
Florida Power & Light	FPL	
Florida Power Corporation	FPC	
Gainesville Regional Utilities	GVL	
Georgia System Operations Corporation	GSOC	
Georgia Transmission Corporation	GTC	
Grand River Dam Authority	GRDA	
Grant County PUD No. 2	GCPD	
Great River Energy	GRE	
Great River Energy	GREC	
Great River Energy	GREN	
Great River Energy	GRES	
GridAmerica	GA	
Hoosier Energy	HE	
Hydro-Quebec, TransEnergie	HQT	✓
Idaho Power Company	IPCO	
Illinois Power Co	IP	
Illinois Power Co	IPRV	
Imperial Irrigation District	IID	
Indianapolis Power & Light Company	IPL	
ISO New England Inc	ISNE	
JEA	JEA	
Kansas City Power & Light, Co	KCPL	
Lafayette Utilities System	LAFA	
LG&E Energy Transmission Services	LGEE	
Lincoln Electric System	LES	
Los Angeles Department of Water and Power	LDWP	
Louisiana Energy & Power Authority	LEPA	
Louisiana Generating, LLC	LAGN	
Madison Gas and Electric Company	MGE	
Manitoba Hydro Electric Board, Transmission Services	MHEB	✓
Michigan Electric Coordinated System	MECS	
Michigan Electric Coordinated System—CONS	CONS	
Michigan Electric Coordinated System—DECO	DECO	
MidAmerican Energy Company	MEC	
Midwest ISO	MISO	
Minnesota Power, Inc	MP	
Montana-Dakota Utilities Co	MDU	
Muscatine Power and Water	MPW	
Nebraska Public Power District	NPPD	
Nevada Power Company	NEVP	
New Brunswick Power Corporation	NBPC	✓
New Horizons Electric Cooperative	NHC1	
New York Independent System Operator	NYIS	
North American Electric Reliability Council	TEST	
Northern Indiana Public Service Company	NIPS	
Northern States Power Company	NSP	
NorthWestern Energy	NWMT	
Ohio Valley Electric Corporation	OVEC	
Oklahoma Gas and Electric	OKGE	
Ontario—Independent Electricity Market Operator	IMO	✓
OPPD CA/TP	OPPD	
Otter Tail Power Company	OTP	
P.U.D. No. 1 of Douglas County	DOPD	
PacifiCorp—East	PACE	
PacifiCorp—West	PACW	
PJM Interconnection	PJM	
Portland General Electric	PGE	
Public Service Company of Colorado	PSCO	
Public Service Company of New Mexico	PNM	
Puget Sound Energy Transmission	PSEI	
Reedy Creek Improvement District	RC	
Sacramento Municipal Utility District	SMUD	
Salt River Project	SRP	
Santee Cooper	SC	
SaskPower Grid Control Centre	SPC	✓
Seattle City Light	SCL	
Seminole Electric Cooperative	SEC	
Sierra Pacific Power Co.—Transmission	SPPC	
South Carolina Electric & Gas Company	SCEG	

EQR DATA DICTIONARY—APPENDIX B. BALANCING AUTHORITY—Continued

Balancing authority	Abbreviation	Outside U.S.*
South Mississippi Electric Power Association	SME	
South Mississippi Electric Power Association	SMEE	
Southeastern Power Administration—Hartwell	SEHA	
Southeastern Power Administration—Russell	SERU	
Southeastern Power Administration—Thurmond	SETH	
Southern Company Services, Inc	SOCO	
Southern Illinois Power Cooperative	SIPC	
Southern Indiana Gas & Electric Co	SIGE	
Southern Minnesota Municipal Power Agency	SMP	
Southwest Power Pool	SWPP	
Southwestern Power Administration	SPA	
Southwestern Public Service Company	SPS	
Sunflower Electric Power Corporation	SECI	
Tacoma Power	TPWR	
Tampa Electric Company	TEC	
Tennessee Valley Authority ESO	TVA	
Trading Hub	HUB	
TRANSLink Management Company	TLKN	
Tucson Electric Power Company	TEPC	
Turlock Irrigation District	TIDC	
Upper Peninsula Power Co	UPPC	
Utilities Commission, City of New Smyrna Beach	NSB	
Westar Energy—MoPEP Cities	MOWR	
Western Area Power Administration—Colorado-Missouri	WACM	
Western Area Power Administration—Lower Colorado	WALC	
Western Area Power Administration—Upper Great Plains East	WAUE	
Western Area Power Administration—Upper Great Plains West	WAUW	
Western Farmers Electric Cooperative	WFEC	
Western Resources dba Westar Energy	WR	
Wisconsin Energy Corporation	WEC	
Wisconsin Public Service Corporation	WPS	
Yadkin, Inc	YAD	

*Balancing authorities outside the United States may only be used in the Contract Data section to identify specified receipt/delivery points in jurisdictional transmission contracts.

EQR DATA DICTONARY.—APPENDIX C. HUB

HUB	Definition
ADHUB	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.
AEPGenHub	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the AEPGenHub.
COB	The set of delivery points along the California-Oregon commonly identified as and agreed to by the counterparties to constitute the COB Hub.
Cinergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.
Cinergy Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) nodes defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).
Entergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.
FE Hub	The aggregated Elemental Pricing nodes (“Epnodes”) nodes defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).
Four Corners	The set of delivery points at the Four Corners power plant commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.
Illinois Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) nodes defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).
Mead	The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.
Michigan Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) nodes defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).
Mid-Columbia (Mid-C)	The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.
Minnesota Hub (MISO)	The aggregated Elemental Pricing nodes (“Epnodes”) nodes defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).
NEPOOL (Mass Hub)	The aggregated Locational Marginal Price (“LMP”) nodes defined by ISO New England Inc., as Mass Hub.
NIHUB	The aggregated Locational Marginal Price (“LMP”) nodes defined by PJM Interconnection, LLC as the Northern Illinois Hub.
NOB	The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.

EQR DATA DICTONARY.—APPENDIX C. HUB—Continued

HUB	Definition
NP15	The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.
NWMT	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.
PJM East Hub	The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM East Hub.
PJM South Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM South Hub.
PJM West Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM Western Hub.
Palo Verde	The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona. Palo Verde Hub includes the Hassayampa switchyard 2 miles south of Palo Verde.
SOCO (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.
SP15	The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.
TVA (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.
ZP26	The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

EQR DATA DICTIONARY—APPENDIX D. TIME ZONE

Time zone	Definition
AD	Atlantic Daylight.
AP	Atlantic Prevailing.
AS	Atlantic Standard.
CD	Central Daylight.
CP	Central Prevailing.
CS	Central Standard.
ED	Eastern Daylight.
EP	Eastern Prevailing.
ES	Eastern Standard.
MD	Mountain Daylight.
MP	Mountain Prevailing.
MS	Mountain Standard.
NA	Not Applicable.
PD	Pacific Daylight.
PP	Pacific Prevailing.
PS	Pacific Standard.
UT	Universal Time.

EQR DATA DICTIONARY—APPENDIX E. UNITS

Units	Definition
KV	Kilovolt.
KVA	Kilovolt Amperes.
KVR	Kilovar.
KW	Kilowatt.
KWH	Kilowatt Hour.
KW–DAY	Kilowatt Day.
KW–MO	Kilowatt Month.
KW–WK	Kilowatt Week.
KW–YR	Kilowatt Year.
MVAR–YR	Megavar Year.
MW	Megawatt.
MWH	Megawatt Hour.
MW–DAY	Megawatt Day.
MW–MO	Megawatt Month.
MW–WK	Megawatt Week.
MW–YR	Megawatt Year.
RKVA	Reactive Kilovolt Amperes.
FLAT RATE	Flat Rate.

EQR DATA DICTIONARY—APPENDIX F. RATE UNITS

Rate units	Definition
$/KV	Dollars per kilovolt.
$/KVA	Dollars per kilovolt amperes.
$/KVR	Dollars per kilovar.
$/KW	Dollars per kilowatt.
$/KWH	Dollars per kilowatt hour.
$/KW–DAY	Dollars per kilowatt day.
$/KW–MO	Dollars per kilowatt month.
$/KW–WK	Dollars per kilowatt week.
$/KW–YR	Dollars per kilowatt year.
$/MW	Dollars per megawatt.
$/MWH	Dollars per megawatt hour.
$/MW–DAY.	Dollars per megawatt day.
$/MW–MO	Dollars per megawatt month.
$/MW–WK	Dollars per megawatt week.
$/MW–YR	Dollars per megawatt year.
$/MVAR–YR.	Dollars per megavar year.
$/RKVA	Dollars per reactive kilovar amperes.
CENTS	Cents.
CENTS/KVR.	Cents per kilovolt amperes.
CENTS/KWH.	Cents per kilowatt hour.
FLAT RATE.	Rate not specified in any other units.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–155]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 27, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license for variance of minimum flow release.

b. *Project No.:* 2210–155.

c. *Date Filed:* September 24, 2007.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Pumped Storage Hydroelectric Project.

f. *Location:* On the Roanoke River, in Bedford, Campbell, Franklin, Pittsylvania, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Teresa P. Rogers, Environmental and Regulatory Affairs Supervisor, Appalachian Power Company, P.O. Box No. 2021, Roanoke, VA 24022, (703) 985–2348.

i. *FERC Contact:* CarLisa Linton-Peters, Telephone (202) 502–8416; e-mail: *carlisa.linton-peters@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protests:* October 29, 2007.

Please include the project number (P–2210) on any comments or motions filed. All documents (an original and eight copies) should be filed with:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper filings, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings. The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Appalachian Power Company (licensee) is requesting modifications to and a continuance of its current 45-day temporary variance of the minimum flow release requirement under license article 29 for the Smith Mountain Pumped Storage Hydroelectric Project. Because of persistent drought conditions in the general project area and the need to conserve water, Appalachian Power Company, after consultation with state resource agencies, requests that it be allowed to continue a temporary variance under several modifying conditions (see licensee's request filed September 24, 2007), until Smith Mountain Lake returns to an adjusted elevation of 794.0 feet.

Concurrent with this notice, the Commission granted the licensee's requests (see Order Granting Temporary Amendment of Minimum Flow Requirement per Article 29, Project No. 2210–155), but reserved authority to require changes to project operation based upon comments received from this notice.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *ferconlinesupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address listed in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19590 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–543]

Duke Energy Carolinas, LLC; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 27, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands And Waters.

b. *Project Number:* 2232–543.

c. *Date Filed:* August 29, 2007.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project No. 2232.

f. *Location:* The project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield, and Kershaw Counties). The proposed action will take place in Catawba County, North Carolina. This project does not occupy Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Kelvin Reagan, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006, Charlotte, NC 28201; telephone 704–382–8386.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at telephone (202) 502–8132.

j. *Deadline for filing comments and or motions:* October 29, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the

Applicant specified in the particular application.

k. *Description of Request:* The licensee has requested Commission authorization to lease to Long Island Marina, Inc. (Long Island) 3.239 acres of project lands for a commercial marina at the existing, previously approved Long Island Marina. The marina is located on Lake Norman in Catawba County, North Carolina. Long Island proposes to re-configure and upgrade the marina. The new marina would consist of a total of 100 boat slips, two piers, ten jet-ski ports and one existing ramp. Dredging of 1700 cubic yards of lake-bed would be required for this reconfiguration. The marina would serve the general public and the residents of Long Island Resorts.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (p-2232) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p-2232–543). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–19591 Filed 10–3–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0409; FRL–8145–5]

The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations and Management (WC/POM); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations & Management (WC/POM) will hold a 2–day meeting, beginning on October 1, 2007 and ending October 2, 2007. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 1, 2007 from 8:30a.m. to 5 p.m. and 8:30 a.m. to 12 noon on October 2, 2007.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, 2777 Crystal Dr., (One Potomac Yard South), 4th Floor South Conference Center, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov* or Grier Stayton, Executive Secretary, P.O. Box 466 Milford, DE 19963; telephone number: (302) 422–8152; fax: (302) 422–2435; email: *''grier stayton'' <aapco-sfireg@comcast.net>*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. '' Potentially affected entities may include, but are not limited to: those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0409. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Facility Docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Tentative Agenda:

1. Update from POM E-label Task Force
2. Discussion on Problem Labels and EPA's Label Accountability Workgroup
3. Merits of translating the National Pesticide Applicator Certification Core Manual into Spanish
4. Requiring an Expiration Date on Chlorine Products and Antimicrobials
5. Concerns with Embossed Pesticide Labeling
6. Labeling Concerns with Mosquito Management Products
7. EPA's Pilot to Evaluate Drift Reduction Technology: Opportunities for State Input
8. POM Working Committee Workgroups Issue Papers/Updates
9. EPA Update/Briefing
   a. Office of Pesticide Programs Update
   b. Office of Enforcement Compliance Assurance Update

List of Subjects

Environmental protection.

Dated: August 24, 2007.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs

[FR Doc. E7–19640 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8479–1]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2007 Fall Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on November 14, 2007 starting at 9 a.m. and ending at 5 p.m.

Location: Hyatt Crystal City at 2799 Jefferson Davis Highway, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. *For documents and press inquiries contact:* Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org*; Web site: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org.*

Dated: September 24, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–19625 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8479–3]

2007 Release of Causal Analysis/Diagnosis Decision Information System (CADDIS)

AGENCY: Environmental Protection Agency.

ACTION: Notice of public release.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of the EPA Web site, ''Causal Analysis/Diagnosis Decision Information System (CADDIS)''—2007. EPA's National Center for Environmental Assessment (NCEA) in the Office of Research and Development (ORD) led the development of the CADDIS Web site in response to strong demand within the EPA (e.g., the Office of Water) and from stakeholders and citizens across the United States seeking a defensible method for determining causes of ecological impairment. CADDIS guides users through EPA's Stressor Identification process, with interactive tools and methods, worksheets, and examples to help scientists and engineers evaluate causes of biological impairment observed in aquatic systems such as streams, lakes, and estuaries.

Access: The CADDIS 2007 Web site can be accessed via the Internet at *http://www.epa.gov/caddis/.*

FOR FURTHER INFORMATION CONTACT: For further information about CADDIS, contact Rick Ziegler, NCEA, via phone: 202–564–2257, or e-mail: *Ziegler.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Thousands of water bodies in the United States have been reported to have an ''unknown'' cause of impairment. To formulate appropriate management actions for impaired water bodies, it is critical to identify the causes of biological impairment (e.g., excess fine sediments, nutrients, or toxic substances). Effective causal analyses call for knowledge of the mechanisms, symptoms, and stressor-response relationships for various stressors, as well as the ability to use that knowledge to draw appropriate, defensible conclusions. NCEA developed CADDIS, a Web-based decision support system, to help regional, state, and tribal scientists perform causal analyses. With this release, CADDIS will also help scientists find, access, organize, and share information useful for causal evaluations of impairment in aquatic systems. It is based on EPA's Stressor Identification process, which is an EPA-recommended method for identifying causes of impairments in aquatic environments. EPA released the first version of CADDIS in 2006, after addressing comments from the public and independently selected, external peer reviewers. The first release of CADDIS included a step-by-step guide to conducting causal analysis, downloadable worksheets and examples, a library of conceptual models, and links to useful information sources.

CADDIS 2007 adds considerable power and usability to the first release. Namely, CADDIS ecologists and Web specialists made the following changes:

- Added eight modules, each describing a common stressor or candidate cause of biological impairment; the stressor modules include metals, sediments, nutrients, dissolved oxygen, temperature, ionic strength, flow alteration, and unspecified toxic chemicals.
- Added material on data analysis including:
  - Information on how nine analytical methods (e.g., scatter plots, linear regression, predicting environmental

conditions from biological observations, quantile regression and species sensitivity distributions) can be used to analyze causal relationships.

○ CADStat, a downloadable software package for analyzing data using a variety of exploratory and statistical approaches.

○ SSD Generator, a tool for deriving species sensitivity distributions.

○ Databases of stressor-response information including chronic exposure-response relationships and species sensitivity distributions for metals from laboratory tests; and stressor-response associations from field observational data for metals and sediments.

• Greatly expanded the conceptual model library by adding generic conceptual models for common causes of biological impairment.

• Developed an interactive Flash-based conceptual model diagram for one common stressor (phosphorus), which provides source citations for cause-and-effect linkages shown in the diagram. (The CADDIS team anticipates this part of the site will expand to include other common stressors and—at some point in the future—harness information collaboratively from the greater scientific community.)

• Updated CADDIS's underlying code, which adheres to EPA's latest Web guidelines, and—similar to the first release—continues to maintain accessibility and 508 compliance.

The CADDIS 2007 release provides users with state-of-the-art causal assessment information and tools for determining why aquatic systems are biologically impaired. Ultimately, use of the CADDIS Web site translates to healthier ecosystems within the United States, while serving as an example stressor identification tool for our global environment.

Dated: September 27, 2007.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–19624 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8479–2; Docket ID No. EPA–HQ–ORD–2007–0971]

An Exploratory Study: Assessment of Modeled Dioxin Exposure in Ceramic Art Studios

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 45-day public comment period for the external review draft document titled, ''An Exploratory Study: Assessment of Modeled Dioxin Exposure in Ceramic Art Studios'' (EPA/600/R–06/044A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

For the external scientific peer review, EPA has contracted with Eastern Research Group (ERG) to convene an independent panel of experts and organize and conduct an external peer-review workshop. The date and location for the external peer-review workshop will be announced in a separate **Federal Register** notice. The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to EPA's contractor for the external peer-review panel's consideration prior to the workshop.

EPA is releasing this external review draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

DATES: The 45-day public comment period begins October 4, 2007, and ends November 19, 2007. Technical comments should be in writing and must be received by EPA by November 19, 2007.

ADDRESSES: The external review draft document, ''An Exploratory Study: Assessment of Modeled Dioxin Exposure in Ceramic Art Studios,'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy of the draft document, please provide your name, mailing address, and the document title, ''An Exploratory Study: Assessment of Modeled Dioxin Exposure in Ceramic Art Studios.''

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

If you need technical information about the draft document, please contact John Schaum, National Center for Environmental Assessment (NCEA); telephone: 202–564–3237; facsimile: 202–565–0078; e-mail *schaum.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

The purpose of this report is to describe an exploratory investigation of potential dioxin exposures to artists and hobbyists who use ball clay to make pottery and related products. Dermal, inhalation and ingestion exposures to clay were measured at the ceramics art department of Ohio State University in Columbus, Ohio. Estimates of exposure were made based on measured levels of clay in the studio air, deposited on surrogate food samples and on the skin of artists. The measurements were made in two separate studies, one in April 2003 and one in July 2004. This draft assessment combines the results of these two studies.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0971, by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *E-mail: ORD.Docket@epa.gov.*

• *Fax:* 202–566–1753.

• *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.

• *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the Docket's normal hours of

operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0971. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

Dated: September 26, 2007.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–19638 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0972; FRL–8477–8]

Draft Scientific and Ethical Approaches for Observational Exposure Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) announces a 45-day public comment period for the draft document titled, ''Scientific and Ethical Approaches for Observational Exposure Studies.'' This public comment period will overlap an external peer review of the draft document by EPA's Human Studies Review Board (HSRB) and discussion at their meeting on October 24, 2007. Notice of the HSRB meeting was published in the **Federal Register** on September 27, 2007, at 72 FR 54908 (Docket ID No. EPA–HQ–ORD–2007–0942) and is posted on the EPA HSRB Web site, *http://www.epa.gov/osa/hsrb/.*

The draft document presents ''state-of-the-science'' approaches for conducting observational exposure studies based on sound science and conforming to the highest ethical standards. These studies, which collect information on how people come into contact with chemicals as they go about their everyday activities, are critical to EPA's mission to protect human health. This document is intended to serve as a resource and reference for researchers and is not meant to represent an official Agency ''guidance document.''

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: Comments must be received on or before November 19, 2007.

ADDRESSES: The draft document is available primarily via the Internet on the National Exposure Research Laboratory's home page under the Scientific and Ethical Approaches for Observational Exposure Studies link at *http://www.epa.gov/nerl/sots.* Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0972, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Docket ID No. EPA–HQ–ORD–2007–0972, Office of Research and Development (ORD) Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0972. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid

the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Public comments received on the document titled, ''Scientific and Ethical Approaches for Observational Exposure Studies,'' may be listed under Docket ID No. EPA–HQ–ORD–2007–0972 or Docket ID No. EPA–HQ–ORD–2007–0942.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Research and Development (ORD) Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Roy Fortmann, National Exposure Research Laboratory, Environmental Protection Agency, Mail Code E205–01, 109 T.W. Alexander Dr., Research Triangle Park, NC 27711; telephone number: (919) 541–2454; fax number: (919) 541–0239; e-mail address: *Fortmann.Roy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

EPA researchers conduct observational exposure studies to understand how and the extent to which people come into contact with chemicals in their everyday lives. The researchers and their managers take the protection of human subjects who participate in these observational studies very seriously. EPA wants to ensure that the procedures used in their studies meet or exceed the most up-to-date scientific and ethical standards. To address this goal, researchers at the Agency's National Exposure Research Lab (NERL) have prepared this document to identify key scientific and ethical issues and to provide information and resources to assist researchers as they plan and implement observational exposure studies. This document is not meant to represent an official Agency ''guidance document.'' Moreover, it recognizes that researchers will work with others—EPA's Human Subjects Research Review Official, Institutional Review Board (IRB) members, the participants and their community, and other stakeholders—to identify and address all of the relevant issues for any specific study to ensure that all participants are respected and protected. The draft document was developed through recommendations from nationally-recognized experts, public comment and external peer review in an open and transparent process. As part of this process, the document is being submitted to EPA's Human Studies Review Board (HSRB), which was established to provide advice, information, and recommendations on issues related to scientific and ethical aspects of human subjects research.

Dated: September 26, 2007.

Lawrence W. Reiter,

Director, National Exposure Research Laboratory, Office of Research and Development.

[FR Doc. E7–19635 Filed 10–3–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

September 26, 2007

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 5, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 03–42.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; and State, local, or tribal Governments.

Number of Respondents: 25,041.

Estimated Time per Response: 1–10 hours.

Frequency of Response: Recordkeeping requirement; On occasion and biennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 105,901 hours.

Total Annual Cost: $51,285,000.

Obligation to Respond: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals' and households' information is contained in the OSCAR database, which is covered under the Commission's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2 (c).

Privacy Impact Assessment: Under development.

Needs and Uses: Section 258 of the Telecommunications Act of 1996 directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission also released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration*. The rules and requirements implementing section 258 can be found primarily at 47 CFR part 64. These rules will continue to enable the Commission to deter slamming, while protecting consumers from carriers that take advantage of consumer confusion over different types of telecommunications services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19519 Filed 10–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 25, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 3, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by email or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry Cowden via e-mail at *PRA@fcc.gov* or call (202) 418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0992.

Title: Request for Extension of the Implementation Deadline for Non-Recurring Services (47 C.F.R. Section 54.507(d)(1)–(4)).

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 850 respondents; 850 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 850 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Nature and Extent of confidentiality: There is no need for confidentiality.

Needs and Uses: Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Section 54.507(d) extends the September 30 deadline for the implementation of non-recurring services for applicants who request an extension from the Administrator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19520 Filed 10–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 25, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 3, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry Cowden via e-mail at *PRA@fcc.gov* or call (202) 418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0971.

Title: Requests for ''For Cause'' Audits and State Commissions' Access to Numbering Resource Application Information (47 CFR 52.15).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal government.

Number of Respondents: 2,050 respondents; 50,500 responses.

Estimated Time per Response: 15 minutes to 3 hours.

Frequency of Response: Third Party Disclosure, and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 14,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: None.

Nature and Extent of Confidentiality: The Commission requires state commissions to treat carriers' applications for initial or growth numbering resources as well as their forecast and utilization data as confidential. In those instances where a state ''open records'' statute prevents the state from providing confidential protection for such sensitive carrier information the Commission will work with the state commission to enable it to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the carrier's sensitive information.

Needs and Uses: To ensure that the numbering resources of the North American Numbering Plan are used efficiently, the Commission authorized ''for cause'' audits as part of its comprehensive audit plan to verify carrier compliance with federal rules and orders and industry guidelines. It also provided state commissions with access to copies of carriers' applications for numbering resources. To request a ''for cause'' audit, the North American Numbering Plan Administrator (NANPA), the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. Requests for copies of carriers' applications for numbering resources are made directly to the carriers by the state commissions. The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of carrier data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

OMB Control No.: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: FCC Forms 507, 508 & 509.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, local or tribal government.

Number of Respondents: 1,300 respondents; 9,959 responses.

Estimated Time per Response: 1–90 hours.

Frequency of Response: Third Party Disclosure, and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 43,119 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Not applicable.

Nature and Extent of Confidentiality: There is no need for Confidentiality.

Needs and Uses: To administer the Universal Service Interstate Common Line Support mechanism, the Administrator must collect projected cost and revenue data and actual cost and revenue data from non-price cap incumbent local exchange carriers and interexchange carriers. In order to implement change to the interstate access tariffs, the Commission must continue to collect certain tariff-related information.

OMB Control Number: 3060–0809.

Title: Communications Assistance for Law Enforcement Act (CALEA).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 250 respondents; 350 responses.

Estimated Time per Response: 18 hours average (range of 7.5 to 80 hours).

Frequency of Response: On occasion reporting requirements, recordkeeping requirement and third party disclosure.

Obligation to Respond: Of the total number of responses, 250 are mandatory according to the CALEA statute, and 100 are necessary for applicants that seek relief under select provisions of the CALEA statute.

Total Annual Burden: 6,275 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. CALEA was enacted in October 1994 to respond to rapid advances in telecommunications technology and eliminates obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 105 of CALEA requires telecommunications carriers to protect against the unlawful interception of communications passing through their systems. Law enforcement officials use the information maintained by telecommunications carriers to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

On May 12, 2006, the Commission released a *Second Report and Order and Memorandum Opinion and Order* in ET Docket No. 04–195, FCC 06–56, which became effective August 4, 2006, except for §§ 1.20004 and 1.20005 of the Commission's rules, which became effective on February 12, 2007 when OMB approved their information collection requirements. The Second Report and Order established new guidelines for filing section 107(c) petitions, section 109(b) petitions, and monitoring reports (FCC Form 445). The monitoring reports were required on

only one occasion and no renewal of that requirement is necessary. CALEA section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, and to come into compliance with a particular CALEA section 103 capability requirement. CALEA section 109(b) permits a telecommunication carrier covered by CALEA to file a petition with the FCC and an application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The Second Report and Order required several different collections of information:

(a) Within 90 days of the effective date of the Second Report and Order, facilities based broadband Internet access and interconnected Voice over Interconnected Protocol (VOIP) providers newly identified in the First Report and Order in this proceeding were required to file system security statements under the Commission's rules (system security statements are currently approved under the existing OMB 3060–0809 information collection).

(b) All telecommunications carriers, including broadband Internet access and interconnected VoIP providers, must file updates to their systems security statements on file with the Commission as their information changes.

(c) Petitions filed under Section 107(c), request for additional time to comply with CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings.

(d) Section 109(b), request for reimbursement of CALEA; these provisions apply to all carriers subject to CALEA and are necessary for carriers seeking relief under this section of the CALEA statute.

OMB Control Number: 3060–0207.

Title: Emergency Alert System Information Collections.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Governments; Non-profit entities.

Number of Respondents: 63,060 respondents; 3,465,823 responses.

Estimated Time per Response: 1 minute average (ranges from 1 minute to 20 hours).

Frequency of Response: Recordkeeping requirements; Reporting requirements; Third party disclosure requirement.

Obligation to Respond: Mandatory for private entities; Voluntary for states.

Total Annual Burden: 63,366 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality required for this information collection.

Needs and Uses: In the Second Report and Order and Further Notice of Proposed Rulemaking in EB Docket No. 04–296, FCC 07–109, the Commission adopts rules that require states to file new EAS plans with the Commission under certain circumstances, expand the number of private entities covered by EAS, and impose new obligations on private entities. These new rules will impact currently existing paperwork collection requirements as discussed below:

47 CFR 11.15 requires EAS participants to maintain a copy of the EAS operating handbook at normal duty positions or EAS equipment locations when an operator is required to be on duty. The handbook must be immediately available to staff responsible for authenticating messages and initiating actions.

47 CFR 11.21 requires that state and local EAS plans be reviewed and approved by the Chief, Public Safety and Homeland Security, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

47 CFR 11.34 requires manufacturers to include instructions and information on how to install, operate and program an EAS Encoder, EAS Decoder, or combined unit and a list of all State and county FIPS numbers with each unit sold or marketed in the U.S.

47 CFR 11.35 requires appropriate entries be made in the station/system logs indicating why any required EAS tests were not received for all broadcast streams and cable systems. All other EAS Participants must also keep a record indicating reasons why any tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.

47 CFR 11.35 also requires that entries be made in the station/system logs, and records of other EAS Participants, when the EAS Encoder/Decoder becomes defective showing the date and time the equipment was removed and restored to service. If replacement of defective equipment is not completed within 60 days, an informal request must be submitted to the District Director of the FCC field office. For DBS and SDARS providers, this informal request shall be submitted to the District Director of the FCC field office serving the area where their headquarters is located. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service and when the defective equipment will be repaired or replaced.

47 CFR 11.41 allows all EAS Participants to submit a written request to the FCC asking to be a Non-Participating National source. In addition, a Non-Participating National source that wants to become a Participating National source must submit a written request to the FCC.

47 CFR 11.42 allows a communications common carrier to participate in the national level EAS, without charge. A communications common carrier rendering free service is required to file with the FCC, on or before July 31st and January 31st of each year, reports covering the six months ending on June 30th and December 31st respectively. These reports shall state what free service was rendered under this rule and the charges in dollars which would have accrued to the carrier for this service if charges had been collected at the published tariff rates if such carriers are required to file tariffs.

47 CFR 11.43 allows entities to voluntarily participate in the national level EAS after submission of a written request to the Director, Office of Homeland Security, Enforcement Bureau.

47 CFR 11.51 requires that EAS equipment be operational, ready to monitor, transmit and receive EAS electronic signals. Cable and wireless cable systems, both analog and digital, can elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Furthermore, cable and wireless cable systems, both analog and digital, can elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based upon a written agreement between all concerned. These written agreements are contained in state and local franchise agreements.

47 CFR 11.51 also requires all actions to be logged when manual interruption of programming and transmission of EAS messages is used.

47 CFR 11.52 requires all EAS Participants to monitor two EAS sources. If the required EAS sources cannot be received, alternate arrangements or a waiver may be

obtained by written request to the FCC's EAS office. Automatic interrupt of programming is required when facilities are unattended. Automatic operation must provide a permanent record of the EAS message.

47 CFR 11.54 requires EAS Participants to enter into their logs/records the time of receipt of an emergency alert notice and an emergency action termination messages during a national level emergency.

47 CFR 11.55 requires EAS participants to monitor their emergency alert system upon receipt of a state or local area EAS message. Stations/systems must also enter into their logs/records the time of receipt of an emergency alert message.

47 CFR 11.61 requires EAS Participants to conduct periodic EAS tests. Tests of the EAS header codes, attention signal, test script and EOM code are required to be performed monthly. Tests of the EAS header codes and end of message codes are made at least once a week. National primary sources shall participate in tests as appropriate. DBS providers, Class D non-commercial educational FM stations and low power TV stations are not required to transmit this test but must log receipt of the test. The FCC may request a report of the tests of the national primary sources. In addition, entries must be made in stations/systems logs/records as previously stated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19532 Filed 10–3–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2007.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Allied Irish Banks, p.l.c., Dublin, Ireland and M&T Bank Corporation, Buffalo, New York (M&T); to acquire 100 percent of the voting shares of Partners Trust Financial Group, (Partners Trust), and merge Partners Trust with and into M&T, and thereby acquire voting shares of Partners Trust Municipal Bank, Utica, New York.

In connection with this application, Allied Irish Banks. p.l.c., and M&T also have applied to acquire Partners Trust Bank; Partners NEWPRO, Inc.; Partners Preferred Capital Corporation; Partners Trust Investment Services, Inc.; BSB Mortgage Corporation; BSB Financial Services, Inc.; Groupinsure Brokerage Holding, Inc.; and SBU Mortgage Corporation, all of Utica, New York, and thereby engage in operating a federal savings bank, pursuant to section 225.28(b)(4)(ii); in extending credit and servicing loans, pursuant to section 225.28(b)(1); in asset management, servicing, and collection activities, pursuant to section 225.28(b)(2)(vi); and in securities brokerage activities, pursuant to section 225.28(b)(7)(i), all of Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. SCBT Financial Corporation, Columbia, South Carolina; to acquire 100 percent of the voting shares of TSB Financial Corporation, and thereby indirectly acquire voting shares of The Scottish Bank, both of Charlotte, North Carolina.

C. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Pinnacle Financial Partners, Inc., Nashville, Tennessee; to merge with Mid–America Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of the South, Mt. Juliet, Tennessee, and PrimeTrust Bank, Nashville, Tennessee.

D. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hazen Bancorporation, Hazen, North Dakota; to acquire additional voting shares, for a total of 16.67 percent, of North Star Holding Company, and thereby indirectly acquire additional voting shares of Unison Bank, both of Jamestown, North Dakota.

2. McIntosh County Bank Holding Company, Ashley, North Dakota; to acquire additional voting shares, for a total of 33.33 percent, of North Star Holding Company, and thereby indirectly acquire additional voting shares of Unison Bank, both of Jamestown, North Dakota.

3. Wishek Bancorporation, Wishek, North Dakota; to acquire additional voting shares, for a total of 33.3 percent, of North Star Holding Company, and thereby indirectly acquire additional voting shares of Unison Bank, both of Jamestown, North Dakota.

E. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bruning Bancshares, Inc., Bruning, Nebraska; to acquire up to 15 percent of the voting shares of 3MV Bancorp, Inc., and thereby indirectly acquire voting shares of Access Bank (in organization), both in Omaha, Nebraska.

2. 3MV Bancorp, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Access Bank (in organization), both of Omaha, Nebraska.

Board of Governors of the Federal Reserve System, October 1, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–19623 Filed 10–3–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), October 15, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the September 17, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
a. Monthly Participant Activity Report.
b. Legislative Report.
3. Quarterly Reports.
a. Investment Policy Review.
b. Vendor Financial Reports.
4. Board Policy Manual.
5. Mid-Year Financial Audit.

Parts Closed to the Public

6. Security.
7. Proprietary Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 2, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–4941 Filed 10–2–07; 10:23 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability of the Draft Environmental Assessment for Improvements to the Nogales Mariposa U.S. Port of Entry, Nogales, Arizona

AGENCY: Public Buildings Service, GSA

ACTION: Notice of Availability and Public Hearing.

SUMMARY: The General Services Administration (GSA) announces the availability of the Draft Environmental Assessment (EA) for Improvements to the Nogales Mariposa U.S. Port of Entry, Nogales, Arizona, for public review and comment. The EA provides GSA and its stakeholders an analysis of the environmental impacts resulting from ongoing operations as well as reasonable alternatives for new operations and facilities at the Nogales Mariposa U.S. Port of Entry, located in southern Arizona.

DATES: Written comments on the Draft EA are invited from the public and may be submitted during the comment period, which begins today and ends November 30, 2007 (see ADDRESSES section for more details). Comments must be postmarked by November 30, 2007, to ensure consideration. The GSA will use the comments received to help prepare the final version of the Nogales Mariposa U.S. Port of Entry EA. A public meeting on the Draft EA will be held on Tuesday, October 16, 2007, from 4 p.m. to 8 p.m. at the Santa Cruz County Office Building, 2150 North Congress Drive, Nogales, Arizona.

The hearing will provide opportunities for information exchange and discussion between GSA and the public, as well as for submitting prepared statements. For more information call (619)557–6169.

ADDRESSES: Comments may be submitted in writing to: Greg Smith, NEPA Project Manager, GSA, 880 Front St., Room 4236, San Diego, CA 92101, or via e-mail to *greg.smith@gsa.gov*. Oral and written comments may also be submitted at the public hearing described in the DATES section. Copies of the Draft Nogales Mariposa U.S. Port of Entry EA may be downloaded from *http:\\www.gsa.gov/nepalibrary*. Other matters regarding this environmental review should be referred to Greg Smith at the address above.

SUPPLEMENTARY INFORMATION: A notice of availability will be mailed to all agencies, organizations, and individuals who participated in the scoping process or were identified during the EA process. GSA has distributed copies of the Draft Nogales Mariposa U.S. Port of Entry EA to appropriate agencies of, the state of Arizona, local county governments, other federal agencies, and other interested parties who have already requested copies.

After the public comment period, which ends November 30, 2007, GSA will consider the comments received, revise the Draft EA if necessary, and issue a Final EA. GSA will consider the Final EA, along with other economic and technical considerations, to make a decision on the appropriate course for improvements to the Nogales Mariposa U.S. Port of Entry.

Dated: September 28, 2007.

Peter G. Stamison,

Regional Administrator,Pacific Rim Region.

[FR Doc. E7–19662 Filed 10–3–07; 8:45 am]

BILLING CODE 6820–YF–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–06BP]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Outcomes Data Collection of the National Prevention Information Network—New—National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP) within the Centers for Disease Control and Prevention (CDC) proposes a survey data collection to assess the CDC National Prevention Information Network's (NPIN) Web site, products and services. The CDC NPIN serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, TB and viral Hepatitis. Products and services offered by the CDC NPIN Web site is the primary channel used by the CDC to provide information concerning prevention, treatment, and care of HIV, STD, TB, and viral Hepatitis to its prevention partners, stakeholders, and other constituents.

The CDC NPIN Web site includes several searchable databases that can be used to locate information about testing centers, funding opportunities, upcoming conferences, educational materials, and news. The Web site is a widely used service by the public, with more than 54 million hits and 3 million visits recorded since August 2004. Following enhancements to the website completed in February 2006, 22,886,855 hits and 1,349,318 visits have already been recorded from February to November 2006. In addition to the Web site, consumers can access information

and order materials and resources by phone using the NPIN toll-free reference and referral line or electronic mail system. As of January 25, 2007, over 370,000 unique requests for materials have been logged and 4,561,186 materials have been ordered by the public.

The primary purposes of the proposed data collection are to assess CDC NPIN users' satisfaction and perceived quality with the Web site, products, and services; determine the extent to which the users' needs are being met; and identify how the Web site, products, and services can be enhanced to meet the needs of the user.

The evaluation will be accomplished by survey data collection from users of the CDC NPIN Web site and users of CDC NPIN products and services. Organizations that do not have access to the Internet will be administered the survey by phone.

The estimated 5,655 respondents include representatives from government agencies, community-based organizations, advocacy organizations, and various other organizations involved in the prevention and/or treatment of HIV/AIDS, STDs, TB, and/or viral Hepatitis.

There are no costs to respondents other than their time. The total estimated annual burden hours are 2,525.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response
NPIN Website User Survey	All NPIN Users (Individuals)	1,078	1	13/60
NPIN Products and Services User Survey	Private Sector Organizations	2,155	2	15/60
	State and local government organization	222	2	15/60
	Federal government organization	94	2	15/60
	Individual/Households	1,648	2	15/60
NPIN Products and Services User Survey (Telephone).	Private Sector Organizations	239	2	15/60
	State and local government organization	25	2	15/60
	Federal government organization	11	2	15/60
	Individual/Households	183	2	15/60

Dated: September 27, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–19620 Filed 10–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–110]

Notice of Public Meeting and Availability for Public Comment

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Public Meeting and Availability for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces a public meeting and request for public input regarding a proposed survey of U.S. truck driver safety and health. The goal of the survey is to collect information on truck driver health, sleep disorders, fatigue, working conditions, and non-fatal injuries. Further information on the proposed survey may be found at: *http://www.cdc.gov/niosh/review/public/110.*

Public Comment Period: From date of publication of this notice until January 2, 2008.

Public Meeting Date and Time: Thursday, November 1, 2007, 8:30 a.m.–4:30 p.m., CST.

Place: Westin O'Hare Hotel, 6100 North River Road, Rosemont, Illinois 60018, telephone (888) 627–8517.

Purpose of the Meeting: To obtain public comment on the content and conduct of a nationally representative survey of truck drivers' safety and health. Special emphasis will be placed on discussion of the following:

(1) Content of the survey.

(2) Appropriate methods of conducting such a survey.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public. Attendance is limited only by the space available. The meeting room will accommodate approximately 70 people. Interested parties should make hotel reservations directly with the Westin O'Hare Hotel by calling (888) 627–8517 or via the Web site at *http://www.starwoodmeeting.com/Book/westatOc* before the cut-off date of 5 p.m. CST October 10, 2007. A special group rate of $205.00 per night (or prevailing government rate) plus tax per night for meeting guests has been negotiated for this meeting. In order to receive the special room rate, you will need to indicate that you will be attending the NIOSH meeting.

Interested parties should confirm their attendance to this meeting by contacting Ms. Mary K. Dingwall, meeting coordinator, at (301) 738–3583 or *MaryDingwall@Westat.com* by October 19, 2007. Oral comments given at the meeting will be recorded and included in the docket. Written comments will also be accepted at the meeting or by submitting them to the NIOSH Docket Office.

Contact Person for Technical Information: Karl Sieber, NIOSH/CDC, Robert A. Taft Laboratories, 4676 Columbia Pkwy. MS R–17, Cincinnati, OH 45226, telephone (513) 841–4231, or Stephanie Pratt, NIOSH/CDC, 1095 Willowdale Road, MS 1808, Morgantown, WV 26505, telephone (304) 285–5992.

Contact Person for Submitting Comments: Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8450, fax (513) 533–8285. Comments may also be submitted by e-mail to *nioshdocket@cdc.gov* or at *http://www.cdc.gov/niosh/review/public/110/.* E-mail attachments should be formatted in Microsoft Word. All comments should be received by January 2, 2008 and should reference the Docket Number (NIOSH–110) in the subject heading.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226 and at *http://www.cdc.gov/niosh/docket/default.html.*

Dated: September 26, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–19613 Filed 10–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Consolidated Vaccine Information Materials for Multiple Infant Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on a proposed new vaccine information statement that consolidates the six vaccine information statements for the following childhood vaccines: DTaP, *Haemophilus influenzae* type b, inactivated polio vaccine, pneumococcal conjugate vaccine, hepatitis B, and rotavirus. This consolidated Vaccine Information Statement would be available to be used by vaccination providers as an alternative to providing the six individual Vaccine Information Statements for the same vaccines.

DATES: Written comments are invited and must be received on or before December 3, 2007.

ADDRESSES: Written comments should be addressed to Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Anne Schuchat, M.D., Director, National Center for Immunization and Respiratory Diseases, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, hepatitis A, meningococcal conjugate and polysaccharide, rotavirus, human papillomavirus (HPV), and trivalent influenza vaccines have subsequently been added to the National Vaccine Injury Compensation Program. Use of the Vaccine Information Statements applicable to all of these vaccines, except meningococcal, rotavirus and HPV, is also required. (Interim versions of Vaccine Information Statements for meningococcal, rotavirus and HPV vaccines are available for discretionary use pending completion of the statutory process for finalizing VISs applicable to those vaccines.) Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/vis.* In addition, single camera-ready copies are available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

Proposed Consolidated Vaccine Information Materials

With six vaccines recommended for infants from birth through 6 months of age—all covered by the National Vaccine Injury Compensation Program—CDC, as required under 42 U.S.C. 300aa–26, developed Vaccine Information Statements for each of those vaccines. CDC is proposing an alternative consolidated Vaccine Information Statement covering those six vaccines in one document, which providers could choose to use instead of the existing individual Vaccine Information Statements for the same vaccines.

Development of Vaccine Information Materials

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

In addition, we invite written comment on the proposed vaccine information materials that follow, entitled ''Your Baby's First Vaccines: What You Need to Know.'' Comments submitted will be considered in finalizing these materials. When the final consolidated VIS is published in the **Federal Register**, the instructions for use of vaccine information materials will be revised to note that this alternative consolidated VIS can be used in lieu of the individual vaccine VISs.

* * * * *

Proposed Multi-vaccine Vaccine Information Statement

YOUR BABY'S FIRST VACCINES: WHAT YOU NEED TO KNOW

Babies are scheduled for six vaccines at 2, 4, and 6 months of age. One of these (hepatitis B) is usually given at birth.

These vaccines protect your baby from 8 serious diseases (see the next page).

Your baby will be getting these vaccines today (check):

- ○ DTaP
- ○ Hib
- ○ Polio
- ○ Pneumococcal
- ○ Hepatitis B
- ○ Rotavirus

Some of these vaccines might be given in the same shot (for example, Hepatitis B and Hib, or DTaP, Polio and Hepatitis B). These ''combination vaccines'' are as safe and effective as the individual vaccines, and mean fewer shots for your baby.

These vaccines may all be given at the same visit. Getting several shots at the same time does not increase the risk to your baby.

This ''Vaccine Information Statement'' tells you about the benefits and risks of these 6 vaccines. It also contains information about reporting an adverse reaction, the National Vaccine Injury Compensation Program, and how to get more information about childhood diseases and vaccines.

Please read this statement before your child gets his or her immunizations, and take it home with you afterward. Ask your doctor, nurse, or other healthcare provider if you have questions.

Department of Health and Human Services, Centers for Disease Control and Prevention, Vaccine Information Statement, 42 U.S.C. 300aa–26, X/X/2007.

Vaccine Benefits: Why get vaccinated?

Your baby's first vaccines protect them from 8 serious diseases, caused by viruses and bacteria. These diseases have injured and killed many children (and adults) over the years. Polio paralyzed about 37,000 people and killed about 1,700 each year in the 1950s before there was a vaccine. In the 1980s, Hib disease was the leading cause of bacterial meningitis in children under 5 years of age. About 15,000 people a year died from diphtheria before there was a vaccine. Most children have had at least one rotavirus infection by their 5th birthday. Most of these diseases are not very common in the U.S. today. But if we stopped vaccinating, they would come back. This has happened in other parts of the world.

8 Serious Diseases

Diphtheria Bacteria

You can get it from contact with an infected person, mainly through the air.

Signs and symptoms include a thick covering in the back of the throat.

It can lead to breathing problems, heart failure, and death.

Tetanus (Lockjaw) Bacteria

You can get it from a cut or wound. It does not spread from person to person.

Signs and symptoms include painful tightening of the muscles, usually all over the body.

It can lead to stiffness of the jaw, so the victim cannot open his mouth or swallow. It leads to death in about 1 case out of 10.

Pertussis (Whooping Cough) Bacteria

You can get it from contact with an infected person, mainly through the air.

Signs and symptoms include violent coughing spells that can make it hard for an infant to eat, drink, or breathe. These spells can last for weeks.

It can lead to pneumonia, seizures (jerking and staring spells), brain damage, and death.

Hib (*Haemophilus influenzae* type b) Bacteria

You can get it from contact with an infected person, mainly through the air.

Signs and symptoms. There may be no signs or symptoms in mild cases.

It can lead to meningitis (infection of the brain and spinal cord coverings); pneumonia; infections of the blood, joints, bones, and covering of the heart; brain damage; deafness; and death.

Hepatitis B Virus

You can get it from contact with blood or body fluids of an infected person. Babies can get it at birth if the mother is infected, or through a cut or wound. Adults can get it from unprotected sex, sharing needles, or other exposures to blood.

Signs and symptoms include tiredness, diarrhea and vomiting, jaundice (yellow skin or eyes), and pain in muscles, joints and stomach.

It can lead to liver damage, liver cancer, and death.

Polio Virus

You can get it from close contact with an infected person. It enters the body through the mouth.

Signs and symptoms can include a cold-like illness, or there may be no signs or symptoms at all.

It can lead to paralysis (can't move arm or leg), or death (by paralyzing breathing muscles).

Pneumococcal Bacteria

You can get it from contact with an infected person, mainly through the air.

Signs and symptoms include fever, chills, cough, and chest pain.

It can lead to meningitis (infection of the brain and spinal cord coverings), blood infections; ear infections, pneumonia, deafness, brain damage, and death.

Rotavirus Virus

You can get it from contact with other children who are infected.

Signs and symptoms include severe diarrhea, vomiting and fever.

It can lead to dehydration, hospitalization (up to about 70,000 children a year), and death.

How Vaccines Work

A child who gets sick with one of these diseases becomes immune to that disease, and won't get it again. But getting the disease the first time can be dangerous. That's why vaccines are a better way to create immunity.

Vaccines are made with the same bacteria or viruses that cause the disease, but they have been weakened or killed to make them safe. Vaccines fool the immune system into thinking a child has the disease. The child becomes immune without having to get sick first.

Routine Childhood Vaccines

These 6 vaccines are routinely given to children under 6 months of age. Children will also get at least one ''booster'' dose of most of these vaccines when they are older.

- DTaP (Diphtheria, Tetanus & Pertussis) Vaccine: 5 doses—2 months, 4 months, 6 months, 15–18 months, 4–6 years. Some children should not get pertussis vaccine. These children can get a vaccine called DT, which does not contain pertussis vaccine.
- Hepatitis B vaccine: 3 doses—Birth, 1–2 months, 6–18 months.
- Polio Vaccine: 4 doses—2 months, 4 months, 6–18 months, 4–6 years.
- Hib (*Haemophilus influenzae* type b) Vaccine: 4 doses—2 months, 4 months, 6 months, 12–15 months. Several Hib vaccines are available. With one type, the 6-month dose is not needed.
- Pneumococcal Vaccine: 4 doses—2 months, 4 months, 6 months, 12–15 months. Older children with certain chronic diseases may also need this vaccine.
- Rotavirus Vaccine: 3 doses—2 months, 4 months, 6 months. Rotavirus is an oral (swallowed) vaccine, not a shot.

Vaccine Risks

Like any medicine, vaccines can cause side effects. Most of these are mild ''local reactions'' such as tenderness, redness or swelling where

the shot is given, or a mild fever. These reactions are part of the body's natural immune response. They can occur in up to 1 child out of 4 for most childhood vaccines. They appear soon after the shot is given and go away within a day or two. These do not occur with rotavirus vaccine, since it is not injected.

More severe side effects can occur, but much less often. Some of them occur so rarely that experts can't tell whether they are caused by vaccines or not.

Among the most serious reactions to vaccines are severe allergic reactions to a substance in a vaccine. These reactions are very rare—less than one in a million shots. Usually they occur very soon after the shot is given. Doctor's office or clinic staff are trained to deal with them. The risk of any vaccine causing serious harm, or death, is extremely small. Getting a disease is much more likely to cause harm than getting a vaccine.

The following conditions (in addition to local reactions and mild fever) have been associated with routine childhood vaccines. By ''associated'' we mean that they are reported after vaccinations more often than would be expected to occur by chance. This does not ''prove'' that the vaccine causes the reaction, but suggests that it is likely.

DTaP Vaccine

Mild Problems: Fussiness (up to 1 child in 3); Tiredness or Poor Appetite (up to 1 child in 10); Vomiting (up to 1 child in 50); Swelling of the entire arm or leg for 1–7 days (up to 1 child in 30)—usually after the 4th or 5th dose.

Moderate Problems: Seizure (jerking or staring) (1 child in 14,000); Non-stop crying for 3 hours or more (up to 1 child in 1,000); Fever over 105°F (1 child in 16,000).

Serious Problems: Long-term seizures, coma, lowered consciousness, and permanent brain damage have been reported very rarely after DTaP vaccine. They are so rare it is not possible to tell if they are caused by the vaccine.

Polio Vaccine/Hepatitis B Vaccine/Hib Vaccine

These vaccines have not been associated with moderate or serious problems.

Pneumococcal Vaccine

Mild Problems: During studies of the vaccine, some children became fussy or drowsy or lost their appetite.

Rotavirus Vaccine

Mild Problems: Children are slightly (1–3%) more likely to have mild, temporary diarrhea or vomiting within a week after getting a dose of rotavirus vaccine than children who have not gotten the vaccine. No moderate or severe problems have been associated with the vaccine.

Check With Your Doctor * * *

Most children can get all childhood vaccines, but some children should not. Sometimes a child should wait until after the recommended age before getting vaccinated.

If your child is sick on the date vaccinations are scheduled, ask your doctor about delaying them. A child with a mild cold or other illness, or a low fever, can usually be vaccinated. But with more serious illnesses, the doctor might want to wait until the child recovers.

The doctor might recommend that some children not get a specific vaccine. This includes any child who had a life-threatening reaction to a previous dose of the vaccine, or has a life-threatening allergy to any vaccine component. Other reasons not to get a specific vaccine include if the child has/had:

DTaP Vaccine

—A brain or nervous system disease within 7 days after a previous dose of DTaP.

—A seizure or collapse after a previous dose of DTaP.

—Non-stop crying for 3 hours or more after a previous dose of DTaP.

—A fever over 105°F after a previous dose of DTaP.

Polio Vaccine

—A life-threatening allergy to the antibiotics neomycin, streptomycin, or polymyxin B.

Hepatitis B Vaccine

—A life-threatening allergy to baker's yeast (the kind used for making bread).

Rotavirus Vaccine

—A child who has had intussusception (an uncommon type of bowel obstruction) should usually not be given rotavirus vaccine. (This is simply a precaution. An older type of rotavirus vaccine, which is no longer used, was associated with several cases of intussusception. Today's vaccine has not been. But children who have had this condition are at increased risk of getting it again.)

What if there is a moderate or severe reaction?

What should I look for?

Look for any unusual condition, such as a serious allergic reaction, high fever, or unusual behavior.

Serious allergic reactions are extremely rare with any vaccine. If one were to happen, it would most likely come within a few minutes to a few hours after the shot.

Signs of a serious allergic reaction can include:

—difficulty breathing
—weakness
—hives
—hoarseness or wheezing
—dizziness
—paleness
—swelling of the throat
—fast heart beat

What should I do?

Call a doctor, or get the child to a doctor right away.

Tell your doctor what happened, the date and time it happened, and when the shot was given.

Ask your doctor, nurse, or health department to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS website at *http://www.vaers.org*, or by calling 1–800–822–7967.

VAERS does not provide medical advice.

The National Vaccine Injury Compensation Program

In the unlikely event that your child has a serious reaction to a vaccine, a federal program exists to help pay for the care of those who have been harmed. For information about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit their website at *http://www.hrsa.gov/vaccinecompensation*.

For More Information

Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.

Call your local or state health department.

Contact the Centers for Disease Control and Prevention (CDC) at 1–800–232–4636 (1–800–CDC–INFO).

Visit CDC Web sites at: *http://www.cdc.gov/vaccines* and *http://www.cdc.gov/ncidod/diseases/hepatitis*.

Dated: September 26, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7–19615 Filed 10–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for fiscal year 2008 (October 1, 2007, through September 30, 2008).

DATES: *Effective Date:* October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jaret Ames, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–23, Atlanta, Georgia 30341–3724, telephone (770) 488–3139, E-mail: *Dforney@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2007.

The formula used to determine the fees is as follows:

$$\frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections.}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised twice and published in the **Federal Register** on November 28, 1989 (54 FR 48942) and November 21, 2005 (70 FR 70078). The revised size/cost factor is presented in Appendix A.

Fee

The fee schedule (Appendix A) will be effective October 1, 2007, through September 30, 2008. If travel expenses continue to increase, the fees may need adjustment before September 30, 2008, because travel constitutes a sizable portion of VSP's costs. If an adjustment is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: September 26, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

APPENDIX A

Vessel Size	GRT [1]	Approximate cost ($US) per GRT
SIZE/COST FACTOR		
Extra Small	< 3,001	0.25
Small	3,001–15,000	0.50
Medium	15,001–30,000	1.00
Large	30,001–60,000	1.50
Extra Large	60,001–120,000	2.00
Mega *	> 120,001	3.00
Vessel Size	GRT [1]	Fee ($US)
FEE SCHEDULE		
Extra Small	< 3,000	1,300
Small	3,001–15,000	2,600
Medium	15,001–30,000	5,200
Large	30,001–60,000	7,800
Extra Large	60,001–120,000	10,400
Mega *	>120,001	15,600

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.
* New Vessel Size Category.

Inspections and reinspections involve the same procedure, require the same amount of time, and are therefore charged at the same rate.

[FR Doc. E7–19609 Filed 10–3–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007F–0355]

Dean Foods Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dean Foods Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vitamin D_2 as a nutrient supplement in soy-based food products.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))),

notice is given that a food additive petition (FAP 7A4769) has been filed by Dean Foods Co., c/o Hogan and Hartson LLP, 555 13th St., NW., Washington, DC 20004–1109. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of vitamin D_2 as a nutrient supplement in soy-based food products.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 26, 2007.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–19576 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0356]

Behind the Counter Availability of Certain Drugs; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to obtain comments regarding behind-the-counter (BTC) availability of drugs. Currently, drugs are available as prescription and non-prescription. Generally, non-prescription products are available in an ''over-the-counter'' (OTC) manner. The FDA is interested in obtaining public comment as it explores the public health benefit of certain drugs being available without a prescription but only after intervention by a pharmacist. The purpose of the meeting is to solicit information and views from interested persons on specific issues associated with BTC availability, including the impact on patient access to safe and effective drug products.

Dates and Times: The public meeting will be held on November 14, 2007, from 8 a.m. to 5 p.m.

Location: The public meeting will be held at the National Transportation Safety Board Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

ADDRESSES: Submit written registration and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic registration to *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm*.

Submit electronic comments to *http://www.accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov/ohrms/dockets* approximately 30 days after the meeting.

For Registration to Attend and/or Participate in the Meeting: Seating at the meeting is limited. People interested in attending should submit written or electronic registration to the Division of Docket Management (see **ADDRESSES**) by close of business on November 5, 2007. Registration is free and will be on a first-come, first-serve basis. Written or electronic comments will be accepted until November 28, 2007.

If you wish to make an oral presentation at the meeting, you must state your intention on your registration submission (see **ADDRESSES**). To speak, submit your name, title, business affiliation, address, telephone number, fax number, and e-mail address. FDA has included questions for comment in this notice. You should also identify by number each question you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you need special accommodations due to a disability, please inform Erik Mettler (see *For Information on the Meeting Contact*).

For Information on the Meeting Contact: Erik Mettler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, rm. 14–101, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *Erik.Mettler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to ensuring the safety and efficacy of all drug products it regulates. FDA is exploring the public health benefit of certain drugs being available BTC that were previously prescription medications. BTC could be comprised of certain medications available behind the counter at the pharmacy without a prescription and require the intervention of a pharmacist before dispensing.

Some groups have asserted that pharmacist interaction with the consumer could ensure safe and effective use of a drug product that otherwise might require a prescription. Because pharmacists have the training and knowledge to provide certain interventions, they may be able to ensure that patients meet the conditions for use and educate patients on appropriate use of the drug product. These groups have suggested, moreover, that the availability of certain drugs BTC could increase patient access to medications that may be underutilized, particularly by patients without health insurance because these medications otherwise would be available only with a prescription.

Variations of a BTC status are already in effect in other countries, including Australia, Canada, France, New Zealand, United Kingdom (UK), Denmark, Germany, Italy, Netherlands, Sweden, and Switzerland. In the UK, there is a ''pharmacist-only'' class of drugs, while the other countries have more than three classes. In general, foreign countries have used the following criteria for switching a drug from prescription to intermediate class: (1) Indications suitable for self-medication, including self-diagnosis, with the intervention of a pharmacist and (2) the medicine has a low potential for side effects or overdose, and intervention by a pharmacist could minimize these risks. Other considerations include: Abuse potential, patient choice and accessibility, and public health issues. With the pharmacy-only classification, typically the pharmacist is required to ensure the patient meets certain criteria prior to dispensing, as well as to provide education on proper use and monitoring.

Accordingly, FDA is interested in exploring the public health implications of BTC dispensing of certain drug products, including (among other things) the implications for patient access and utilization, including drug prices, the continued safety and effectiveness of drugs, and patient compliance with drug therapy.

II. Scope of Meeting

FDA is interested in obtaining public comment on BTC availability of certain drugs, the appropriate regulatory

framework for such drugs, and criteria for BTC availability.

Specifically, we are seeking input on the following issues related to BTC:

General

1. Should there be BTC availability of certain drug products? If so why? If not why?

2. What might the impact of BTC be on patient access?

3. What might the impact of BTC be on patient compliance with drug therapy?

4. What should the criteria or standards be for a drug to be treated as BTC?

5. Please comment on the following criteria for what roles a pharmacist or other health professional might play, which are included below for discussion purposes. For example, a pharmacist or other practitioner licensed by law to dispense prescription drugs prior to sale might:

(A) Review or conduct an initial screening for clinical laboratory test results, contraindications, or drug interactions;

(B) Counsel the patient on safe use;

(C) Monitor for continued safe or effective use.

6. Should BTC availability be used as a temporary or transitional status for drugs that move from prescription status to OTC versus a permanent status?

7. Should there be criteria or standards for a drug to transition out of BTC status to OTC status? If so, what should these criteria or standards be?

8. If safety concerns arise, should there be criteria or standards for a drug to transition out of BTC status to prescription status? Or from OTC status to BTC status? If so what should these criteria or standards be for each scenario?

9. What effect would BTC availability have on patient access to medications in this category?

10. How could we evaluate whether BTC improves patient access to medications?

11. Would BTC availability be cost-effective to patients? Please explain.

12. What effect would BTC availability have on patient safety?

13. What measures would be necessary to ensure patient safety?

14. In general, what are the benefits and costs to the healthcare system as a whole related to BTC availability?

Logistics

1. Discuss logistical challenges for pharmacy storage and dispensing of BTC drugs. How might these challenges be addressed?

2. What dispensing procedures should be associated with BTC medications?

3. What types of records should be kept in association with BTC dispensing? If such records were to include patient laboratory values, how would the pharmacist gain access to this information as well as other information in the patient's medical records?

4. How would patient privacy be protected in a retail pharmacy setting? Please discuss any privacy concerns that would need to be addressed.

5. Should reimbursement be available to pharmacists for providing services associated with BTC dispensing? What type? What type of billing procedures could be utilized and how would third party companies facilitate such reimbursements?

6. Who would oversee a BTC program? What impact would it have on States and what might be the role for the State boards of pharmacy?

7. Would special training be needed for pharmacists to participate in dispensing BTC medications? If any, what type of training would this entail?

8. Would special training be needed for other pharmacy staff to aid in managing the work flow (storage, record keeping, distribution) and additional BTC responsibilities of the pharmacist(s) and the pharmacy? If so, what type of training or measures should be put in place?

9. Could qualified healthcare professionals/providers other than pharmacists be responsible for dispensing of BTC drugs? If so, what types of healthcare professionals/providers? And in what type of settings could this situation be accommodated?

10. What impact would BTC availability of drugs have on the practice of pharmacy?

11. What impact would BTC availability of drugs have on the practice of medicine?

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic notices of participation and comments for consideration. To permit time for all interested persons to submit data, information, or views on this subject, the docket for the meeting will open 14 days prior to the meeting and remain open for 30 days following the meeting. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions identified by the number and subject to which they refer in the previous text in this document. Please identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the meeting also will be available for review at the Division of Dockets Management.

Dated: September 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19329 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Docket No. [2001D–0193 (formerly 01D–0193)]

Guidance for Industry and Food and Drug Administration Staff; Biological Indicator Premarket Notification Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Biological Indicator (BI) Premarket Notification (510(k)) Submissions.'' The agency is issuing this guidance document to provide information that will help manufacturers prepare premarket notification submissions for these devices. The document provides guidance regarding performance characteristics for biological indicator devices, which are intended to monitor the effectiveness of sterilizers used in healthcare facilities.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Biological Indicator (BI) Premarket Notification (510(k)) Submissions'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151 or 1–800–638–2041. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sheila Murphey, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3747.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance is for biological indicator devices intended for use in health care facilities to monitor the effectiveness of sterilizers. Biological sterilization process indicators are class II devices identified in 21 CFR 880.2800(a). In the **Federal Register** of May 21, 2001 (66 FR 27985), FDA invited interested persons to comment on the draft guidance entitled ''Premarket Notifications [510(k)] for Biological Indicators Intended to Monitor Sterilizers Used in Health Care Facilities; Draft Guidance for Industry and FDA Reviewers.''

FDA received five comments on the draft guidance. Many of the comments are addressed by the voluntary consensus standards that have been recognized by FDA since the draft was issued and that are now cited in the guidance. We addressed comments that suggested the statistics in the validation protocol were too restrictive by clarifying that these statistics are examples, not thresholds. We also revised the guidance for clarity and brevity in response to the comments received.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''biological indicator premarket notification submissions.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Biological Indicator (BI) Premarket Notification (510(k)) Submissions'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1320 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB Control Number 0910–0120. The labeling provisions addressed in the guidance have been approved under OMB Control Number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 26, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–19573 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0309]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Electrocardiograph Electrodes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes.'' The draft guidance describes a means by which the electrocardiograph electrode device may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would designate this draft guidance as the special control for this device and would exempt the device from premarket notification requirements, subject to specific limitations, if the device addresses the issues identified in the guidance by following its recommendations. The draft guidance document is not final, nor is it being implemented at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 2, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit electronic comments to either*http://www.fda.gov/dockets/ecomments* or*http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sharon Lappalainen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4095, or by e-mail at *Sharon.Lappalainen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 5, 1980 (45 FR 7926), FDA issued a final rule classifying the electrocardiograph electrode into class II, under the Federal Food, Drug, and Cosmetic Act (the act). An electrocardiograph electrode is the electrical conductor which is applied to the surface of the body to transmit the electrical signal at the body surface to a processor that produces an electrocardiogram or vectorcardiogram. FDA has now developed a draft guidance document for the device and, under the act's provisions, is proposing to designate the draft guidance as the special control that, when combined with the general controls, the agency believes will provide a reasonable assurance of the safety and effectiveness of this device type.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would designate this draft guidance document as the special control for this device and would exempt the device from premarket notification requirements, subject to limitations in 21 CFR 870.9, if the device addresses the issues identified in the special controls guidance by following the draft guidance's recommendations.

The draft special controls guidance document identifies the classification, product code, and classification identification for the electrocardiograph electrode device. In addition, the draft guidance document identifies the risks to health and serves as a special control that, when followed and combined with the general controls, will generally address the risks associated with this generic device type and permit introduction of the device to the market.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Class II Special Controls Guidance Document: Electrocardiograph Electrodes'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number (1597) to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 26, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–19578 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0348]

Establishing a Docket for the Development of Safety and Effectiveness Assessments of Vaccines Used for Pandemic Influenza; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the opening of a docket to receive information and comments from manufacturers of vaccines and other interested persons concerning the development of safety and effectiveness assessments of vaccines used for pandemic influenza. FDA is interested in obtaining comments and information to aid in the development of programs for adverse events surveillance following administration of pandemic influenza vaccines, and in the development of protocols to study effectiveness of influenza vaccines in pre-pandemic and pandemic situations.

DATES: Submit written or electronic comments on the safety and effectiveness assessments of vaccines for pandemic influenza use, and comments on information submitted to the docket by other interested persons by December 3, 2007.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852–1448. Submit electronic comments or information to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr. Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The National Strategy for Pandemic Influenza was issued by President Bush in November 2005. This National Strategy identifies the U.S. Department of Health and Human Services (HHS) as the lead for medical response and is intended to guide our nation's preparedness and response to pandemic influenza.

The Implementation Plan for the National Strategy for Pandemic Influenza (the Implementation Plan) was issued by the President on May 3, 2006. The Implementation Plan translates the Strategy into more than 300 actions for Federal departments and agencies and sets expectations for State and local governments and other non-Federal entities. FDA's Center for Biologics Evaluation and Research is the lead for the vaccine action items under section 6.1.13.9 parts (1) and (3) of chapter 6 of the Implementation Plan. This section, in part, states that HHS, in coordination with the Department of Defense, the Veteran's Administration, and in collaboration with State, territorial, tribal, and local partners, shall develop and refine mechanisms to: (1) Track adverse events following vaccine and antiviral administration; and (2) define protocols for conducting vaccine- and antiviral-effectiveness studies during a pandemic, within 18 months.

FDA conveyed in our May 31, 2007, Guidance for Industry: Clinical Data Needed to Support the Licensure of Pandemic Influenza Vaccines (72 FR 30599), that all sponsors who seek licensure of a pandemic influenza vaccine should expect FDA to seek their involvement in working with FDA and other governmental agencies on plans to collect additional safety and effectiveness data, such as through epidemiological studies, when the vaccine is used (see *http://www.fda.gov/cber/gdlns/panfluvac.htm*). FDA and the Centers for Disease Control and Prevention are engaged in discussions about adverse events surveillance during early use of influenza vaccines for pre-pandemic and pandemic situations. Relevant to the actions outlined in the preceding paragraph, we are inviting vaccine manufacturers who are pursuing the development of pre-pandemic and pandemic influenza vaccines, as well as other interested persons, to provide comments and information concerning mechanisms to track adverse events following vaccination, and the development of protocols to study effectiveness of influenza vaccines during a pandemic.

Specifically, we are requesting information on the design of potential studies to assess the effectiveness of influenza vaccine in a pandemic situation, including comments on the potential usefulness of randomized trials, case control studies, or additional study designs, as well as, potential endpoints. In addition, we are seeking comments on organizations and entities, such as managed care organizations, or other public or private entities that may be able to partner with manufacturers and sponsors to assess safety and effectiveness.

We are requesting comments and information to help us understand the complex issues encountered in trying to obtain these data during a pandemic. Your comments and information might assist us in the development of additional guidance documents for the conduct of postmarketing safety surveillance and effectiveness studies for pandemic influenza vaccines.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and information regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of this document 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.

III. Electronic Access

Persons with access to the Internet may obtain the National Strategy for Pandemic Influenza, issued November 2005, and the Implementation Plan for the National Strategy, issued May 3, 2006, at (*http://www.pandemicflu.gov/plan/federal/index.html*).

Dated: September 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19577 Filed 10–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA AIDS Drug Assistance Program Quarterly Report—(OMB No. 0915–0294): Revision

HRSA's AIDS Drug Assistance Program (ADAP) is funded through Part B of Title XXVI of the Public Health Service Act, the Ryan White HIV/AIDS Program, which provides grants to States and Territories. The ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients or for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 States, the District of Columbia, Puerto Rico, and several Territories receive ADAP grants. As part of the funding requirements, ADAP grantees submit quarterly reports that include information on patients served, pharmaceuticals prescribed, pricing, and other sources of support to provide AIDS medication treatment, eligibility

requirements, cost data, and coordination with Medicaid. Each quarterly report requests updates from programs on number of patients served, type of pharmaceuticals prescribed, and prices paid to provide medication. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (e.g., State funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordinating with Medicaid).

The quarterly report represents the best method for HRSA to determine how ADAP grants are being expended and to provide answers to requests from Congress and other organizations.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
1st Quarterly Report	57	1	57	3	171
2nd, 3rd, & 4th Quarterly Reports	57	3	171	1.5	256.5
Total	57	.....	228	.....	427.5

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 28, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–19599 Filed 10–3–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Hepatitis C Virus Cell Culture System

Description of Technology: Hepatitis C virus (HCV) infection causes chronic liver disease and is a major global health problem with an estimated 170 million people affected worldwide and 3–4 million new cases every year. Therapeutic advances will be greatly aided by the ability of researchers to successfully replicate and characterize the virus in vitro. The study of HCV replication has, however, been hindered by the lack of an efficient virus culture system. One approach, using cell culture adaptive mutations in the viral RNA has been found to significantly enhance HCV virus production, but it has been difficult to define which stage of the viral lifecycle is affected by a given adaptive mutation.

NIH researchers have now developed a single-cycle virus production system that allows the stage of the viral lifecycle affected by a specific adaptive mutation to be determined. They have isolated a unique subclone of Huh 7 Hepatoma cells, S29, that permits HCV replication and infectious virion release, but is resistant to infection by HCV. This permits the use of single cycle growth studies, and removes the confounding effects of virus re-infection allowing progress to be made on structure/function studies, or on studies of the effects of drugs on replication and virus assembly.

Applications: HCV drug discovery; HCV single-cycle virus studies; HCV structure/function studies.

Market: HCV research.

Inventors: Suzanne U. Emerson, Robert H. Purcell, Rodney Russell (NIAID).

Patent Status: HHS Reference No. E–324–2007/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Chekesha S. Clingman, Ph.D.; 301/435–5018; *clingmac@mail.nih.gov*.

Use of CpG Oligodeoxynucleotides To Induce Epithelial Cell Growth

Description of Invention: Wound repair is the result of complex interactions and biologic processes. Three phases have been described in normal wound healing: acute inflammatory phase, extracellular matrix and collagen synthesis, and remodeling. The process involves the interaction of keratinocytes, fibroblasts and inflammatory cells at the wound site. The sequence of the healing process is initiated during an acute inflammatory phase with the deposition of provisional tissue. This is followed by re-epithelialization, collagen synthesis and deposition, fibroblast proliferation, and neovascularization, all of which ultimately define the remodeling phase. These events are influenced by growth factors and cytokines secreted by inflammatory cells or by the cells localized at the edges of the wound.

Tissue regeneration is believed to be controlled by specific peptide factors which regulate the migration and proliferation of cells involved in the repair process. Thus, it has been proposed that growth factors will be useful therapeutics in the treatment of wounds, burns and other skin disorders. However, there still remains a need for additional methods to accelerate wound healing and tissue repair.

This application claims methods of increasing epithelial cell growth. The methods include administering a therapeutically effective amount of a CpG oligodeoxynucleotide (ODN) to induce epithelial cell division. Also claimed are methods of inducing wound healing. The method includes treating the wound with a CpG oligonucleotide, thereby inducing wound healing. The wound can be any type of wound, including trauma or surgical wounds. The CpG ODN can be applied systemically or locally.

Application: Induction of wound healing through use of CpG oligodeoxynucleotides.

Developmental Status: CpG oligonucleotides have been synthesized and preclinical studies have been performed.

Inventors: Dennis Klinman and Takahashi Sato (NCI).

Patent Status: U.S. Provisional Application filed 06 Sep 2007 (HHS Reference No. E–242–2007/0–US–01).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The Laboratory of Experimental Immunology of the National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize methods of increasing epithelial cell growth. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Flexible, Polyvalent Antiviral Dendritic Conjugates for the Treatment of HIV/AIDS

Description of Technology: This technology describes the design and synthesis of flexible, polyvalent, antiviral conjugates of less than 200 kDa for the treatment of HIV/AIDS. These conjugates are mimetic of D1D2-Igαtp, a high-molecular-weight (1 MDa) CD4-immunoglobulin fusion construct with extreme HIV neutralizing potency. Cryo electron microscopy suggests that the extreme potency of D1D2-Igαtp is due to polyvalent presentation of a gp120-binding ligand on a flexible scaffold. The current prototype for the technology is a conjugate comprising soluble, two-domain human CD4 covalently linked to a flexible poly(ethylene glycol)-PAMAM dendrimer scaffold. The construct is designed to retain a high degree of flexibility and polyvalence, and, at less than 200 kDa, is similar in size to successful antibody therapeutics currently on the market. Because it retains the key determinants of potency and the human CD4 moieties of D1D2-Igαtp, this conjugate is expected to have the following unique set of HIV antiviral properties: (1) IC_{90} infectivity neutralization values in the nanomolar range against HIV primary isolates; (2) lack of susceptibility to viable escape mutations, because the ligand is CD4, and because CD4-independence evolves concomitantly with constitutive exposure of neutralization-sensitive, highly conserved coreceptor binding site epitopes; (3) indefinite control of HIV viral replication, without the need for combination therapy, arising from properties (1) and (2); (4) improved HIV viral replication control when used in combination with other Highly Active Antiretroviral Therapy (HAART); (5) improved prevention of seroconversion when used in combination with other HAART shortly following known exposure to HIV.

Applications: Novel therapeutics for the treatment and prevention of HIV infection.

Development Status: Synthesis and characterization in progress.

Inventors: Sriram Subramaniam and Adam Bennett (NCI).

Publication: AE Bennett *et al.* Cryo electron tomographic analysis of an HIV neutralizing protein and its complex with native viral gp 120. J Biol Chem., in press; published online ahead of print June 28, 2007.

Patent Status: U.S. Provisional Application No. 60/932,464 filed 31 May 2007 (HHS Reference No. E–213–2007/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, Ph.D.; 301/435–5606; *HuS@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Cell Biology of the National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Flexible, Polyvalent Antiviral Dendritic Conjugates for the Treatment of HIV/AIDS. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Monoclonal Antibodies to Fusion-Active Conformations of GP41

Description of Technology: This technology describes three novel monoclonal antibodies, 2F12, 9C5 and 11B8, which were derived against an HIV gp41 heptad-repeat entry inhibitor that mimics a structure of the HIV envelope protein fusion intermediate. These antibodies recognize the fusion-intermediate and six-helix conformations of gp41 and are useful tools for high-throughput screening assays (HTS) to identify novel HIV–1 inhibitors. Since the drugs identified in the assays using these monoclonal are expected to inhibit HIV infection in a different manner than current antiretroviral drugs, these antibodies may serve as valuable tools for screening for new drugs that may have activity against HIV strains that are resistant to currently available antiretroviral drugs.

Applications: Research tool.

Development Status: In vitro data available .

Inventors: Carol D. Weiss and Russell A. Vassell (CBER/FDA).

Related Publication: S Jiang et al. A screening assay for antiviral compounds targeted to the HIV–1 gp41 core structure using a conformation-specific monoclonal antibody. J Virol Methods. 1999 Jun;80(1):85–96.

Patent Status: HHS Reference No. E–124–2007/0—Research Tool. Patent protection not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing as biological material.

Licensing Contact: Sally Hu, Ph.D.; 301/435–5606; *HuS@mail.nih.gov.*

Dated: September 27, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–19649 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Portfolio Analysis and Strategic Initiatives, Office of the Director, National Institutes of Health; Notice of Meeting

Notice is hereby given of a planning meeting for the proposed Council of Councils, an external advisory panel to the NIH IC Directors and the Office of Portfolio Analysis and Strategic Initiatives (OPASI).

The meeting will be open to the public, with attendance limited to space available. individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Council of Councils Planning Group.

Date: November 8, 2007.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: Among the topics proposed for discussion are: Role of the Council and timeline.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Consultant To OPASI, 301–977–9307, *bhammond@thehillgroup.com.*

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's Web page: *http://opasi.nih.gov/council/* where an agenda and any additional information for the meeting will be posted when available.

Dated: September 18, 2007.

Alan M. Krensky,

Director, Office of Portfolio Analysis and Strategic Initiatives (OPASI).

[FR Doc. 07–4932 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Pediatric Nutrition.

Date: October 22, 2007.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Virginia P. Wray, PhD, Deputy Chief, Research Programs Review Branch, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8125, Bethesda, MD 20892-8328, 301–496–9236, *wrayv@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4925 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: November 15–16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Charles Joyce, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4920 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselor, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: October 29, 2007.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsic Avenue, Bethesda, MD 20814.

Contact Person: Robert S Balaban, PhD, Scientific Director, Division of Intramural Research, National Institutes of Health, NHLBI, Building 10, CRC, 4th Floor, Room 1581, 10 Center Drive, Bethesda, MD 20892 301/496–2116.

Information is also available on the Institute's/Center's home page: *http:///www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4930 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Conference Grants.

Date: November 27, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy 2, Suite 200 Large Conference Room, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4918 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review R21s.

Date: December 4, 2007.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4921 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, September 28, 2007, 11:30 a.m. to September 28, 2007, 1:30 p.m. National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 which was published in the **Federal Register** on August 28, 2007, 72 FR 49287.

The meeting will be held October 19, 2007. The meeting is closed to the public.

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4922 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Clinical Research Studies.

Date: October 17, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, R13 Conference Grants Review.

Date: October 22, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Review of TINSAL–2D Ancillary Studies.

Date: October 30, 2007.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Clinical Research Studies.

Date: October 31, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Metabolism of Bile Acids.

Date: November 2, 2007.

Time: 9:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Review of T32/K08 Grant Applications.

Date: November 12, 2007.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4923 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Commission on Digestive Diseases.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Commission on Digestive Diseases.

Date: November 19, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: Introductions; updates from Working Groups; Commission timeline and next steps; and general discussion. Pre-registration is required. Instructions will be available on the Commission's Web site at *http://NCDD.niddk.nih.gov.*

Place: Sofitel Chicago O'Hare, 5550 North River Road, Rosemont, IL 60018.

Contact Person: Stephen P. James, MD, Director, Division of Digestive Diseases & Nutrition, National Institute of Diabetes and Digestive and Kidney Diseases, NIH, 6707 Democracy Blvd., RM 677, Bethesda, MD 20892–5450, 301–594–7680, *natlcommdd@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 28, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4924 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pregnancy and HIV Prevention.

Date: October 29–30, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mother and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4926 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Fragile X Research Center Revision Applications.

Date: October 29–30, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4927 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fall R34 AIDS review.

Date: November 2, 2007.

Time: 2 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Community Based Participatory Research.

Date: November 2, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd. Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertation Grants II.

Date: November 5, 2007.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertation Grants I.

Date: November 7, 2007.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Prevention of Trauma Related Adjustment and Mental Disorders in High-Risk Occupations.

Date: November 9, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301–443–0004, *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, K99 Fall Review.

Date: November 9, 2007.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Developing Ctrs For Innovation In Services And Interventions Research/Advanced Centers For Innovation In Services And Intervention Research.

Date: November 12, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1959, *csarampo@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mouse Models Containing Human Alleles.

Date: November 13, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606 Bethesda, MD 20892–9606, 301–443–1606,

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4929 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, MIDARP Review.

Date: November 14, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4931 Filed 10–03–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Immunology—B Study Section, October 11, 2007, 8:30 a.m. to October 12, 2007, 5 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on September 21, 2007, 72 FR 54051–54054.

The meeting will be held at the Hilton Hotel/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910. The meeting dates and times remain the same. The meeting is closed to the public.

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4919 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: October 15–16, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, The Main Building, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Mehrdad M. Tondravi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–435–1173, *tondravm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Community-Level Health Influences and Interventions.

Date: October 23, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Chemosensory.

Date: October 24, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: October 25–26, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, Washington, DC 20036.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DIG F(02) M Special Emphasis Panel Members.

Date: October 25, 2007.

Time: 10:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social

Science and Population Studies R03s, R15s, R21s.

Date: October 26, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Imaging and Bioinformatics.

Date: October 29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dissemination and Implementation Research in Healthcare.

Date: October 29, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Melinda Tinkle, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594–6594, *tinklem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities, Communication and Science Education.

Date: October 29, 2007.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Devices and Bioengineering.

Date: October 29, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, 301–435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biological Chemistry and Macromolecular Biophysics SBIR/STTR Grant Applications.

Date: October 29–30, 2007.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Revinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 10892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Non-HIV Microbial Vaccine Development.

Date: October 29, 2007.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis

Date: October 29, 2007.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population SBIR.

Date: October 29, 2007.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development of Anti-Cancer Drugs.

Date: October 29, 2007.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMRD Member Conflicts.

Date: October 29, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sandra L. Melnick Seitz, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, (301) 435–1251, *melnicks@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Trajectories, Health Risks, Psychopathology and Interventions.

Date: October 29–30, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, VMD Member Conflict Application Review.

Date: October 29, 2007.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cognitive Dynamics.

Date: October 29, 2007.

Time: 3:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member

Conflict: Behavioral and Genetic Epidemiology.

Date: October 29, 2007.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships: ZRG1 SBIB V (50).

Date: October 30, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Firrell, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Drug Development and Therapeutics I, SBIR/STTR.

Date: October 30–31, 2007.

Time: 11 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Center or Scientific Review Special Empahsis Panel, LIRR Member Conflicts.

Date: October 30–31, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPIC Member Conflict Special Emphasis Panel 2.

Date: October 30, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pilot and Feasibility Clinical Studies in Digestive Diseases and Nutrition.

Date: October 30, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Analysis of Complex Traits.

Date: October 30, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, (301) 435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Social Science and Population Studies.

Date: October 30, 2007.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exercise and Aging.

Date: October 30, 2007.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: James Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: GCMB.

Date: October 30, 2007.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Brain Disorders Review Group.

Date: October 31–November 1, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Del Coronado, 1500 Orange Avenue, Coronado, CA 92118.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vulnerabilities to Depressive Symptoms and Psycho-social Well-being.

Date: October 31, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4928 Filed 10–3–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: *Effective Date:* October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, (Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2007–56, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2007, and ending December 31, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning January 1, 2008, and ending March 31, 2008.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4

Beginning date	Ending date	Under-payments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7

Dated: October 1, 2007.

W. Ralph Basham,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. E7–19607 Filed 10–3–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–87]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request, Disaster Housing Assistance Program (DHAP)

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, QDAM Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_Deitzer@hud.gov*, telephone (202) 402–2374. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection requirement as described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program (DHAP).

Description of Information Collection: This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement (IAA) establishing a pilot grant program called the Disaster Housing Assistance Program (DHAP), and that the operating requirements for the DHAP have been issued through HUD Notice. DHAP is a joint initiative undertaken by HUD and FEMA to provide monthly rent subsidies and case management services for individuals and families displaced by Hurricane Katrina or Hurricane Rita who were not receiving housing assistance from HUD.

OMB Control Number: 2577–New.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 469,700; the number of respondents is 700; the frequency of response for each form varies from weekly, quarterly and annually.

Status: This is a request for new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 28, 2007.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E7–19581 Filed 10–3–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–31]

Notice of Proposed Information Collection: Comment Request; Compliance Inspection Report and Mortgagee's Assurance of Completion

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 3, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Compliance Inspection Report and Mortgagee's Assurance of Completion.

OMB Control Number, if applicable: 2502–0189.

Description of the need for the information and proposed use: This is a request for extension of a currently approved collection. Form HUD–92051, Compliance Inspection Report, is the document on which the property inspector or appraiser prepares his or her findings. The form provides categories for the inspector or appraiser to report the status of repair requirements on proposed construction cases. This report becomes a part of the case file and a copy is provided to the lender. Form HUD–92300, Mortgagee's Assurance of Completion, is completed by the mortgagee and assures HUD that the items set forth in the inspection report will be completed by the required date stated.

Agency form numbers, if applicable: HUD–92051 and HUD–92300.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 154,667. The number of respondents is 37,440, the number of responses is 623,060, the frequency of response is on occasion, and the burden hour per response varies from 6 to 15 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 26, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E7–19583 Filed 10–3–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 5, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Roberto Garza Delgado, Houston, TX, PRT–163044.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dirk Arthur dba Stage Magic Inc, Las Vegas, NV, PRT–152105, 152106, 152108, 152110, 152111, 152112, 160974, 162725, and 162714.

The applicant requests the issuance of permits for the re-export and re-import of five captive-born tigers (*Panthera tigris*), and the export and re-import of three captive born Bengal tigers (*Panthera tigris tigris*) and one captive-born leopard (*Panthera pardus*), to and from worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are as follows: Tigers (the following were previously issued under permit 704301: 152105, Snow Magic; 152106, Bianca; 152108, Shabba; 152110, Sabrina; 152111, T.J.); Bengal tigers (160974, Kellar; 162714, Thurston; 162725, Ivory); and leopard (152112, Zorro). This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Applicant: Feld Entertainment, Inc., Vienna, VA, PRT–149514.

The applicant requests the issuance of permits for the import and re-export of 12 captive-born tigers (*Panthera tigris*), from and to Germany for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and re-export of any potential progeny born within the United States.

Dated: September 7, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–19597 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 5, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Stephen Barnes, University of Alabama at Birmingham, Birmingham, AL, PRT–162128.

The applicant requests a permit to import biological samples from cheetah (*Acinonyx jubatus*) from the Wellington Zoo, Wellington, New Zealand for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: James E. Smith, Lakeland, FL, PRT–160847.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mark E. Hopmann, League City, TX, PRT–161817.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: August 31, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–19598 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: 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 of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before November 5, 2007.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW, Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

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.

Permit TE–153351

Applicant: WASS Gerke & Associates, Scottsdale, Arizona.

Applicant requests a permit for research and recovery purposes to conduct presence/absence surveys for the Southwestern willow flycatcher (*Empidonax traillii extimus*) and the Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit TE–161542

Applicant: Arizona Public Service (APS)—Four Corners Power Plant, Fruitland, New Mexico.

Applicant requests a permit for research and recovery purposes to conduct presence/absence surveys for the Southwestern willow flycatcher (*Empidonax traillii extimus*) and the Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit TE–776123

Applicant: Texas A & M University at Galveston, Galveston, Texas.

Applicant requests a permit for research and recovery purposes to conduct research, surveys, and retrieval of stranded leatherback sea turtles (*Dermochelys coriacea*) within coastal Texas.

Permit No. TE–161391

Applicant: Edwards, Shannon, San Antonio, Texas.

Applicant requests a new permit to conduct presence/absence surveys for the golden-cheeked warbler (*Dendroica chryoparia*) and black capped-vireo (*Vireo atricapilla*) for research and recovery purposes in central and west central Texas.

Permit No. TE–819477

Applicant: John Taschek, Taschek Environmental Consulting, Albuquerque, New Mexico.

Applicant requests an amendment to an existing permit to add presence/absence surveys for black-footed ferret (*Mustela nigripes*), interior least tern (*Sterna antillarum*), northern aplomado falcon (*Falco femoralis septentrionalis*), Colorado pikeminnow (*Ptychocheilus lucius*), Gila chub (*Gila intermedia*), Gila topminnow (*Poeciliopsis occidentalis*), razorback sucker (*Xyrauchen texanus*), and Rio Grande silvery minnow (*Hybognathus amarus*); presence/absence surveys and collection of Holy Ghost ipomopsis (*Ipomopsis sanctispiritus*), Knowlton cactus (*Pediocactus knowltonii*), Kuenzler hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri*), Mancos milk-vetch (*Astragalus humillimus*), Sacramento prickly poppy (*Argemone pleiacantha ssp. pinnatisecta*), Sneed pincushion cactus (*Coryphantha sneedii* var. *sneedii*), and Todsen's pennyroyal (*Hedeoma todsenii*); and capture and handling of Mexican spotted owl (*Strix occidentalis lucida*) within Arizona and New Mexico.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 31, 2007.

Christopher T. Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E7–19621 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of Two Plant Species and Two Wildlife Species in the Midwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), initiate 5-year reviews of Houghton goldenrod (*Solidago houghtonii*), dwarf lake iris (*Iris lacustris*), scaleshell mussel (*Leptodea leptodon*), and Niangua darter (*Etheostoma nianguae*) under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these reviews, we will make a finding on whether these species are properly classified under the Act.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than December 3, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review the information that we receive on these species, see ''Public Solicitation of New Information.''

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person under ''Public Solicitation of New Information.''

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why Do We Conduct a 5-Year Review?

Under the Act we maintain the List of Endangered and Threatened Wildlife and Plant Species (List) at 50 CFR 17.11 and 17.12. We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine (1) whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, we will consider a species for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when we listed the species, or interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. Therefore, we are requesting submission of any new information (best scientific and commercial data) on these species since they were originally listed.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the species in Table 1.

TABLE 1.—LISTING INFORMATION SUMMARY FOR FOUR SPECIES IN THE MIDWEST REGION

Common name	Scientific name	Status	Listed entity	Final listing rule
Dwarf lake iris	*Iris lacustris*	Threatened	U.S.A. (MI, WI), Canada (Ont.).	Sept. 28, 1988 (53 FR 37972).
Houghton's goldenrod	*Solidago houghtonii*	Threatened	U.S.A. (MI), Canada (Ont.)	July 18, 1988 (53 FR 27134).
Niangua darter	*Etheostoma nianguae*	Threatened	U.S.A. (MO)	June 12, 1985 (50 FR 24649).
Scaleshell mussel	*Leptodea leptodon*	Endangered	U.S.A. (AL, AR, IA, IL, IN, KY, MN, MO, OH, OK, SD, TN, WI).	Oct. 9, 2001 (66 FR 51322).

What Information Do We Consider in Our Review?

In our 5-year review, we consider all new information available at the time of the review. These reviews will consider the best scientific and commercial data that have become available since the original listing determination or most recent status review of each species, such as—(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions, including but not limited to amount, distribution, and suitability; (C) Conservation measures that have been implemented to benefit the species; (D) Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Public Solicitation of New Information

We request any new information concerning the status of the plant species Houghton's goldenrod and dwarf lake iris, and of the wildlife species Niangua darter and scaleshell mussel. See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of the species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we

specifically request information on the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered. Finally, we solicit recommendations pertaining to the development of, or potential updates to, recovery plans and additional actions or studies that would benefit these species in the future.

Our practice is to make information, including names and home addresses of respondents, available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your response, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your response to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mail or hand-deliver information on the following species to the U.S. Fish and Wildlife Service Field Supervisor, at the corresponding addresses below. You may also view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during regular business hours.

Houghton's goldenrod: 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–6316, Attention: Houghton's goldenrod 5-Year Review. For species-specific information, contact Ms. Tameka Dandridge at 517–351–8315.

Dwarf lake iris: 2651 Coolidge Road, Suite 101, East Lansing, MI 48823–6316, Attention: Dwarf lake iris 5-Year Review. For species-specific information, contact Ms. Barbara Hosler at 517–351–6326.

Niangua darter: 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0007, Attention: Niangua darter 5-Year Review. For species-specific information, contact Mr. Rick Hansen at 573–234–2132, extension 106.

Scaleshell mussel: 101 Park DeVille Drive, Suite A, Columbia, MO 65203–0007, Attention: Scaleshell mussel 5-Year Review. For species-specific information, contact Mr. Andy Roberts at 573–234–2132, extension 110.

Electronic information must be submitted in Text format or Rich Text format to *FW3_FY07MidwestRegion5YearReview@fws.gov*. Please send information for each species in a separate e-mail. Include the following identifier in the subject line of the e-mail: Information on the 5-year review for (add name of species—for example, '' * * * for scaleshell mussel''), and include your name and return address in the body of your message.

How Are These Species Currently Listed?

Table 1 provides current listing information for the species under active review in this notice. Also, the List, which covers all listed species, is available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.*

Definitions

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature;

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range; and

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist); (b) reclassify the species from endangered to threatened (downlist); or (c) remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Authority

We publish this document under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 4, 2007.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E7–19603 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
102062	Salvatore Cucorullo	70 FR 29362; May 20, 2005	August 22, 2007.
148507	Alvin E. Adams	72 FR 33242; June 15, 2007	August 9, 2007.
151878	Jeff M. Jarman	72 FR 28517; May 21, 2007	May 21, 2007.
152182	Thomas P. Wittmann	72 FR 31090; June 5, 2007	August 3, 2007.
152740	Sherwin N. Scott	72 FR 31847; June 8, 2007	August 3, 2007.
152741	Sherwin N. Scott	72 FR 31847; June 8, 2007	August 3, 2007.
154208	John E. Stepan	72 FR 31601; June 7, 2007	August 15, 2007.
154890	Terry Morgan	72 FR 31601; June 7, 2007	June 7, 2007.

Dated: August 31, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–19605 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–03–840–1610–241A]

Southwest Resource Advisory Council; Canyons of the Ancients National Monument Subgroup Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Committee (RAC) Canyons of the Ancients National Monument (Monument) Subgroup, will meet as directed below.

DATES: The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup meeting will be held October 19, 2007, at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 1 p.m. One public comment period is planned and will begin at approximately 2:30 p.m. The meeting will adjourn at approximately 3:30 p.m.

ADDRESSES: The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup meeting will be held at the Anasazi Heritage Center, located at 27501 Highway 184, in Dolores, Colorado.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager, or Heather Musclow, Monument Planner, Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

SUPPLEMENTARY INFORMATION: The 11-member Subgroup provides counsel and advice to the full Council for its consideration and deliberation concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. We plan to discuss the planning schedule and content of the Monument's Draft Resource Management Plan/Draft Environmental Impact Statement and other issues as appropriate.

The meeting is open to the public and includes a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Subgroup meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Subgroup can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Subgroup meeting.

Dated: September 25, 2007.

LouAnn Jacobson,

Monument Manager Canyons of the Ancients National Monument.

[FR Doc. 07–4880 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–80468; 7–08807]

Notice of Realty Action Recreation and Public Purposes Act Classification of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 20 acres of public land in Clark County, Nevada. The Calvary Chapel Green Valley Church proposes to use the land for a church, school, and day care center.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands until November 19, 2007.

ADDRESSES: Send written comments to the Field Manager, BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Philip Rhinehart, Supervisory Realty Specialist, at (702) 515–5182.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Clark County, Nevada, has been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 11, N½NE¼NW¼SE¼,
SW¼NE¼NW¼SE¼,
SE¼NW¼NW¼SE¼,
NE¼SW¼NW¼SE¼, and
NW¼SE¼NW¼SE¼. Containing 15 acres, more or less in Clark County, Nevada.

The following described public land was previously classified for R&PP use by **Federal Register** notice published May 4, 2006.

Mount Diablo Meridian, Nevada

T. 23 S., R. 61 E.,
Sec. 11, SE¼NE¼NW¼SE¼, and
NE¼SE¼NW¼SE¼. Containing 5 acres, more or less in Clark County, Nevada.

In accordance with the R&PP Act, the Calvary Chapel Green Valley Church filed an application for the above-described 20 acres of public land to be developed as a church (multipurpose building), school, day care center and related facilities. The multipurpose building will include a worship center, offices, classrooms, nursery, kitchen, restrooms, utility/storage rooms, and a lobby. The related facilities include sidewalks, landscaped areas, paved parking areas, youth athletic fields, and off site improvements. Additional detailed information pertaining to this application, plan of development, and site plans is in case file N–80468 located in the BLM Las Vegas Field Office at the above address.

Churches are a common applicant under the ''public purposes'' provision of the R&PP Act. The Calvary Chapel Green Valley Church is an Internal Revenue Service registered non-profit organization and is, therefore, a qualified applicant under the R&PP Act.

The land is not needed for any Federal purpose. The lease/conveyance is consistent with the Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. The lease/patent will also be subject to:

1. An easement in favor of Clark County for roads, public utilities, and flood control purposes; and

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

On October 4, 2007, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit comments involving the suitability of the land for a church, school, day care center and related facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

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. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective December 3, 2007. The lands will not be available for lease/conveyance until after the classification becomes effective.

Authority: 43 CFR part 2740.

Mark R. Chatterton,

Assistant Field Manager, Non-Renewable Resources Las Vegas, NV.

[FR Doc. E7–19584 Filed 10–3–07; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–020]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 10, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–404–408 and 731–TA–898–902 and 904–908 (Review)(Hot-Rolled Carbon Steel Flat Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before October 25, 2007.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission

Issued: October 1, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–19617 Filed 10–3–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in *United States and Commonwealth of Kentucky Environmental and Public Protection Cabinet* v. *East Kentucky Power Cooperative, Inc.* Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on September 20, 2007, a proposed consent decree (''Consent Decree'') was lodged in *United States and Commonwealth of Kentucky Environmental and Public Protection Cabinet* v. *East Kentucky Power Cooperative, Inc.*, Civil Action No. 06–cv–00211–JMH, pending in the United States District Court for the Eastern District of Kentucky.

The Consent Decree would resolve claims asserted by the United States against EKPC pursuant to sections 113(b) and 414 of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b) and 77651m, seeking injunctive relief and assessment of civil penalties for EKPC's violation of:

(a) The Acid Rain provisions of the Act, 42 U.S.C. 7651 through 7651o;

(b) Title V of the Act, 42 U.S.C. 7661 *et seq.*; and

(c) The federally-enforceable State Implementation Plan (''SIP'') developed by the Commonwealth of Kentucky.

EKPC operates three coal-fired power plants in Kentucky. The complaint filed by the United States alleges that EKPC modified Units 1 and 2 at its Dale facility without complying with federal

and state requirements for participation in emissions allowance trading programs, and without installing nitrogen oxide emissions controls required under the Acid Rain provisions of the Act.

The complaint also alleges that EKPC violated Title V of the Act by operating without a permit that included Acid Rain requirements for Dale Units 1 and 2, and that EKPC violated Kentucky's SIP by failing to purchase and retire nitrogen oxide ozone season emissions allowances for Dale Units 1 and 2.

The proposed Consent Decree would require EKPC to install and operate nitrogen oxide emissions controls on Dale Units 1 and 2, to continuously operate pollution monitoring equipment for those units, and to apply for appropriate permits. The proposed Consent Decree would also require EKPC to pay a fixed penalty of $11,400,000 over six years, with the possibility of additional penalty payments if EKPC meets certain thresholds of financial performance.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to United States v. East Kentucky Power Cooperative, D.J. Ref. No. 90–5–2–1–08835.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507–1612, and at U.S. EPA Region IV, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4902 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Park System Resource Protection Act

Notice is hereby given that the United States Department of Justice, on behalf of the U.S. Department of the Interior, National Park Service (''DOI'') has reached a settlement with Alexander Morera regarding claims for response costs and damages under the Park System Resource Protection Act (''PSRPA''), 16 U.S.C. 19jj *et seq.*

The United States' claim arises from the grounding of the vessel ''Sea Curity'' in Biscayne National Park on February 1, 2004. The grounding damaged the area's seagrass bed and supporting habitat. Pursuant to the Agreement, the United States will recover $295,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Settlement Agreement between the United States and Alexander Morera, DOJ Ref. No. 90–5–1–1–08731.

The proposed Settlement Agreement may be examined at Biscayne National Park, 9700 SW., 328th St., Homestead, FL 33033, and at the Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4900 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Toxic Substances Control Act

Notice is hereby given that on September 18, 2007, a proposed consent decree in *United States, et al.* v. *Transformer Services Inc.*, 1:07–cv–00296–SM, was lodged with the United States District Court for the District of New Hampshire.

The proposed Consent Decree will settle the United States' claims for violations of the Toxic Substances Control Act, 15 U.S.C. 2601, *et seq.*, related to Transformer Services Inc.'s, (''TSI'') failure to dispose of PCB waste within one year from the date the waste was designated for disposal. Pursuant to the proposed Consent Decree, TSI will continue compliance with the terms of the January 30, 2001 Consent Agreement and Order except that, beginning on the effective date of the proposed Consent Decree, TSI agrees to fund the closure trust fund at $1500 per month (instead of the current $700 per month). The proposed Consent Decree further sets forth an enforceable schedule for TSI to finalize a clean-up resulting from a minor release of PCBs at its facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, and either e-mailed to *pubcomment–ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, Department of Justice, Washington, DC 20044-7611, and should refer to *United States, et al.* v. *Transformer Services Inc.,* D.J. Ref. 90–5–1–1–08721.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire, and at the United States Environmental Protection Agency,

Region 1 (New England Region), One Congress Street, Boston, Massachusetts 02114. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree, please so note and enclose a check in the amount of $27.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4903 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed Second Amendment to the Consent Decree, in *United States* v. *The Upjohn Co. et al.,* v. *ABF Freight System, Inc., et al.,* Civil No. 1:92–CV–659 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on September 21, 2007, pertaining to the West KL Avenue Landfill Superfund Site (the ''Site''), located on West KL Avenue, Oshtemo Township, Kalamazoo County, Michigan. The proposed Second Amendment to the Consent Decree amends a Consent Decree entered by the Court in 1992, and a First Amendment to that Consent Decree entered by the Court in 2005, that resolved the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Pharmacia Corp., successor to The Upjohn Company; Kalamazoo County; Charter Township of Oshtemo; the City of Kalamazoo (collectively, the ''Performing Settling Defendants''); and 219 additional Third-Party Defendant generators at the Site (all defendants, collectively, the ''Settling Defendants'').

Under the proposed Second Amendment to the Consent Decree, the Performing Settling Defendants are obligated to implement a Record of Decision (''ROD'') Second Amendment issued by the U.S. Environmental Protection Agency (''EPA'') on September 12, 2005 (''2005 ROD Amendment''). The 2005 ROD Amendment: (1) Revises the boundary of the municipal water service to residences, moving the boundary further downgradient to include additional properties that have had Site-related contaminants detected in their drinking water wells; (2) replaces the active pump and treat remedy for the contaminated groundwater plume selected by the initial 1990 ROD with Monitored Natural Attenuation (''MNA'') and contingent remedies; and (3) replaces the 1990 ROD cap design (which included a 2-feet thick clay capping layer) with a geosynthetic clay layer, a 40 mil geomembrane liner, a geocomposite drainage layer, an 18-inch layer of clean fill, and a vegetated 6-inch layer of topsoil.

Under the proposed Second Amendment to Consent Decree, Plaintiff and the Performing Settling Defendants agree to modify the terms of the Consent Decree, as provided by Paragraph 85 of the Consent Decree, to require the Performing Settling Defendants to implement the provisions of the 2005 ROD Amendment. The Settling Defendants other than the Performing Settling Defendants are not signatories to the proposed Second Amendment to the Consent Decree. The Second Amendment to the Consent Decree does not add to or change any of the settlement obligations of the Settling Defendants other than the Performing Settling Defendants, and none of the settling Third-Party Defendants will have any obligations to implement the provisions of the 2005 ROD Amendment. Pursuant to the simplified notification procedures of Paragraph 85 of the Consent Decree approved by the Court in 2005 under the First Amendment to the Consent Decree, the Settling Defendants other than the Performing Settling Defendants will not be separately notified of the material modifications to the work under the Consent Decree required by the 2005 ROD Amendment and the Second Amendment to the Consent Decree other than through this **Federal Register** Notice.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Second Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *The Upjohn Co. et al.,* v. *ABF Freight System, Inc., et al.,* Civil No. 1:92–CV–659 (W.D. Mich.), and DOJ Reference No. 90–11–2–561.

The proposed Second Amendment to the Consent Decree may be examined at: (1) The Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave. NW., Suite 501, Grand Rapids, MI 49503, (616–456–2404); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Stuart Hersh (312–886–6235)).

During the public comment period, the proposed Second Amendment to the Consent Decree may also be examined on the following U.S. Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Second Amendment to the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $3.00 for the Second Amendment to the Consent Decree only (12 pages, at 25 cents per page reproduction costs), or $21.00 for the Second Amendment to the Consent Decree and all appendices (84 pages), made payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4901 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 033–2007]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), proposes to establish a new system of records entitled ''Law Enforcement National Data Exchange (N–DEx),'' DOJ/FBI–020.

DATES: The Privacy Act requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, OMB, which has oversight responsibilities under the Act, and the Congress must be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this new Privacy Act system of records. Comments must be received by November 13, 2007. The system of records will be effective November 13, 2007 unless comments are received that result in a contrary determination.

ADDRESSES: Comments may be sent to Joo Chung, Counsel, Privacy and Civil Liberties Office, Office of the Deputy Attorney General, 950 Pennsylvania Ave., NW., Washington, DC 20530, or facsimile 202–616–9627.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, Federal Bureau of Investigation, 202–324–3396.

SUPPLEMENTARY INFORMATION: The Department of Justice (DOJ) and its component agency, the FBI, have identified improved information sharing with the entire law enforcement community as a key goal and the focus of the Department's Law Enforcement Information Sharing Program (LEISP). The Law Enforcement National Data Exchange (N–DEx) Program is at the heart of the LEISP and will improve information sharing for law enforcement purposes. The N–DEx, operated under the aegis of the FBI's Criminal Justice Information Services (CJIS) Division, is a scalable information sharing network that will provide the capability to make potential linkages between crime incidents, criminal investigations, arrests, bookings, incarcerations, and parole and/or probation information in order to help solve, deter and prevent crimes and, in the process, enhance homeland security.

The N–DEx will be populated by data that is already collected by law enforcement agencies at the Federal, State, local and tribal levels in fulfilling their functions, such as incident, offense and case reports. The N–DEx, however, will facilitate the combination of this data in one secure repository in order to be reviewed for connections, trends or similarities that will help facilitate the deterrence, prevention and resolution of crimes. Each data contributor will provide information subject to conditions elaborated in a memorandum of understanding or based on Federal law that are expected to reserve ultimate control and disposition of the data to the contributing agencies. Although the N–DEx will facilitate comparisons of seemingly disparate data, the information may not be used as a basis for action or disseminated beyond the recipient without that recipient first obtaining permission of the record owner/contributor. This permission policy, which may be waived only where there is an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person or imminent harm to national security, will help ensure that information maintained in the system is verified and updated as necessary. These rules will be enforced through strong and consistent audit procedures.

All data contributors will be responsible for ensuring that information they share is relevant, timely, complete, and accurate and periodic updates will be required in order to enhance data and system integrity.

System access will be based on a user's job function in his or her respective agency and will also be conditioned on access limits prescribed by the data contributor, which can range from unrestricted sharing to highly restricted access.

Because the N–DEx contains criminal law enforcement information, the Attorney General is proposing to exempt this system from certain portions of the Privacy Act, as permitted by law, to protect sensitive information contained in this system and to prevent the compromise of ongoing law enforcement investigations and sources and methods. As required by the Privacy Act, a proposed rule is being published concurrently with this notice to seek public comment on the proposal to exempt this system.

In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on this new system of records to OMB and the Congress. A description of the N–DEx system of records appears below.

Dated: September 25, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

JUSTICE/FBI–020

SYSTEM NAME:

Law Enforcement National Data Exchange (N–DEx).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Records will be located at the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Road, Clarksburg, WV 26306, and at appropriate locations for system back-up and continuity of operations purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The N–DEx will cover any individual who is identified in a law enforcement report concerning a crime incident or criminal investigation. These individuals include, but are not limited to: Subjects; suspects; associates; victims; persons of interest; witnesses; and/or any individual named in an arrest, booking, parole and/or probation report.

CATEGORIES OF RECORDS IN THE SYSTEM:

The N–DEx will contain information collected by criminal justice agencies that is needed for the performance of their legally authorized, required function. The records in the system consist of incident, offense and case reports as well as arrest, booking, incarceration, and parole and/or probation information from Federal, State, local and tribal law enforcement entities. Identifying information in this system will include, but not be limited to: Name(s); sex; race; citizenship; date and place of birth; address(es); telephone number(s); social security number(s) or other unique identifiers; physical description (including height, weight, hair color, eye color, gender); occupation and vehicle identifiers. Data from the FBI's CJIS Division, including the National Crime Information Center (NCIC), the Interstate Identification Index (III), and Integrated Automated Fingerprint Identification System (IAFIS), will be made available to the system for queries, but the N–DEx will not contain copies of these databases.

The information contributed by Federal, State, local and tribal law enforcement entities will be formatted using the National Information Exchange Model (NIEM), a single standard Extensible Markup Language (XML) foundation for exchanging information between agencies, in order to facilitate information sharing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 533, 534; 28 CFR 0.85 and 28 CFR part 20.

PURPOSE(S):

The purpose of the N–DEx system is to enhance the interconnectivity of criminal justice databases in order to improve the sharing of multiple levels of criminal justice data to further criminal justice objectives for crime analysis, law enforcement administration, and strategic/tactical operations in investigating, reporting, solving, and preventing crime, and, thereby, improving homeland security. The N–DEx system will allow Federal, State, local and tribal law enforcement agencies to compare and/or link criminal incidents and/or investigations occurring in their own jurisdictions with those in other jurisdictions throughout the country.

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, all or a portion of the records or information contained in this system may be disclosed outside the FBI as a routine use pursuant to 5 U.S.C. 552a(b)(3), to the extent such disclosures are compatible with the purpose for which the information was collected, in accordance with any blanket routine uses established for FBI record systems. For current blanket routine uses, see Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published in the **Federal Register** at 66 FR 33558 (June 22, 2001) and amended at 70 FR 7513 (Feb. 14, 2005). Routine uses are not meant to be mutually exclusive and may overlap in some cases. In addition, the FBI may disclose relevant system records as follows:

A. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement or homeland security responsibilities.

B. To a Federal, State, local, joint, tribal, foreign, international, or other public agency/organization, or to any person or entity in either the public or private sector, domestic or foreign, where such disclosure may facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property or similar criminal justice objectives.

C. To any person or entity in either the public or private sector, domestic or foreign, if deemed by the FBI to be reasonably necessary to elicit information or cooperation from the recipient for use in furthering the purposes of the system.

D. To appropriate agencies, entities, and persons when (1) The Department of Justice suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department of Justice has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft, or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of Justice's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

E. To those agencies, entities and persons the FBI may consider necessary or appropriate incident to the ensuring the continuity of government functions in the event of any actual or potential significant disruption of normal operations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not Applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most information is maintained in electronic form and stored in computer memory, on disk storage, on computer tape, or other computer media. However, some information may also be maintained by the contributing agency in hard copy (paper) or other form.

RETRIEVABILITY:

Information will be retrieved by linkages based on identifying data collected on involved persons, places and things, and other non-specific descriptions of circumstances to identify events with a common modus operandi. This could include individual names or other personal identifiers.

SAFEGUARDS:

System records are maintained in limited access space in FBI controlled facilities and offices. Computerized data is password protected. All FBI personnel are required to pass an extensive background investigation. The information is accessed only by authorized DOJ personnel or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records. Authorized system users will have adequate physical security and built in controls to protect against unauthorized personnel gaining access to the equipment and/or the information stored in it.

RETENTION AND DISPOSAL:

The information within the N–DEx system will be contributed by Federal, State, local, and tribal law enforcement entities. All entities will be responsible for ensuring the relevance and currency of the information they contribute to the system and will have control and responsibility for the disposition of their own records through a process that will be documented by a memorandum of understanding or based upon Federal law. Those portions of the N–DEx that constitute Federal records will be subject to retention schedules for those documents that have been approved by the National Archives and Records Administration (NARA). In addition, N–DEx, itself, will result in the creation of metadata or an audit log that reflects any correlation between any of the submitted records, as well as information about user activity. A schedule for disposition of this metadata will be submitted to NARA for approval.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

Because this system contains law enforcement records, the records in this system have been exempted from notification, access, and amendment to the extent permitted by subsection (j) of the Privacy Act. An individual who is the subject of one or more records in this system may be notified of records that are not exempt from notification and, accordingly, may access those

records that are not exempt from disclosure. A request for access to a non-exempt record shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request.'' Requests should include full name and complete address and be signed. To verify the signature it must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. Other identifying data that will assist in making a proper search of the system may also be submitted. Requests for access must be addressed to the Record/Information Dissemination Section, Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001.

A determination on notification and access, in the sole prerogative of the FBI, will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

To contest or amend information maintained in the system, an individual should direct his/her request to the address provided above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Some information may be exempt from contesting record procedures as described in the section titled ''Exemptions Claimed for the System.'' An individual who is the subject of one or more records in this system may contest and pursue amendment of those records that are not exempt. A determination whether a record may be subject to amendment will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information contained in the N–DEx system is obtained from Federal, State, local, and tribal criminal justice agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsection (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), and are published in today's **Federal Register**.

[FR Doc. E7–19461 Filed 10–3–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 28, 2007.

The Department of Labor (DOL) hereby announces the submission 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: John Kraemer, OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816 / Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *John_Kraemer@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 applicable 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: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Application for Waiver of Surface Facilities Requirements.

OMB Number: 1219–0024.

Estimated Number of Respondents: 843.

Estimated Total Annual Burden Hours: 322.

Estimated Total Annual Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: Title 30 Code of Federal Regulations (CFR). §§ 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 CFR 71.403, 71.404, 75.1712–4 and 75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds upon which the waiver is requested.

The information is used to determine if the conditions at a mine make it impractical for the mine operator to provide the required sanitary facilities. The mine operator submits the request for a waiver to the MSHA district in which the mine is located. The district uses this information in determining if the conditions at a mine justify granting the waiver. If the waiver is granted, the information serves as written documentation that the mine operator is not required to comply with the applicable part(s) of the standard(s) covered by the waiver.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

OMB Number: 1219–0042.

Estimated Number of Respondents: 4,945.

Estimated Total Annual Burden Hours: 2,347.

Estimated Total Annual Cost Burden: $3,550.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: Identification of the miner representative, notification of

mine owner and operator legal identity and notification of commencement of operations and closing of mines provide information to help ensure the health and safety of mine workers by identifying responsibility for mining operations.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Record of Results of Examinations of Self-Rescuers (Underground Coal Mines).

OMB Number: 1219–0044.

Estimated Number of Respondents: 719.

Estimated Total Annual Burden Hours: 124,375.

Estimated Total Annual Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: Title 30 CFR 75.1714–3(b), (c), (d), and (e) require that self-rescuers be examined regularly at intervals not to exceed 90 days by a qualified person who certifies by date and signature that the tests were conducted. A record must be made when a self-rescue device is removed from service and when corrective action is taken as a result of the examination. The records are used as an enforcement tool to insure that the devices have been examined and are maintained in operable and usable condition.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Escape and Evaluation Plans 30 CFR 57.11053.

OMB Number: 1219–0046.

Estimated Number of Respondents: 242.

Estimated Total Annual Burden Hours: 4,114.

Estimated Total Annual Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profit (Mines)

Description: Title 30 CFR 57.11053 requires the development of an escape and evacuation plan specifically addressing the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that revisions be made as mining progresses. The plan must be available to the inspector and conspicuously posted at locations convenient to all persons on the surface and underground. The mine operator and representatives of the Mine Safety and Health Administration (MSHA) are required to jointly review the plan at least once every six months. The information is prepared by the mine operator for use by miners, MSHA, and persons involved in rescue operations. The information allows miners and rescue personnel to be aware of the emergency escape route for a particular working place.

Agency: Mine Safety and Health Administration.

Type of Review: New collection of information.

Title: Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN).

OMB Number: 1219–0NEW.

Estimated Number of Respondents: 40,000.

Estimated Total Annual Burden Hours: 3,332.

Estimated Total Annual Cost Burden: $11,439.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: MSHA issues certifications, qualifications and approvals (licenses) to the nation's miners to conduct specific mine-related work. In an effort to reduce the use of Social Security Numbers as identifiers, MSHA will issue Individual Identification Numbers, or MIIN, where identification is required by MSHA for miners.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–19575 Filed 10–3–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Census of Fatal Occupational Injuries.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before December 3, 2007.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) was delegated responsibility by the Secretary of Labor for implementing Section 24(a) of the Occupational Safety and Health Act of 1970. This section states that ''the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses * * *''.

Prior to the implementation of the Census of Fatal Occupational Injuries (CFOI), the BLS generated estimates of occupational fatalities for private sector employers from a sample survey of about 280,000 establishments. Studies showed that occupational fatalities were underreported in those estimates as well as in those compiled by regulatory, vital statistics, and workers' compensation systems. Estimates prior to CFOI varied widely, ranging from 3,000 to 10,000 fatal work injuries annually. In addition, information needed to develop prevention strategies were often missing from these earlier programs.

In the late 1980s, the National Academy of Sciences study, *Counting Injuries and Illnesses in the Workplace*, and another report, *Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping*, emphasized the need for the BLS to compile a complete roster of work-related fatalities because of concern over the accuracy of using a sample survey to estimate the incidence of occupational fatalities. These studies also recommended the use of all available data sources to compile detailed information for fatality prevention efforts.

The BLS tested the feasibility of collecting fatality data in this manner in 1989 and 1990. The resulting CFOI was

implemented in 32 States in 1991. National data covering all 50 States and the District of Columbia have been compiled and published for 1992–2006, approximately eight months after each calendar year.

The CFOI compiles comprehensive, accurate, and timely information on work-injury fatalities needed to develop effective prevention strategies. The system collects information concerning the incident, demographic information on the deceased, and characteristics of the employer.

Data are used to:

—Develop employee safety training programs;

—Develop and assess the effectiveness of safety standards; and

—Conduct research for developing prevention strategies.

In addition, States use the data to publish State reports, to identify State-specific hazards, to allocate resources for promoting safety in the workplace, and to evaluate the quality of work life in the State.

II. Current Action

Office of Management and Budget clearance is being sought for the Census of Fatal Occupational Injuries.

In 2006, 5,703 workers lost their lives as a result of injuries received on the job. This official systematic, verifiable count mutes controversy over the various counts from different sources. The CFOI count has been adopted by the National Safety Council and other organizations as the sole source of a comprehensive count of fatal work injuries for the U.S. If this information were not collected, the confusion over the number and patterns in fatal occupational injuries would continue, thus hampering prevention efforts. By providing timely occupational fatality data, the CFOI program provides safety and health managers the information necessary to respond to emerging workplace hazards.

During 2006, the BLS Washington staff responded to almost 1,400 requests for CFOI data from various organizations. (This figure excludes requests received by the States for State-specific data.) In addition, the CFOI page of the BLS Web site averaged about 5,000 users per month in 2006.

Washington staff also responded to numerous requests from safety organizations for staff members to participate in safety conferences and seminars. The CFOI research file, made available to safety and health groups, is being used by 15 organizations. Study topics include fatalities by worker demographic category (young workers, older workers, Hispanic workers); by occupation or industry (construction workers, police officers, landscaping workers, workers in oil and gas extraction); by event (heat-related fatalities, fatalities from workplace violence, suicides, falls from ladders); or other research such as safety and health program effectiveness and the impact of fatality risk on wages. (A current list of research articles and reports that include CFOI data can be found in the BLS Report 2587, dated September 2007, Appendix I. Copies of this report are available upon request.)

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• 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.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Census of Fatal Occupational Injuries.

OMB Number: 1220–0133.

Affected Public: Federal government; Individuals or households; Private sector (Business or other for-profits, Not-for-profit institutions, Farms); State, local or tribal governments.

Frequency: On occasion.

Form	Total respondents	Total responses	Average time per response (minutes)	Estimated total burden (hours)
BLS CFOI–1	1,720	1,720	20	574
Source Document Letter	229	22,000	8.7	3,190
Totals	1,949	23,720	.....	3,764

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 28th day of September, 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–19600 Filed 10–3–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 31, 2007, the National Science Foundation published a notice in the

Federal Register of a permit applications received. Permits were issued on October 1, 2007 to: Andrea Polli, Permit No. 2008–001. Robert A. Garrott, Permit No. 2008–016.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–19611 Filed 10–3–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 27, 2007, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on September 28, 2007 to: Mahlon C. Kennicutt, Permit No. 2008–014.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–19622 Filed 10–3–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC, Indian Point Nuclear Generating Unit No. 3.; Revision to Existing Exemptions

1.0 Background

Entergy Nuclear Operations, Inc. (ENO or the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Westchester County, New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, § 50.48, requires that nuclear power plants that were licensed before January 1, 1979, of which IP3 is one, must satisfy the requirements of 10 CFR Part 50, Appendix R, Section III.G. Subsection III.G.2 addresses fire protection features for ensuring that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. Subsection III.G.2.c provides use of a 1-hour fire barrier, in addition to installed fire detection and automatic fire suppression in the area, as one means for complying with this fire protection requirement.

In an NRC letter and safety evaluation (SE) dated February 2, 1984, the NRC granted the licensee exemptions from the requirements of Appendix R, Section III.G.2, for Fire Area ETN–4 (Fire Zones 7A, 60A and 73A) to the extent that redundant safe-shutdown trains are not separated by more than 20 feet without intervening combustibles or fire hazards, and that redundant safe-shutdown trains are not separated by 1-hour rated fire barrier in an area protected by automatic fire detection and suppression systems. The exemption was based on the minimum of 12′ spatial separation between the redundant trains, minimal fire hazards in the area, the use of asbestos-jacketed flame-retardant cables, and the installed automatic fire detection and cable tray suppression systems.

Following a comprehensive reassessment of the IP3 Appendix R compliance basis, the licensee identified the need for additional separation measures and installed 1-hour rated fire wraps on several redundant safe-shutdown raceways in Fire Area ETN–4 (Fire Zones 7A, 60A and 73A). By SE dated January 7, 1987, the NRC accepted the use of 1-hour rated fire barriers in the above fire area and confirmed continued validity of the exemption granted by the February 2, 1984 SE. IP3 used the Hemyc fire barrier system to provide the 1-hour rated fire barriers. In the January 7, 1987 SE, the NRC also approved an exemption from Appendix R, Section III.G.2, separation requirements for Fire Area PAB–2 (Fire Zone 1) to the extent that redundant safe-shutdown trains are not separated by more than 20 feet without intervening combustibles or fire hazards, and that an automatic suppression system has not been provided. The basis for this exemption included the partial spatial separation between the redundant safe-shutdown trains, the low fire loading in the area, and the existing fire protection features including an automatic fire detection system, manual hose stations and portable extinguishers, a partial-height non-combustible barrier designed to protect redundant equipment against radiant heat from a fire, and a 1-hour rated Hemyc cable wrap around the normal power feed to the redundant Component Cooling Water (CCW) Pump 33.

Testing by the NRC in 2005 identified Hemyc electrical raceway fire barrier system (ERFBS) as a potential nonconforming barrier, potentially not capable of providing a 1-hour fire rating, and Information Notice (IN) 2005–07, ''Results of HEMYC Electrical Raceway Fire Barrier System Full Scale Fire Testing,'' and Generic Letter (GL) 2006–03, ''Potentially Nonconforming Hemyc and MT Fire Barrier Configurations,'' were issued to licensees to inform them of the issue and to collect information regarding Hemyc fire barrier installations. In response to GL 2006–03, ENO informed the NRC that they had declared the Hemyc ERFBS at IP3 inoperable and implemented temporary compensatory measures including an hourly fire watch and verification that fire detection systems are operable in the affected fire areas until compliance is restored for the Hemyc ERFBS. In a letter dated July 24, 2006, ENO stated they would modify the installed Hemyc ERFBS based on the test results. This would provide at least a 24-minute rated fire barrier for cable tray configurations, and a 30-minute rating for conduit and box configurations, between redundant trains of safe-shutdown equipment and cables, which is less than the previously approved 1-hour fire barrier. ENO asserted that in light of the minimal fire hazards and the existing fire protection features in the affected fire areas, this configuration continues to satisfy the basis for an exemption in accordance with 10 CFR 50.12.

In summary, by letter dated July 24, 2006, and supplemental letters dated April 30, May 23, and August 16, 2007, responding to the NRC staff's request for additional information, ENO submitted a request for revision of existing exemptions for the Upper and Lower Electrical Tunnels (Fire Area ETN–4, Fire Zones 7A and 60A, respectively), and the Upper Penetration Area (Fire Area ETN–4, Fire Zone 73A), to the extent that 24-minute rated fire barriers are used to protect redundant safe-shutdown trains located in the above fire areas in lieu of the previously

approved 1-hour rated fire barriers per the January 7, 1987 SE. For the 41′ Elevation CCW Pump Area (Fire Area PAB–2, Fire Zone 1) ENO is requesting a revision of the existing exemptions to the extent that a 30-minute rated fire barrier is provided to protect redundant safe shutdown trains located in the same fire area.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. One of these special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Subsection III.G.2 of 10 CFR 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. The provisions of III.G.2.c through the use of a 1-hour fire barrier with fire detectors and an automatic fire suppression system is one acceptable way to comply with this fire protection requirement.

The NRC staff reviewed the licensee's evaluation in support of the subject exemption revision request for a 24-minute rated fire barrier for ETN–4, and 30-minute rated fire barrier for PAB–2, in lieu of a 1-hour rated barrier, and concluded that given the existing fire protection features in the affected fire zones, ENO continues to meet the underlying purpose of 10 CFR Part 50, Appendix R, Subsection III.G.2 for the cable tray, conduit and junction box configurations. The following technical evaluation provides the basis for this conclusion.

3.1 Fire Hazards

The licensee stated that the fire hazards and ignition sources in both Fire Areas ETN–4 and PAB–2 remain materially unchanged from those described in the SEs dated February 2, 1984, and January 7, 1987. For Fire Area ETN–4, the ignition sources consist of limited transient combustibles (in all fire zones), and several instrument cabinets and a 3kVA 480V/120V instrument power transformer in Fire Zone 73A. The current IP3 Fire Hazard Analysis calculated the fire severity in Fire Area ETN–4 to be less than 60 minutes, with asbestos-jacketed flame-retardant cable insulation being the predominant combustible. The licensee states that the asbestos-jacketed cable would not constitute a significant component of the fuel source due to the flame-retardant nature of the cable.

Based on a November 22, 1982, letter that included results of testing of asbestos-jacked cable, NRC staff concludes that the ignition sources in the area are unlikely to cause fire propagation along the cables to a significant degree, and therefore, it is reasonable to exclude the asbestos-jacketed cable from being considered a hazard within the area.

For the 41′ Elevation CCW Pump Area (PAB–2, Fire Zone 1), the current IP3 Fire Hazard Analysis indicated a fire severity of less than 10 minutes. Combustibles are predominantly attributed to the CCW pump bearing lubricating oil and transient materials.

3.2 Rated Fire Wraps

The licensee has performed an engineering evaluation to compare the details of the NRC-sponsored Hemyc fire test configurations as reported in NRC IN 2005–07, ''Results of Hemyc Electrical Raceway Fire Barrier System Full Scale Fire Testing,'' with the details of the installed Hemyc ERFBS at IP3. The evaluation established that the configurations are comparable in most cases. Where differences were noted, minor enhancements to the ERFBS supports and installation of additional over-banding on certain enclosures will be performed to upgrade the configurations. Based on these upgrades, the licensee expected the Hemyc ERFBS at IP3 to provide at least 24 minutes of protection for cable tray configuration, and 30 minutes for conduit and box-type configurations, as demonstrated by comparison to relevant NRC-tested configurations. The following are comparisons between the IP3 Hemyc installations and NRC-sponsored test configurations:

4-Inch Conduit Configuration

The Hemyc-wrapped 4-Inch Conduit Configuration installed in Fire Area ETN–4 (Fire Zones 60A and 73A) and Fire Area PAB–2 (Fire Zone 1) is comparable to Configuration 1A in NRC Test 1. These are 4″ conduits protected by a direct-attached 2″-thick Hemyc blanket wrap. Tests performed by both NRC and industry indicated that this configuration provides at least 30 minutes of protection from an exposed fire using the American Society for Testing and Materials (ASTM) standard E–119 time-temperature profile.

Box-Type Configuration

The Hemyc-wrapped Box-Type Configuration installed in Fire Area ETN–4 (Fire Zone 73A) is comparable to Configuration 2G in NRC Test 2, except for the lack of the stainless steel over-banding. These enclosures are protected by a direct-attached 2″-thick Hemyc blanket wrap. Both NRC and industry-sponsored tests indicated that box-type configurations provided at least 30 minutes of thermal protection when tested in accordance with ASTM E–119. However, to more closely reflect Configuration 2G, the licensee is committed to install over-banding on the Box-Type Configuration at IP3.

Cable Tray Configuration

The Hemyc-wrapped Cable Tray Configuration installed in Fire Area ETN–4 (Fire Zones 7A and 73A) is comparable to Configuration 2B and 2D of NRC Test 2. These cable trays are protected by a 1–1/2″-thick Hemyc blanket wrap with a nominal 2″ air gap between the protected cable tray and the blanket. Fire tests conducted by both NRC and industry indicated that these Hemyc-wrapped cable tray configurations will provide at least 24 minutes of thermal protection in accordance with the ASTM E–119 time-temperature profile.

Based on the above, the NRC staff concludes that the licensee has adequately demonstrated a 30-minute rated fire wrap for the 4-Inch Conduit Configuration and Box-Type Configuration. The Cable Tray Configuration has been adequately demonstrated to provide a 24-minute rated fire wrap.

3.3 Existing Fire Protection Features

Fire Area ETN–4 contains the Upper and Lower Electrical Tunnels (Fire Zones 7A and 60A, respectively) and the Upper Penetration Area (Fire Zone 73A). This area is separated from other plant areas by 3-hour rated fire barriers. Automatic fire detection systems and automatic cable tray fire suppression systems are installed in the area. Manual fire suppression features including accessible fire hose stations and portable fire extinguishers are also provided.

Fire Area PAB–2 contains the 41′ Elevation CCW Pump Area (Fire Zone 1). This fire area is separated from other fire areas by 3-hour rated fire barriers. There is a portion of open grating from this area to the 55′ elevation above. However, the open grating is located approximately 9 feet to the east of the CCW pumps; therefore, there is no potential for combustible liquids to drip

directly onto the CCW pumps area. Furthermore, the area on the 55′ elevation only houses components such as the CCW heat exchangers, boric acid transfer pump, air receivers, and various compressed air and gas tanks that normally contain minimal combustible liquids. Automatic fire detection systems and manual fire suppression features in the form of accessible fire hose stations and portable fire extinguishers are provided in this fire zone. In addition, a 7′ partial height, noncombustible barrier is installed around the redundant 33 CCW Pump to shield this pump from radiant heat in the event of a fire in the other CCW pumps area.

3.4 Enhanced Administrative Controls of Hot Work and Transient Combustibles

The licensee stated that administrative controls of hot work and transient combustibles have improved since the previous exemptions. IP3 administrative procedures now designated Fire Areas ETN–4 and PAB–2 as ''Level 2'' combustible control areas, which constrain transient combustibles to ''moderate'' quantities as follows:

□ 100 pounds of fire retardant treated lumber, or

□ 25 pounds of loose ordinary combustibles or plastics, or

□ 5 gallons of combustible liquids stored in approved containers, or

□ One pint of flammable liquids stored in approved containers, or

□ One 20 ounce flammable aerosol can.

Any planned introduction of transient combustibles that is more than the allowable amount will require prior review and approval by a Fire Protection Engineer. In addition, any planned hot work in Fire Areas ETN–4 and PAB–2 will also require prior review and approval by a Fire Protection Engineer. The review will determine if additional protective or compensatory measures is required.

3.5 Evaluation

10 CFR Part 50, Appendix R, Section II states that a licensee's fire protection program shall extend the concept of defense-in-depth (DID) to fire protection with the following objectives:

1. To prevent fires from starting,

2. To detect rapidly, control, and extinguish promptly those fires that do occur, and

3. To provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

The NRC staff has evaluated the elements of DID used for fire protection at IP3, applicable to the fire zones under review. The staff was concerned about the introduction of additional ignition sources and transient combustibles into the affected areas. However, the concern is addressed by existing administrative controls at IP3 which effectively limit transient combustibles to a level that would not significantly challenge the existing fire protection features in the affected areas. The administrative control procedures at IP3 ensure that transient combustibles, which may exceed the allowable limit, will not be introduced into the affected fire zones without prior evaluation by a qualified Fire Protection Engineer, and without appropriate additional compensatory measures. The three CCW pumps make up the ignition sources in the 41′ Elevation CCW Pump Area (Fire Zone 1). Each of these pumps contain a small amount of lubricating oil, with a combined fire severity of less than 10 minutes. As such, a significant fire is not expected to develop in this fire zone. The Upper Electrical Tunnel, Fire Zone 60A, contains no fixed ignition sources, and the combustible load consists of primarily asbestos-jacketed cables. Therefore, based upon consideration of the limited fire ignition sources and fire hazards in the affected areas, and the existing administrative controls of hot works and transient combustibles at IP3, the staff concludes that objective one of DID is adequately met.

Based on the evaluation of fire detection and suppression systems provided in the affected fire zones, the NRC staff determined that any postulated fire is expected to be promptly detected by the available automatic fire detection systems in Fire Area ETN–4 (Fire Zone 60A) and Fire Area PAB–2 (Fire Zone 1). Fire Zone 60A is provided with an automatic cable tray fire suppression system, as well as manual suppression equipment. Fire Zone 1 is provided with manual fire suppression only. The available fire detection and suppression equipment in these fire zones ensure that a postulated fire will not be left unchallenged. In addition, since Fire Zone 1 and 60A contain low combustible loading, the NRC staff concluded that the reduction in the level of DID due to the lack of an areawide automatic fire suppression system in these fire zones does not affect the prompt detection and suppression capability of DID objective 2.

With the proposed additional protection of electrical raceway supports and installation of over-banding on Hemyc box configurations, the modified fire barrier configurations are expected to afford at least 24 minutes for cable tray configurations and 30 minutes of protection for conduit and box configurations. Since the Hemyc ERFBS is expected to provide only 24 or 30 minutes of protection for redundant components and cables in the event of a fire, the NRC staff was concerned about the fire loading in Fire Area ETN–4 (Fire Zone 60A). However, in light of the properties of the asbestos-jacketed cables and the installed fire detection and automatic and manual suppression systems in the area, the staff determined that a credible fire in Fire Zone 60A will be limited in severity and would not challenge the 24- or 30-minute barriers. For Fire Area PAB–2 (Fire Zone 1), the NRC staff also concluded that the 30-minute fire barrier rating is adequate in protecting the redundant safe shutdown equipment due to the lack of significant combustible loading in the area, the partial fire wall which localizes a postulated fire from affecting redundant equipment, and the available fire detection and manual suppression systems.

Based on the limited ignition sources and administrative controls satisfying DID objective 1, in conjunction with installed fire detection and suppression features which adequately satisfy DID objective 2, the NRC staff concluded that the minimal combustibles in the areas and existing active/passive fire protection features can compensate for the reduction in DID of objectives 3 and would not impact IP3 post-fire safe-shutdown capability.

3.6 Authorized by Law

This exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection. As stated in Section 3.0 above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

3.7 No Undue Risk to Public Health and Safety

The underlying purpose of Subsection III.G.2 of 10 CFR Part 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of

fire damage in the event of a fire. Based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources, the NRC staff judges that application of Subsection III.G.2 of 10 CFR Part 50, Appendix R, for these Fire Areas is not necessary to achieve the underlying purpose of this regulation. No new accident precursors are created by allowing use of a fire barrier expected to provide less than 1 hour of fire protection and the probability of postulated accidents is not increased. Similarly, the consequences of postulated accidents are not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

3.8 Consistent With Common Defense and Security

The proposed exemption would allow use of a fire barrier expected to provide less than 1 hour of fire protection based on the existing fire barriers, fire detectors, automatic and manual fire suppression equipment, administrative controls, the fire hazard analysis, the Hemyc configuration, and the absence of significant combustible loads and ignition sources. This change to the plant requirements for the specific configuration in this fire zone has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

3.9 Special Circumstances

One of the special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Subsection III.G.2 of 10 CFR Part 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. For Fire Area ETN–4 (Fire Zones 7A, 60A, and 73A) and Fire Area PAB–2 (Fire Zone 1), the NRC staff finds that the existing configuration described herein will ensure that a redundant train necessary to achieve and maintain safe shutdown of the plant will remain free of fire damage in the event of a fire in these fire zones. Based upon consideration of the information in the licensee's Fire Hazards Analysis, administrative controls for transient combustibles and ignition sources, previously-granted exemptions for this fire zone, and the considerations noted above, the NRC staff concludes that this exemption meets the underlying purpose of the rule.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, a special circumstance is present such that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants ENO an exemption from the requirement of Section III.G.2 of 10 CFR Part 50, Appendix R, for Fire Area ETN–4 (Fire Zones 7A, 60A, and 73A) and Fire Area PAB–2 (Fire Zone 1) at IP3, provided that the existing Hemyc ERFBS in these areas are modified to achieve at least a 24-minute fire resistance rating for cable tray configuration and 30-minute fire resistance rating for conduits and box configurations, consistent with the licensees comparison to the NRC's tested configurations as documented in Entergy Engineering Report IP–RPT–06–00062, Revision 0, ''Comparison of IP3 Hemyc Electrical Raceway Fire Barrier System to NRC Hemyc Fire Test Results,'' which meet ASTM–E–119 temperature rise acceptance criteria. The modifications, as committed in Entergy Letter NL–07–061, dated May 23, 2007, will include:

Complete modification (including supporting engineering evaluation) to install stainless steel over-banding (as described), additional protection of the electrical raceway supports, and protection of certain metallic penetration items, associated with the existing Hemyc ERFBS located outside containment at Indian Point 3. [This is a clarification of commitment 3 (licensee reference number COM–07–00034) made in Entergy Letter NL–06–060 dated June 8, 2006.]

The licensee is also committed to keep fire protection compensatory measures in place at IP3 until the aforementioned modifications are completed. The scheduled completion date of these modifications is December 1, 2008. The acceptance of this exemption is also based on the licensee's stated availability of administrative control procedures that control hot work and limit transient combustibles in the affected areas.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 55254).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of September 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–19663 Filed 10–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–456]

Exelon Generation Company, LLC; Braidwood Station, Unit 1; Exemption

1.0 Background

Exelon Generation Company, LLC (Exelon, the licensee) is the holder of Facility Operating License No. NPF–72, which authorizes operation of Braidwood Station, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Will County in Illinois.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, section 50.46,

''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' requires, in part, ''that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section.'' 10 CFR Part 50, Appendix K, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. 10 CFR 50.46 and 10 CFR Part 50, Appendix K make no provisions for use of fuel rods clad in a material other than Zircaloy or ZIRLO.

The Braidwood, Unit 1 core consists of a combination of Westinghouse-designed VANTAGE 5 and VANTAGE+ fuel assemblies. Each fuel assembly has 264 fuel rods arranged in a 17 by 17 array. The licensee intends to insert up to eight fuel assemblies containing AREVA NP Inc. (AREVA) modified Advanced Mark-BW(A) (Advanced Mark-BW(A)) fuel. These assemblies will be placed in nonlimiting locations of the core during Cycles 15, 16,

and 17. The Advanced Mark-BW(A) fuel assemblies are similar in design to the Advanced Mark-BW fuel assemblies using the approved M5 alloy for the cladding, structural tubing, and grids. The Advanced Mark-BW fuel design was approved in a topical report BAW–10239(P)–A, entitled ''Advanced Mark-BW Fuel Assembly Mechanical Design Topical Report'' (Advanced Mark-BW Topical Report).

The licensee requested an exemption from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K to allow the use of fuel rods clad with AREVA's M5 alloy. The M5 alloys are proprietary alloys and chemically different from Zircaloy or ZIRLO fuel cladding materials which are approved for use. Therefore, a plant specific exemption from these regulations is required to support the use of the eight Advanced Mark-BW(A) fuel assemblies for Braidwood Station, Unit 1.

In summary, the licensee has requested an exemption from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, to allow the use of fuel assemblies containing Advanced Mark-BW(A) fuel design.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that application of the regulation in 10 CFR 50.46 and 10 CFR Part 50, Appendix K is not necessary to achieve the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to load fuel assemblies containing Advanced Mark-BW(A) fuel at Braidwood Station, Unit 1. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.45 is to establish acceptance criteria for ECCS performance. Previously, the approved Advanced Mark-BW Topical Report demonstrated the acceptability of the M5 cladding under loss of coolant accident (LOCA) conditions. The unique features of the proposed fuel assemblies were evaluated for effects on the LOCA analysis. The results showed that the assemblies would not adversely affect the ECCS performance. Since the eight Advanced Mark-BW(A) fuel assemblies will be located at non-limiting core locations, the NRC concludes that the LOCA safety analyses will remain bounding for these assemblies at Braidwood Station, Unit 1.

Paragraph I.A.5 of 10 CFR Part 50, Appendix K states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of Zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced zirconium-based and M5 alloys for determining acceptable fuel performance. The underlying intent of this portion of 10 CFR Part 50, Appendix K, however, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. The approved Advanced Mark-BW Topical Report show that due to the similarities in the chemical composition of the M5 alloys and Zircaloy, the application of the Baker-Just equation in the analysis of the M5 clad fuel rods will continue to conservatively bound all post-LOCA scenarios. Thus, application of 10 CFR Part 50, Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

Based on the above, no new accident precursors are created by using the proposed Advanced Mark-BW(A) fuel assemblies at Braidwood Station, Unit 1, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Advanced Mark-BW(A) fuel assemblies at Braidwood Station, Unit 1. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Since the eight Advanced Mark-BW(A) fuel assemblies will be located at non-limiting core locations, the NRC concludes that the LOCA safety analyses will remain bounding for these assemblies at Braidwood Station, Unit 1. The underlying purpose of 10 CFR Part 50, Appendix K is to ensure that analysis of fuel response to LOCAs is conservatively calculated. The approved Advanced Mark-BW Topical Report show that due to the similarities in the chemical composition of the M5 alloys and Zircaloy, the application of the Baker-Just equation in the analysis of the M5 clad fuel rods will continue to conservatively bound all post-LOCA scenarios. Thus, application of 10 CFR Part 50, Appendix K is not necessary for the licensee to achieve its underlying purpose in these circumstances. Therefore, since the underlying purpose of 10 CFR 50.46 and 10 CFR Part 50, Appendix K is achieved, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50.46 and 10 CFR Part 50, Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon, an exemption from the requirements of 10 CFR 50.46 ''that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical Zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section,'' and 10 CFR Part 50, Appendix K that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation for Braidwood Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (72 FR 52585). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September 2007.

For the Nuclear Regulatory Commission.

Tim McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–19666 Filed 10–3–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 183rd meeting on October 16–18, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Tuesday, October 16, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

ACNW&M Working Group Meeting on Preclosure Seismic Analysis Evaluation at the Proposed Yucca Mountain, Nevada, Repository

Purpose

The purpose of this Working Group Meeting is to understand the regulatory

framework, and associated acceptance criteria, to be used by the staff in their analysis of pre-closure seismic hazards at the proposed Yucca Mountain repository site. This information will be compared with the processes used to determine seismic safety at other types of NRC-licensed nuclear facilities (e.g., nuclear power plants, independent spent fuel storage installations, and fuel fabrication facilities).

8:35 a.m.–8:45 a.m.: Greetings and Introductions (Open)—Dr. William Hinze, the cognizant ACNW&M Member for this meeting topic will provide an overview of the expected goals for the Working Group Meeting, the planned technical sessions, and introduce the invited panelists and speakers.

8:45 a.m.–9 a.m.: Overview of the Development of NRC's Seismic Regulations (Open)—The Committee will hear an overview by an ACNW&M staff member on the development of NRC's Seismic Regulations.

9 a.m.–9:30 a.m.: Current Seismic Design Requirements for Nuclear Power Plants (Open)—The Committee will be briefed by a representative of the NRC Office of Nuclear Reactor Regulation on the current seismic design requirements for nuclear power plants.

9:30 a.m.–9:45 a.m.: Pre-Closure Seismic Design Requirements for the Yucca Mountain HLW Repository (Open)—The Committee will be briefed by a representative of the NRC Office of Nuclear Material Safety and Safeguards (NMSS) on the pre-closure seismic design requirements for the Yucca Mountain HLW repository.

9:45 a.m.–10 a.m.: Interim Staff Guidance, ''Review Methodology for Seismically Initiated Event Sequences''—DHLWRS–ISG–01 (Open)—The Committee will be briefed by a representative of the Office of NMSS on the interim staff guidance, ''Review Methodology for Seismically Initiated Event Sequences.''

10 a.m.–10:30 a.m.: American Society of Civil Engineers Standard ASCE/SEI 43–0–5 (Open)—The speaker is yet to be determined. This topic may be removed or modified.

10:45 a.m.–11:15 a.m.: Current Seismic Design Requirements for MOX Facilities (Open)—The Committee will be briefed by a representative of the Center for Nuclear Waste Regulatory Analyses on the current seismic design requirements for MOX facilities.

11:15 a.m.–12:15 p.m.: Stakeholders and Public Comments (Open)

1:30 p.m.–2:30 p.m.: Roundtable Discussion (Open)—Scheduled participants are expected to include representatives from Nuclear Waste Technical Review Board (NWTRB) and NRC Office of Nuclear Regulatory Research.

2:30 p.m.–2:45 p.m.: Closing Remarks (Open)—By Dr. William J. Hinze.

3 p.m.–5 p.m.: GE–Hitachi Nuclear Energy (GE–H) Spent Nuclear Fuel (SNF) Recycling Processes (Open)—The Committee will hear presentations from representatives of GE–H regarding an overview of their advanced SNF recycling processes.

Wednesday, October 17, 2007

8 a.m.–8:05 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:05 a.m.–12:30 p.m.: NRC's Total-System Performance Assessment (TPA) Code for Review of Performance Assessment of the Yucca Mountain Site (Open)—NRC staff representatives from the Office of NMSS will brief the Committee on the newly released version of the staff's TPA code (Version 5.1). This updated tool will support the staff's review of an impending license application for the proposed Yucca Mountain repository site.

1:30 p.m.–3 p.m.: Draft Proposed Rule/Guidance on Preventing Legacy Sites (Open/Closed)—NRC staff representatives from the Office of Federal and State Materials and Environmental Management Program (FSME) will brief the Committee on NRC's proposed rulemaking and guidance for prevention of decommissioning legacy sites.

Note: A portion of this session may be closed to discuss pre-decisional documents pursuant to 5 U.S.C. 552b(c)(9)(B)

3 p.m.–4 p.m.: Preparation for Meeting with NRC Commissioners (Open)—The Committee will discuss and approve the viewgraphs for the ACNW&M briefing to the NRC Commissioners, scheduled for Wednesday, November 14, 2007.

Thursday, October 18, 2007

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:35 a.m.: Mallinckrodt Site Decommissioning Plan (Open)—The Committee will be briefed by representatives of the NRC staff from the Office of FSME on decommissioning of the Mallinckrodt Chemical, Inc. site, in St. Louis, Missouri.

9:35 a.m.–10:35 a.m.: Vendor's Views on the Transportation-Aging-Disposal (TAD) Performance Specifications (Open)—A representative from Holtec International, a commercial vendor, will brief the Committee on their views on the TAD Performance Specifications, possible challenges the vendor may be facing, and suggestions for expediting NRC approval of a TAD license application.

10:35 a.m.–12 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

1 p.m.–2:30 p.m.: Revision of NUREG–1854, NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations—Draft Final Report for Interim Use (Open)—NRC staff representatives from the Office of FSME will brief the Committee on how the public comments on the draft guidance were resolved.

2:30 p.m.–4:30 p.m.: Discussion of Proposed and Potential ACNW&M Letter Reports (Open)—The Committee will continue discussion of proposed ACNW&M letter reports.

4:30 p.m.–5 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. (ET), as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close a portion of this meeting noted above to

discuss pre-decisional documents pursuant to 5 U.S.C. 552b(c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Dr. Dias.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/acnw* (ACNW&M schedules and agendas).

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Assistant (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: September 28, 2007.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–19618 Filed 10–3–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Form N–8F, SEC File No. 270–136, OMB Control No. 3235–0157

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'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 3 hours on average to complete. It is estimated that approximately 251 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 753 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on Form N–8F is not kept confidential. 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) 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*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 27, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19546 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Form S–6, SEC File No. 270–181, OMB Control No. 3235–0184

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form S–6 (17 CFR 239.16), for Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2 (17 CFR 274.13).'' Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''), and to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'').

Form S–6 is used for registration under the Securities Act of the securities of any unit investment trust that is registered under the Investment Company Act on Form N–8B–2.[1] A separate registration statement under the Securities Act must be filed for each series of units issued by the trust. Form S–6 consists of, among other things, a prospectus, certain written consents, an undertaking to file supplementary information, and certain exhibits containing financial and other information required in the registration

[1] Form N–8B–2 is the form used by unit investment trusts to register as investment companies under the Investment Company Act (except for unit investment trusts that are insurance company separate accounts issuing variable annuity or variable life insurance contracts, which instead register on Form N–4 and Form N–6, respectively). The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

statement but not required to appear in the prospectus.

Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) provides, in pertinent part, that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use. As a result, most unit investment trusts that are registered under the Investment Company Act on Form N–8B–2 update their registration statements on Form S–6 on an annual basis so that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts that are registered under the Investment Company Act on Form N–8B–2 must furnish to investors a prospectus containing pertinent information set forth in the registration statement. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

The Commission estimates that each year unit investment trusts file approximately 1,353 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected unit investment trusts is 47,355 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) 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*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 27, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19547 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Existing Collection; New OMB Control No.: Rule 0–4, SEC File No. 270–569, OMB Control No. 3235-xxxx

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'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the collection of information discussed below.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 (''Act'' or ''Advisers Act'') (15 U.S.C. 80b–1 *et seq.*) entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives approximately 9 applications per year submitted under rule 0–4 of the Act. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, the cost ranges from approximately $7,000 for preparing a well-precedented, routine application to approximately $80,000 to prepare a complex or novel application. We estimate that the Commission receives 2 of the most time-consuming applications annually, 4 applications of medium difficulty, and 3 of the least difficult applications subject to rule 0–4. This distribution gives a total estimated annual cost burden to applicants of filing all applications of

$355,000 [(2×$80,000) + (4×$43,500) + (3×$7,000)]. The estimates of annual burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. 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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov* ; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 27, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19548 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Existing Collection; New OMB Control No.: Rule 607, SEC File No. 270–568, OMB Control No. 3235-xxxx

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'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of the collection of information discussed below.

Rule 607 under Regulation E (17 CFR 230.607) entitled, ''Sales material to be filed,'' requires sales material used in connection with securities offerings under Regulation E (17 CFR 230.601 to 610a) to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.[1] Regulation E allows the exemption of securities issued by a small business investment company (''SBIC'') which is registered under the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) or a closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Investment Company Act from registration under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*), so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed $5,000,000 and certain other conditions are met. Commission staff reviews sales material filed under rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed for investor protection.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. However, we are requesting one annual response and an annual burden of one hour for administrative purposes. The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. 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 control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 27, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19549 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

[1] Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28006]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 28, 2007.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2007. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 23, 2007, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Ameritor Investment Fund [File No. 811–747]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 24, 2007, applicant was liquidated, at which time applicant's liabilities exceeded its assets. Expenses of $6,775 incurred in connection with the liquidation were paid by applicant and Ameritor Financial Corporation, applicant's investment adviser.

Filing Dates: The application was filed on July 24, 2007, and amended on September 14, 2007.

Applicant's Address: 4400 MacArthur Blvd., NW., Suite 301, Washington, DC 20007.

UC Co Investment Fund LLC [File No. 811–21599]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 15, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,035 incurred in connection with the liquidation were paid by UC Co Advisors LLC, applicant's investment adviser.

Filing Dates: The application was filed on January 13, 2005, and amended on April 28, 2005 and September 18, 2007.

Applicant's Address: c/o Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Sq., New York, NY 10036.

Dryden Municipal Series Fund [File No. 811–4023]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 15, 2006, each of applicant's series transferred its assets to Dryden National Municipals Fund, Inc., based on net asset value. Expenses of $1,002,000 incurred in connection with the reorganization were paid by applicant's series.

Filing Date: The application was filed on September 4, 2007.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Van Kampen Trust for Investment Grade Florida Municipals [File No. 811–6538]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 8, 2007, applicant transferred its assets to Van Kampen Trust for Investment Grade Municipals, based on net asset value. Applicant's preferred shares were converted into preferred shares of the acquiring fund at a ratio of one-to-one. Expenses of $548,000 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Van Kampen Asset Management, applicant's investment adviser.

Filing Date: The application was filed on September 5, 2007.

Applicant's Address: 522 Fifth Ave., New York, NY 10036.

Asset Management Fund Large Cap Equity Institutional Fund, Inc. [File No. 811–620]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 8, 2007, applicant transferred its assets to Large Cap Equity Fund, a portfolio of Asset Management Fund, based on net asset value. Expenses of $229,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on August 31, 2007.

Applicant's Address: 675 Third Ave., Suite 1130, New York, NY 10017.

ACM Municipal Securities Income Fund, Inc. [File No. 811–7510]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 18, 2007, applicant transferred its assets to AllianceBernstein National Municipal Income Fund, Inc., based on net asset value. Each holder of applicant's preferred shares received corresponding preferred shares of the acquiring fund having an aggregate liquidation preference and value equal to the aggregate liquidation preference and value of the respective class of applicant's preferred stock. Expenses of $215,405 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on July 24, 2007 and amended on September 17, 2007.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

The Tocqueville Alexis Trust [File No. 811–8428]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2006, applicant transferred its assets to The Tocqueville Fund, a series of The Tocqueville Trust, based on net asset value. Expenses of $170,265 incurred in connection with the reorganization were paid by Tocqueville Asset Management L.P., applicant's investment adviser.

Filing Date: The application was filed on August 20, 2007.

Applicant's Address: 40 W 57th St., 19th Floor, New York, NY 10019.

Franklin Templeton High Yield Trust [File No. 811–21358]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on August 20, 2007.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

Value Line U.S. Multinational Company Fund, Inc. [File No. 811–7311]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 16, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $10,157 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 17, 2007 and amended on September 5, 2007.

Applicant's Address: 220 East 42nd St., New York, NY 10017.

Advantage Advisers Troon Fund, L.L.C. [File No. 811–8003]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 22, 2007, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $189,970 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on August 23, 2007, and amended on September 20, 2007.

Applicant's Address: c/o Oppenheimer & Co. Inc., 200 Park Ave., 24th Floor, New York, NY 10116.

Excelsior Directional Hedge Fund of Funds NewSub, LLC [File No. 811–22055]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering of its securities.

Filing Dates: The application was filed on April 26, 2007, and amended on September 18, 2007.

Applicant's Address: c/o U.S. Trust Hedge Fund Management, Inc., 225 High Ridge Rd., Stamford, CT 06905.

Federated Capital Income Fund, Inc. [File No. 811–5114]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 26, 2003, applicant transferred its assets to Federated Capital Income Fund, a portfolio of Federated Income Securities Trust, based on net asset value. Applicant paid $103,804 in expenses incurred in connection with the reorganization.

Filing Dates: The application was filed on April 17, 2007, and amended on April 18, 2007, September 14, 2007 and September 17, 2007.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19579 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28008; 812–13232]

Fidelity Rutland Square Trust, *et al.*; Notice of Application

September 28, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

APPLICANTS: Fidelity Management & Research Company (''FMR''), Fidelity Management Trust Company (''FMTC''), Strategic Advisers, Inc. (''SAI'') (collectively, the ''Adviser''); Fidelity Distributors Corporation (''FDC'') and National Financial Services LLC (''NFS'') (collectively, the ''Distributor''); and Fidelity Rutland Square Trust (the ''Trust'').

FILING DATES: The application was filed on September 6, 2005, and amended on September 27, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 23, 2007, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is a statutory trust organized under the laws of the state of Delaware and is registered under the Act as an open-end management investment company. The Trust currently offers three series that intend to rely on the relief requested by the application: PAS Small Cap Fund of Funds, PAS International Fund of Funds, and PAS U.S. Opportunity Fund of Funds (''PAS Funds,'' and each a ''Fund of Funds'').[1] Each PAS Fund operates as a fund of funds and has its own distinct investment objectives, policies and restrictions.

2. SAI currently serves as the investment adviser to each PAS Fund. FMR and SAI are investment advisers registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). FMTC is a ''bank'' within the meaning of section 202(a)(2) of the Advisers Act and, accordingly, is exempt from registration under the Advisers Act. Any future Adviser will be registered under the Advisers Act or exempt from registration. Each of FMR, FMTC, and SAI is a direct or indirect subsidiary of FMR Corp., a Massachusetts corporation. FDC and NFS are broker-dealers registered under the Securities Exchange Act of 1934 (''Exchange Act''). Each of FDC and NFS is a direct or indirect subsidiary of FMR Corp. FDC is currently the distributor of the PAS Funds.

3. Applicants request relief to permit: (a) A Fund of Funds to acquire shares of registered open-end management investment companies that are not part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (the ''Non-Affiliated Investment Companies'') and unit investment trusts (''UITs'') that are not part of the same group of investment companies as the Fund of Funds (''Non-Affiliated Trusts,'' and together with the Non-Affiliated Investment Companies, the ''Non-Affiliated Underlying Funds''); (b) the Non-Affiliated Underlying Funds, their principal underwriter and brokers and dealers registered under the Exchange Act (''Brokers'') to sell such shares to the Fund of Funds; (c) a Fund of Funds to acquire shares of certain other registered open-end management investment companies advised by the Adviser or series thereof and that are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (''Affiliated Underlying Funds,'' and together with the Non-Affiliated Underlying Funds, the ''Underlying Funds''); and (d) the Affiliated Underlying Funds, their principal underwriter and Brokers to sell such shares to the Fund of Funds.[2] Certain of the Non-Affiliated Underlying Funds

[1] Applicants request that the order extend to each registered open-end management investment company or series thereof that is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act as the Trust (each included in the term ''Fund of Funds'') and advised by the Adviser or any investment adviser controlling, controlled by, or under common control with the Adviser (each included in the term ''Adviser''). Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any other existing or future registered open-end management investment company that subsequently relies on the order will do so only in accordance with the terms and conditions of the application.

[2] With regard to purchases of shares of Non-Affiliated Underlying Funds, the requested order would apply to purchases made by a Fund of Funds only to the extent that the Fund of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act.

may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs''). Each Fund of Funds also may invest in stocks, bonds, money market instruments and other securities and financial instruments that are consistent with its investment objective.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit the Funds of Funds to acquire shares of the Underlying Funds and to permit the Underlying Funds, their principal underwriter and Brokers to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Non-Affiliated Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Underlying Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds may have over a Non-Affiliated Underlying Fund, applicants propose a condition prohibiting: (a) The Adviser and any person controlling, controlled by or under common control with the Adviser, any investment company or issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act, advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the ''Group''), and (b) any investment adviser to a Fund of Funds within the meaning of section 2(a)(20)(B) of the Act (''Subadviser''), any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the ''Subadviser Group'') from controlling (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 below precludes a Fund of Funds and its Adviser, Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Fund Affiliate'') from causing any existing or potential investment by the Fund of Funds in a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund Affiliate and the Non-Affiliated Underlying Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Non-Affiliated Fund Affiliate''). Non-Affiliated Underlying Funds will be prohibited from purchasing a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Subadviser, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Non-Affiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. Applicants also propose a condition that once an investment by a Fund of Funds in the securities of a Non-Affiliated Investment Company exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Non-Affiliated Investment Company, including a majority of the independent directors or trustees, will determine that any consideration paid by the Non-Affiliated Investment Company to the Fund of Funds or a Fund Affiliate Service Provider [3] in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Non-Affiliated Investment Company; (b) is within the range of consideration that the Non-Affiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

7. To further assure that a Non-Affiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and Non-Affiliated Investment Company will execute an agreement stating, without limitation,

[3] A ''Fund Affiliate Service Provider'' is the Adviser, any Subadviser, promoter or principal underwriter of the Fund of Funds, and any person controlling, controlled by or under common control with any of these entities, provided that (i) such person would reasonably be expected to be in a position to provide services of a securities-related nature (that is, investment advisory, brokerage, distribution, transfer agency, administration, participant recordkeeping or shareholder services) to a Non-Affiliated Underlying Fund, or (ii) if such person is not described by clause (i), to the actual knowledge of the Adviser, any Subadviser, promoter or principal underwriter of the Fund of Funds, such person currently has or is reasonably expected to begin having a material business relationship with a Non-Affiliated Underlying Fund.

that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that a Non-Affiliated Underlying Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment from a Fund of Funds.[4]

8. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to approving any investment advisory contract under section 15 of the Act, the board of trustees of the Fund of Funds (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), will find that the investment advisory fees charged under the Fund of Fund's investment advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Adviser or Distributor will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Non-Affiliated Investment Company under rule 12b–1 under the Act) received from a Non-Affiliated Underlying Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund. Applicants also state that any sales charges and/or service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830''), charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a funds of funds set forth in NASD Conduct Rule 2830.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except in certain circumstances identified in condition 10 below. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including its expense structure and the additional expenses of investing in Underlying Funds.[5]

B. Section 17(a)

10. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

11. Applicants state that if a Funds of Funds and an Affiliated Underlying Fund were deemed to be under common control, they would be affiliated persons of each another. Applicants also state that a Funds of Funds and an Underlying Fund might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[6]

12. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching.[7] Applicants note that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Non-Affiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Non-Affiliated Underlying Fund, it will vote its shares of the Non-Affiliated Underlying Fund in the same proportion as the vote of all other holders of the Non-Affiliated Underlying Fund's shares. This condition will not apply to the

[4] A Non-Affiliated Investment Company (including an ETF) would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[5] Each Fund of Funds also will comply with the disclosure requirements concerning the aggregate expenses of investing in Underlying Funds set forth in Investment Company Act Release No. 27399 (June 20, 2006).

[6] Applicants note that a Fund of Funds investing in ETFs generally would purchase and sell shares of an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

[7] Applicants acknowledge that receipt of any compensation by (a) An affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgement.

Subadviser Group with respect to a Non-Affiliated Underlying Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser, acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of a Non-Affiliated Investment Company) or as the sponsor (in the case of a Non-Affiliated Trust).

2. No Fund of Funds or Fund Affiliate will cause any existing or potential investment by the Fund of Funds in a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund Affiliate and the Non-Affiliated Underlying Fund or a Non-Affiliated Fund Affiliate.

3. The Board of the Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Adviser and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund Affiliate from a Non-Affiliated Underlying Fund or a Non-Affiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Non-Affiliated Investment Company exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Non-Affiliated Investment Company, including a majority of the independent directors or trustees, will determine that any consideration paid by the Non-Affiliated Investment Company to the Fund of Funds or a Fund Affiliate Service Provider in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Non-Affiliated Investment Company; (b) is within the range of consideration that the Non-Affiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Non-Affiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Non-Affiliated Underlying Fund will purchase a security in any Affiliated Underwriting.

6. Before investing in a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Non-Affiliated Investment Company will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds will notify the Non-Affiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Non-Affiliated Investment Company a list of the names of each Fund Affiliate Service Provider. The Fund of Funds will notify the Non-Affiliated Investment Company of any changes to the list of names as soon as reasonably practicable after a change occurs. The Non-Affiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

7. Before approving any advisory contract under section 15 of the Act, the Board of the Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under the advisory contract will be based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. These findings and the basis upon which they are made will be recorded fully in the minute books of the appropriate Fund of Funds.

8. The Adviser or Distributor will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Non-Affiliated Investment Company under rule 12b–1 under the Act) received from a Non-Affiliated Underlying Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from a Non-Affiliated Underlying Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

9. Any sales charges and/or service fees (as defined in NASD Conduct Rule 2830) charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

10. No Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) Acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19631 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28007; 812–13426]

Van Eck Associates Corporation, et al.; Notice of Application

September 28, 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 section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an

exemption from sections 17(a)(1) and (a)(2) 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 equity securities indices (''Equity Funds''), to issue shares of limited redeemability (''Shares''); (b) secondary market transactions in the Shares of the Equity Funds to occur at negotiated prices; (c) dealers to sell Shares of Equity Funds 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 Equity Funds to deposit securities into, and receive securities from, the Equity Funds in connection with the purchase and redemption of aggregations of Shares; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Equity Funds to acquire Shares; and (f) under certain circumstances, the Equity Funds that track certain foreign equity securities indices to pay redemption proceeds more than seven days after the tender of Shares (the ''Prior Order'').[1] Applicants seek to amend the Prior Order in order to offer additional series based on fixed income securities indices (the ''New Funds'' and together with the Equity Funds, the ''Funds'').

APPLICANTS: Van Eck Associates Corporation (''Adviser''), Market Vectors ETF Trust (''Trust''), and Van Eck Securities Corporation (''Distributor'').

FILING DATES: The application was filed on September 25, 2007, and amended on September 28, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 23, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 99 Park Avenue, 8th Floor, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Branch Chief, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is organized as a series fund with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940 (''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 (the ''Exchange Act''), will serve as the principal underwriter and distributor of each New Fund's Shares.

2. The Trust is currently permitted to offer Funds based on equity securities indices in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trust to offer the New Funds that, except as described in the application, would operate in a manner identical to the 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 of a fixed income securities index (''Underlying Index'').[2] No entity that creates, compiles, sponsors, or maintains an Underlying 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 Trust, the Adviser, any Sub-Adviser, the Distributor, or a promoter of a New Fund.

4. The investment objective of each New Fund will be to provide investment results that correspond, before expenses, generally to the price and yield performance of the relevant Underlying Index. The Adviser may fully replicate a New Fund's relevant Underlying Index or use a representative sampling strategy where the New Fund will seek to hold a representative sample of the component securities of the Underlying Index.

5. Under the Prior Order, applicants stated that each Equity Fund would invest at least 95% of its total assets in the component securities of its underlying index and may invest up to 5% of its assets in money market instruments, money market funds, futures contracts, options, options on futures contracts, swap contracts, cash and cash equivalents as well as in stocks not included in its underlying index but which the Adviser believes will help the Equity Fund track its underlying 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, as disclosed in the relevant prospectus, in the securities that comprise the relevant Underlying Index, and at times may invest up to 20% of its total assets in certain futures, options, and swap contracts, cash and cash equivalents, as well as securities not included in its Underlying Index which the Adviser believes will help the Fund track its Underlying Index. At all times, a New 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 Underlying Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

6. Applicants state that the New Funds 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 Underlying Index (''Deposit

[1] Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 27283 (Apr. 7, 2006) (notice) and 27311 (May 2, 2006) (order), subsequently amended by Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 27694 (Jan. 31, 2007) (notice) and 27742 (Feb. 27, 2007) (order).

[2] The New Funds identified in the application would have as their Underlying Indexes: the Lehman Brothers Short Managed Money Municipal Index, Lehman Brothers Intermediate Managed Money Municipal Index, Lehman Brothers Long Managed Money Municipal Index, Lehman Brothers Non-Investment Grade Municipal Index, Lehman Brothers Managed Money Municipal California Index, and the Lehman Brothers Managed Money Municipal New York Index.

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 Funds in the Prior Order, except as specifically noted by applicants (and summarized in this notice). The New Funds will comply with the terms and provisions of the Prior Order except as modified by this application. Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19630 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28009; 812–13412]

Vanguard STAR Funds, et al.; Notice of Application

September 28, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Vanguard STAR funds, Vanguard Chester Funds, Vanguard Trustees' Equity Fund, Vanguard Variable Insurance Funds (collectively, the ''Trusts''), The Vanguard Group, Inc. (''VGI'') and Vanguard Marketing Corporation (''VMC'').

FILING DATES: The application was filed on August 10, 2007, and amended on September 24 and 28, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 23, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Nathan M. Will, The Vanguard Group, Inc., P.O. Box 2600, Valley Forge, PA 19482.

FOR FURTHER INFORMATION CONTACT: Donna Tumminio, Law Clerk, at (202) 551–6826, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. The Trusts are Delaware statutory trusts and are registered under the Act as open-end management investment companies. The Trusts offer separate series (''Funds'') that may invest in other registered investment companies in reliance on section 12(d)(1)(G) of the Act and rule 12d1–2 under the Act (''Underlying Funds''). Applicants propose that the Funds be permitted to invest in futures contracts, options on futures contracts, swap agreements, derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments''), in addition to Underlying Funds.[1]

2. VGI is a Pennsylvania corporation that is wholly and jointly owned by certain registered investment companies. VGI is registered as an investment adviser under the Investment Advisers Act of 1940 and as a transfer agent under the Securities Exchange Act of 1934 (''Exchange Act''). VGI provides each of the Funds with corporate management, administrative, transfer agency, and, in some cases, investment advisory services. VMC is a registered broker-dealer under the Exchange Act and is a wholly owned subsidiary of VGI. VMC provides all distribution and marketing services for the Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the

[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 Funds 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.

[1] Other Investments do not include shares of any registered investment companies that are not part of the ''same group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts. Applicants request that the relief also apply to any future Fund, whether organized as an investment company or as a series thereof, which is advised by VGI or any entity controlling, controlled by or under common control with VGI and which is part of the same group of investment companies as the Funds.

same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19639 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56555; File Nos. SR–Amex–2007–65; SR–BSE–2007–45; SR–CBOE–2007–64; SR–ISE–2007–44; SR–NYSEArca–2007–65]

Self-Regulatory Organizations; American Stock Exchange LLC; Boston Stock Exchange, Inc; Chicago Board Options Exchange, Incorporated and International Securities Exchange, LLC: Notice of Filing of Proposed Rule Changes Relating to the Definition of a Complex Trade; NYSE Arca, Inc.: Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Definition of a Complex Trade

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2007, September 13, 2007, June 12, 2007, June 1, 2007, and July 6, 2007, the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, LLC (''ISE''), and NYSE Arca, Inc. (''NYSE Arca'') (each, an ''Exchange'' and, collectively, the ''Exchanges''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II and III below, which Items have been substantially prepared by the Exchanges. On July 11, 2007, NYSE Arca filed Amendment No. 1 to its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend the definition of ''complex trade'' set forth in their respective rules pertaining to the Intermarket Options Linkage (''Linkage'') to include stock-option trades. The text of the proposed rule changes is available at the Exchanges' Web sites,[4] the Exchanges' principal offices, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, each Exchange included statements concerning the purpose of, and basis for, their proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

Under Section 8(c)(iii)(G) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''),[5] the Linkage

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] Amendment No. 1 to SR–NYSEArca–2007–65 effected technical corrections to the proposed rule change.

[4] *See http://www.amex.com, http://www.bostonstock.com, http://www.cboe.com, http://www.ise.com*, and *http://www.nyse.com*.

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating the Linkage proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act

Plan participants (''Participants'') may amend the definition of the term ''complex trade'' from time to time. The Participants have agreed to update the definition of ''complex trade'' to extend the associated trade-through liability exemption to cover certain stock-option trades. Accordingly, each of the Exchanges has submitted a proposal that would amend each of the Exchange's definition of ''complex trade,'' set forth in the Exchange's respective rules pertaining to the Linkage, to include the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) The same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation.[6]

2. Statutory Basis

The Exchanges believe the proposed rule changes are consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchanges believe the proposed rule changes are consistent with the requirements of Section 6(b)(5) of the Act,[8] which provides that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchanges have neither solicited nor received comments on these proposals.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 Numbers SR–Amex–2007–65; SR–BSE–2007–45; SR–CBOE–2007–64; SR–ISE–2007–44; and SR–NYSEArca–2007–65 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 Numbers SR–Amex-2007–65; SR–BSE–2007–45; SR–CBOE–2007–64; SR–ISE–2007–44; and SR–NYSEArca–2007–65. These file numbers 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal offices of the Exchanges. 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 Numbers SR–Amex-2007–65; SR–BSE–2007–45; SR–CBOE–2007–64; SR–ISE–2007–44; and SR–NYSEArca–2007–65 and should be submitted on or before October 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19558 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] The Exchanges propose to amend their respective rules that define ''complex trade'' for Linkage purposes, namely Amex Rule 940(b)(3), Boston Options Exchange Rule Chapter XII, Section 1(c), CBOE Rule 6.80(4), ISE Rule 1900(3), and NYSEArca Rule 6.92(a)(4).

The Phlx has filed a proposed rule change with the Commission to amend its definitions of ''synthetic option'' and ''complex trade'' to conform such definitions with the related ''stock option'' and ''complex trade'' definitions of the Exchanges. *See* SR–Phlx–2007–40.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56573; File No. SR–CHX–2007–16]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend Its Bylaws to Confirm That an Exchange Director Cannot Participate in the Determination of Any Matter Involving an Issuer of a Security Listed or To Be Listed on the Exchange, if the Director is a Director, Officer, or Employee of the Issuer

September 28, 2007.

I. Introduction

On July 27, 2007, the Chicago Stock Exchange, Inc. (''CHX'' 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 Article II, Section 7 of its bylaws to confirm that, a CHX director cannot participate in the determination of any matter involving an issuer of a security listed or to be listed on the Exchange, if the CHX director is a director, officer, or employee of the issuer. On August 10, 2007, CHX filed an amendment to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 24, 2007.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CHX bylaws currently prohibit a CHX director from participating in the determination of any matter in which the CHX director is personally interested. In its filing, CHX stated that the proposal would add a clarification to its bylaws by confirming certain situations when a CHX director would be deemed ''personally interested'' in a matter involving an issuer of a security listed or to be listed on the Exchange. Specifically, under the proposal a CHX director is deemed ''personally interested'' when the CHX director is a director, officer, or employee of the issuer of the security listed or to be listed on the Exchange. Further, this proposed provision is non-exclusive and the proposed changes to the bylaws specifically state that CHX would evaluate other relationships between the CHX director and the issuer on a case-by-case basis.

III. Discussion

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to 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 notes that CHX's bylaws currently prohibit a CHX director from participating in the determination of any matter in which the CHX director is personally interested. However, in a matter involving an issuer of a security listed or to be listed on the Exchange, CHX's bylaws do not specify under what situations the CHX director would be deemed personally interested. The proposal would specifically state that a CHX director could not participate in a matter involving an issuer listed or to be listed on the Exchange if the CHX director is a director, officer, or employee of the issuer. As noted above, this is not an exclusive list defining all situations involving an issuer and a CHX director in which a CHX director would be deemed ''personally interested'' and shall not participate in a matter pursuant to CHX bylaws. Under the proposal, CHX would evaluate other relationships between a CHX director and an issuer on a case-by-case basis. Examples of other situations the Commission would expect to involve a personal interest would include, among others, when a CHX director is serving as a consultant to an issuer, is a significant shareholder of the issuer or has some other relationship with the issuer. Moreover, CHX represented that when CHX directors recuse themselves from a decision, CHX would reflect such recusals in the minutes of the meeting in which the recusal occurs, consistent with CHX's internal written policies.

The Commission believes that it is good corporate practice for CHX to confirm in its bylaws certain situations when an Exchange director is deemed personally interested in a matter involving an issuer of a security listed or to be listed on CHX and to reflect recusals in the minutes of the meetings in which the recusal occurs. This will help to ensure that matters involving the listing and delisting of issuer's securities on CHX is considered in a fair and impartial manner which furthers the protection of investors and the public interest consistent with Section (6)(b)(5) of the Act. Based on the above, the Commission believes that the proposal is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–2007–16) as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19559 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56571; File No. SR–FINRA–2007–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the Reporting of Foreign Equity Securities to the Order Audit Trail System

September 28, 2007.

I. Introduction

On July 31, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) 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 relating to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Partial Amendment No. 1, the Exchange stated when a director recuses himself or herself from a decision, the Exchange would reflect that recusal in the minutes of the meeting at which the recusal occurred, in accordance with its internal written policies.

[4] *See* Securities Exchange Act Release No. 56281 (August 17, 2007), 72 FR 48708.

[5] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

reporting of order information for foreign equity securities to the Order Audit Trail System (''OATS''). The proposed rule change was published for comment in the **Federal Register** on August 9, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NASD Rules 6950 through 6958 (''OATS Rules'') impose obligations on member firms to record in electronic form and report to OATS on a daily basis certain information regarding orders in Nasdaq-listed equity securities originated, received, transmitted, modified, canceled, or executed by members. FINRA integrates the OATS information with quote and transaction information from a number of different sources to create a time-sequenced record of orders, quotes, and transactions.

Currently, a member has recording and reporting obligations under the OATS Rules only with respect to orders in Nasdaq-listed equity securities. Beginning on February 4, 2008, members also will be required to record and report order information regarding all OTC equity securities, as defined in NASD Rule 6951.[4] The definition of ''OTC equity security'' encompasses essentially all foreign equity securities, except those that are listed on a U.S. national securities exchange.

After approval of NASD–2005–101, FINRA indicated that numerous member firms and industry organizations raised issues with its staff regarding the breadth of the application of the OATS Rules to foreign equity securities, as well as issues presented by the lack of U.S. symbols for many foreign securities; the programming difficulties associated with tracking trades in foreign symbols and currencies; and the fact that, for many firms, orders for foreign securities are handled by foreign affiliates that are not currently set up to record and report OATS information. In addition, FINRA noted that many trades in foreign equity securities are routed to foreign broker-dealers and executed on a foreign stock exchange. Consequently, pursuant to the OATS Rules although FINRA would receive OATS information regarding the origination and routing of such orders, FINRA would not receive execution reports, and FINRA would not have trade report data to consolidate with the OATS data.[5]

In response to these concerns, FINRA proposed to amend Rule 6952 to exclude certain orders and transactions in foreign equity securities from the OATS recording and reporting requirements. With this change members will only have to record and report order information regarding foreign equity securities only in those instances where any resulting execution is subject to the transaction reporting requirements in Rule 6620. Members would not be required to record and submit information to FINRA for orders in a foreign equity security that do not result in a trade report to FINRA.[6] FINRA will receive order information for the same transactions for which FINRA receives trade report information. FINRA believes this change strikes the appropriate balance enabling FINRA to effectively monitor its members' compliance with their order handling requirements while avoiding overly burdensome reporting requirements.

In addition, FINRA proposed to permit firms to use Form T to report required OATS information instead for reporting through the firm's normal OATS reporting channels in instances where a firm has a reporting obligation in a foreign equity security, but does not have a U.S. symbol assigned to it at the time of the trade.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[8] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change addresses concerns unique to OATS reporting requirements for orders in foreign equity securities in a manner consistent with the Act, and strikes an appropriate balance between ensuring that FINRA can effectively monitor members' compliance with their order handling obligations and avoiding overly burdensome reporting requirements. Members will continue to be required to record and report OATS data to FINRA in those instances where a resulting execution in a foreign equity security is subject to a transaction reporting requirement pursuant to Rule 6620(g). Therefore, FINRA will receive OATS data that it can use in connection with trade reports to effectively monitor its members' activities in foreign equity securities. However, members will be relieved of the obligation to record and report OATS data to FINRA in instances where there is not a transaction reporting requirement.

Further, the Commission believes that allowing members to report required OATS data for orders in a foreign equity security that has not been assigned a symbol at the time of the reportable event on Form T instead of through a member's normal OATS report channels will allow members to fulfill their trade reporting obligations and OATS obligations more efficiently while still ensuring the FINRA receives the information it requires to effectively monitor its members' trading activity in foreign equity securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2007–001), be, and hereby is, approved. It will become operative on February 4, 2008.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19593 Filed 10–3–07; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 56199 (August 3, 2007), 72 FR 44899 (the ''Notice'').

[4] *See* Securities Exchange Act Release No. 54585 (October 10, 2006); 71 FR 61112 (October 17, 2006) (SR–NASD–2005–101); NASD *Notice to Members* 06–70 (December 2006); *see also* Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR–NASD–2007–019).

[5] Trade reporting requirements under NASD Rule 6620 do not extend to a member's transactions in foreign equity securities executed on and reported to a foreign securities exchange or transactions executed over-the-counter in a foreign country that are reported to the regulator of securities markets for that country. *See* NASD Rule 6620(g); Securities Exchange Act Release No. 55745 (May 11, 2007), 72 FR 27891 (May 17, 2007) (SR–NASD–2007–030).

[6] See the Notice at 44900–44901 for examples of trade reporting scenarios.

[7] In approving this proposed rule change, the Commission 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. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5951]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Congress-Bundestag Youth Exchange Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–08.

Catalog of Federal Domestic Assistance Number: 19.410.

Key Dates:

Application Deadline: November 8, 2007.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division (ECA/PE/C/PY), of the Department of State's Bureau of Educational and Cultural Affairs announces an open competition for the Congress-Bundestag Youth Exchange Program (CBYX). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to facilitate educational exchanges between American and German high school students and young professionals.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The CBYX program supports the exchange of American and German young people in order to sustain and strengthen German-American friendship based on common values of democracy, and to convey lasting personal and institutional relationships to the successor generation. The primary objective of the program is to encourage American and German youth to learn about each other's society and culture through educational exchange. Additional goals for this competition include a renewed effort to promote the participants' roles as young ambassadors and the impact they can have on US-German relations, and to strengthen the linkages between U.S. Representatives and their Bundestag counterparts. The program provides a full scholarship for an academic year experience of living and studying in the host country.

The Department of State, Bureau of Educational and Cultural Affairs administers the CBYX program in the United States. The program is known in Germany as the Parlamentarisches Patenschafts-Program (PPP), and is administered by the German Bundestag Administrative Office (WI4).

Inaugurated in 1983 through a bilateral agreement between the U.S. Congress and the German Bundestag, each government provides funding to exchange organizations through assistance awards for the costs of participant recruitment and selection, international airfare, orientation and debriefing, and hosting support for the respective exchange participants.

The U.S.-German agreement calls for an open grants competition every four years, and WI4 is holding a simultaneous open competition to select the German counterpart organizations that will manage the program in Germany. Up to five German high school exchange organizations will be partnered with five American high school exchange organizations, and one German vocational and one German young professionals exchange organization will be paired with American exchange organizations. Within the proposal narrative organizations should name their intended German partner organization and provide pertinent institutional background and support materials as appropriate, and demonstrate your ability to cooperate with foreign partners in implementing exchanges.

Pending the availability of funds, organizations that are successful in this competition will be awarded grants in FY2009 for academic year 2009–10. Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew the grants for three additional fiscal years before openly competing them again. All grants will be subject to availability of funds.

Please note: At the time of publication, funds have not been appropriated to support this program. As is the case with all Bureau assistance awards, final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

According to the agreement between the State Department and the Bundestag WI4, the maximum number of participants to be exchanged in any given year is 400 Germans and 400 Americans. However, the actual number of participants exchanged each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. Though Congress has not yet determined the budget level for FY2009, the competition for program year 2009–10 will be based on *up to* 350 American and 360 German participants. Throughout the four-year grant cycle, representatives of both governments and the respective grantee organizations will *hold annual discussions to determine the final participant numbers for each academic year.*

Participants are chosen according to procedures and criteria established by each government. In the U.S. the CBYX program has three components.

1. *High School Component:* In FY 2009 this component may provide a maximum of 250 (50 per each organization) scholarships for a one-year educational and cultural homestay experience in Germany for American high school students ages 15–18, and reciprocally, host a maximum of 285 (57 per each organization) German students in the U.S. High school exchange organizations are invited to bid on conducting merit-based competitions among American high school students in one or more of five designated regions of the United States, as follows:

Northeast: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Washington, DC, Delaware, Maryland.

Southeast: Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Tennessee, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico.

Central States: Indiana, Illinois, Michigan, Minnesota, Wisconsin, Iowa, Missouri, Nebraska.

Southwest: Kansas, Texas, Oklahoma, Colorado, New Mexico, Utah, Arizona, Southern California* (*the northern border of this region includes the counties of Monterey, San Benito, Fresno, and Inyo).

Pacific/Northwest: Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Nevada, North Dakota, South Dakota, Northern California* (*the southern border of this region includes the counties of Santa Cruz, Santa Clara, Merced, Madera, and Mono).

American high school exchange organizations may bid on more than one region, indicating the most preferred region(s) in priority order. Five organizations will be selected to conduct all aspects of the recruitment and selection of 50 American participants in one of the five regions. In coordination with its German partner organization, high school organizations will program 50 American and 57 German students. German students may be placed in host homes and schools throughout the U.S.

Organizations that are awarded a grant will conduct advertising, recruitment, processing of applications, screening, selection, pre-departure, arrival, and re-entry orientations, and management of all administrative and logistical matters including domestic and international travel.

In the host country, American and German partner organizations will coordinate arrival and re-entry orientation for the respective exchange students, placement of the students in host families and schools (nationwide), arrange program enrichment activities, conduct the recruitment, screening, including criminal background checks, selection and orientation of host-families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

For the German participants grantee organizations should secure all host family and school placements at least two weeks prior to the German students' arrival in the United States. Organizations will be required to submit to the program office a list of these placements (host families, host schools, and corresponding Congressional representatives/districts) no later than August 31 and periodically update the information throughout the year.

Grantee organizations will submit to the Department of State program office, at least 60 days after departure/arrival data lists of all current American participants with U.S. addresses, names of parents and corresponding Congressional representatives/districts.

2. *Vocational Component:* This component provides scholarships to graduating American high-school seniors with a vocational specialization for a one-year professional study and training experience in their fields of interest in Germany. One organization will be selected to conduct all aspects of the nationwide selection competition in the U.S. for 25 American students and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations, and management of all administrative and logistical matters including domestic and international travel. (During the selection process the grantee is encouraged to work with vocational educational offices at the state level, as well as administrators of secondary schools with vocational education curriculum.)

The German partner organization chosen by the Bundestag Administrative Office will coordinate arrival and re-entry orientation for the students and their placement in host families and schools, arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

The vocational grantee organization will submit to the Department of State program office, at least 60 days after departure/arrival a data list of all current American participants with U.S. addresses, names of parents and corresponding Congressional representatives/districts.

3. *Young Professionals Component:* This component provides scholarships for a one-year professional study and training experience in the host country in business, technical, vocational, and agricultural fields to young American and German students ages 18–24. One organization will be selected to conduct all aspects of programming for 75 American and 75 German Young Professionals, including the nationwide competition for the Americans and placement of the German students in American homes and schools, advertising, recruitment, processing of applications, screening, selection and pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, the American and German partner organization will coordinate arrival and re-entry orientation for the students, the placement of the students in host families (or other suitable living quarters) and schools (colleges/universities), arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

In the United States, each German young professional participant will be placed in a two-or four-year college for one semester of full-time study or a minimum of 12 credit hours (which may include an English class) throughout the academic year. The organization is encouraged to seek tuition waivers and cost sharing with cooperating colleges. The organization will coordinate with each participant to assure that his/her practicum is based on a prospectus of the specific skills and functions that will be mastered and that there is a structured learning component that enables the participant to gain a perspective on the overall operation of the business. The selected organization will also coordinate a six-week Congressional internship on Capitol Hill or in the state office for up to five German young professionals.

A monthly stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but it is anticipated that the stipend would be substantially reduced or eliminated during the second half of the program when the participants receive allowances for living expenses from the firms or agencies hosting their practicum. The current stipend range is $250 to $300 per the regional cost of living. Where possible, hosting arrangements should be found that do not require subsidization.

The selected young professionals organization will be required to submit to the program office a list of the German placements in the United States (host homes and host schools and corresponding Congressional representatives/districts) no later than August 31, and periodically update the information throughout the year.

The young professionals organization will submit to the Department of State program office, at least 60 days after departure/arrival data lists of all current American participants with U.S. addresses, names of parents and corresponding Congressional representatives/districts.

4. *Administrative Supplementals:* The administrative supplemental will provide funds to:

(1) One high school organization to produce and distribute the high school scholarship promotional materials and maintain the CBYX High School Scholarship application Web site, and

(2) One organization from either of the three components to maintain the

Congress-Bundestag Alumni Database Web site for all CBYX participants.

High School Scholarship Materials and Web Site

In addition to the 20-page program narrative, interested high school organizations may submit a bid to produce and distribute the high school scholarship promotional materials and maintain the High School scholarship application Web site. The narrative for the supplemental should not exceed three pages and include a separate budget projection. For budget/line-item details please see the Project Objectives, Goals, and Implementation (POGI). The supplemental funds will be included in the final grant agreement and listed as a separate item of expenditure. The Bureau anticipates funding this activity at a level of approximately $53,200, pending availability of funds.

The selected high school ''administrative'' organization will coordinate with all of the high school grantee organizations data/input for production of the promotional materials. Once the input is finalized the administrative organization will mass produce and distribute the materials to the high school organizations. This includes advertisement brochures, posters, and scholarship applications for recruiting American high school students, and set up/maintenance of the scholarship application Web site. The Web site advertises the same printed promotional materials and allows interested students to download applications and submit them to the respective high school organization responsible for recruiting in the students' home state.

Once the high school grantee organizations receive the promotional materials from the administrative organization they will distribute the materials to a wide audience within their appointed region, including public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. (Innovative methods of publicizing the program are welcome, within funding limitations. Organizations are encouraged to utilize their volunteer networks and alumni to promote the program.)

Alumni Database Web Site

In addition to the 20-page program narrative, interested organizations from either of the three components may submit a bid to set up and maintain the CBYX Alumni Database Web site. The narrative for the supplemental should not exceed three pages and include a separate budget projection. For budget/line-item details please see the Project Objectives, Goals, and Implementation (POGI). The supplemental funds will be included in the final grant agreement and listed as a separate item of expenditure. The Bureau anticipates funding this activity at a level of approximately $10,000, pending availability of funds.

The organization selected to maintain the Congress-Bundestag Alumni Database Web site for all CBYX participants will set up and maintain a Web-based listing of CBYX participants designed to centrally harness alumni and encourage activities beyond their participation in the program. The organization select for this supplemental will coordinate participant/alumni lists will all CBYX organizations to assure students' eligibility and accuracy.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2009.

Approximate Total Funding: Unknown at this time, *pending* a FY–2009 *Congressional Appropriation*. However, for proposal development purposes, the total FY–2007 funding level was $3,256,000.

Approximate Number of Awards: 7 (5 High School Component, 1 Young Professionals Component, 1 Vocational Component).

Approximate Average Award: Unknown at this time, pending a FY–2009 Congressional Appropriation.

Anticipated Award Date: January 2010.

Anticipated Project Completion Date: August 2011.

Additional Information: Final funding will be pending a FY 2009 Congressional Appropriation. However, for illustrative purposes, the current average per capita costs for each program component are: $4,545 for the high school component, $5,698 for the young professionals component, and $3,900 for the vocational component. Applicants' budget submissions should be realistic and reflect anticipated actual costs required to implement the program(s) and the varying costs specific to the German participants' hosting needs, and the American participants' programming needs. Budget submissions under this RFGP may be subject to renegotiation. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Budgets should be prepared according to Tab D of the Proposal Submission Instructions (PSI). You may delete or modify line items according to program and administrative needs as described in the proposal narrative. Please include budget notes, as appropriate.

High school organizations should prepare a budget to recruit/program 50 Americans and host 57 Germans; vocational organizations should prepare a budget to recruit/program 25 Americans; young professionals organizations should prepare a budget to recruit/program 75 Americans and 75 Germans.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the *Office of Citizen Exchanges, Youth Programs Division, ECA/PE/C/PY, Room 568*, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 203–7527 and (202) 203–7529, *jonessa1@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–08–08 when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify *Bureau Program Officer Shalita Jones* and refer to the Funding Opportunity Number ECA/PE/C/PY–08–08 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62, *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62, *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at #*http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The

Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable timeframe), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.
the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget projection for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Please refer to the Solicitation Package for allowable costs, complete budget guidelines and formatting instructions.

Note: Final budgets will be solicited from the selected grantees for FY 2009 (academic year 2009–10) no later than fall 2009.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: November 8, 2007.

Reference Number: ECA/PE/C/PY–08–08.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/PE/C/PY–08–08, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation

packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability To Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm #articleI.*

VI.3. Reporting Requirements

You must provided ECA with a hard copy original plus one of the following reports:

Mandatory:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include a narrative of program activities and financial expenditures according to the proposed time line within the specified quarter, as well as issues that may have arisen and how they were handled, lessons learned, etc., (see POGI for more details).

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document. Reports may also be sent electronically to *reports@state.gov* and copied the program officer.

VII. Agency Contacts

For questions about this announcement, contact Shalita Jones, Program Officer, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, ECA/PE/C/PY–08–08, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7507 and fax number (202) 203–7529, *jonessa1@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–08.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 27, 2007.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–19642 Filed 10–3–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28734; Notice 1]

DaimlerChrysler Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

DaimlerChrysler Corporation (DCC) has determined that certain model year 2007 motor vehicles that it produced between May 8, 2006 and March 16, 2007 do not comply with paragraph S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 pounds) or Less.* DCC has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), DCC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of DCC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 3,037 model year 2007 Dodge Dakota (Dakota) pickup trucks produced between May 8, 2006 and March 16, 2007. Paragraph S4.3(d) of FMVSS No. 110 requires:

> Vehicles S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g),* * *
>
> (d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size designation;* * *

By way of background, DCC explains that model year 2006 Dakotas were equipped with five P265/65R17 tires—the four tires installed on the vehicle at time of sale and the spare tire. The vehicle placard on the 2006 model year Dakota accurately reflected the sizes of the tires. DCC further explained that they decided to equip the subsequent model year 2007 Dakota with P265/60R18 tires. However, prior to the actual launch of the MY 2007 vehicles, DCC discovered that a P265/60R18 tire would not fit properly in the spare tire location on the vehicle. Therefore, DCC decided to retain the P265/65R17 tire as the spare tire, while going forward with the decision to use P265/60R18 tires as in-service original equipment. Unfortunately, the vehicle placards affixed to the subject model year 2007 Dakotas were not revised to reflect the decision to use the P265/65R17 spare tire, therefore the vehicles do not comply with S4.3(d).

DCC argues that the noncompliance, the erroneous designation of the size of the spare tire on the vehicle placard, does not have any adverse safety impact. In DCC's estimation, the P265/60R18 tire and the P265/65R17 tire are equivalent. They support this estimation by stating that the recommended cold tire inflation pressure specified on the vehicle placard—240 kPa (35 psi)—is appropriate for either P265/60R18 or P265/65R17 tires when mounted for service on the Dakota, and that the *Tire & Rim Association Handbook* confirms that the P265/65R17 spare tire supplied with the vehicles can carry more weight at 35 psi (2,124 pounds) than the P265/

60R18 tire referred to on the erroneous vehicle placard (2,064 pounds).

DCC states that all other information provided on the 2007 Dakota vehicle placard is correct.

In summation, DCC states that it has corrected the problem that caused these errors so that they will not be repeated in future production and that it believes that because the noncompliance is inconsequential to motor vehicle safety that no corrective action is warranted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. *By hand delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* until September 29, 2007, by logging onto the DOT Docket Management System Web site at *http://dms.dot.gov;* after September 28, 2007, by logging onto the Federal Docket Management System Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 5, 2007.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 27, 2007.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–19602 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28769; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) has determined that certain motor vehicle replacement equipment that it sold prior to May 17, 2007 did not comply with paragraphs S4.1(k) and S4.1(l) of 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209 *Seat Belt Assemblies.* FORD has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), FORD has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of FORD's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 180,603 seat belt replacement assemblies for 2000–2004 model year Ford Focus passenger cars and 191,352 service seat belt assemblies for 2001–2004 model year Ford Escape multipurpose passenger vehicles. The assemblies for the Focus passenger cars were sold from July 1999 through May 17, 2007, and the assemblies for the Escape multipurpose passenger vehicles were sold from June 2000 through April 18, 2007. Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require:

(k) Installation instructions. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Installations,'' November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

(l) Usage and maintenance instructions. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

Ford explains that the subject seat belt assemblies were sold in the United States and federalized territories without the installation, usage, and maintenance instructions required by paragraphs in S4.1(k) and S4.1(l) of FMVSS 209.

Ford makes the argument that the service seat belt assemblies in question are only made available to Ford authorized dealerships for their use or subsequent resale and that the Ford parts ordering process used by Ford dealers clearly identifies the correct service part required by model year, model, and seating position. By way of example, Ford further explains that an order for a driver's-side front buckle assembly for a 2002 model year Focus would be filled by the components specifically designed to be installed in that particular position in that specific vehicle. This is because Ford's service seat belt assemblies are designed to be installed properly only in their intended application.

Ford additionally states that technicians at Ford dealerships that replace seat belts have access to the installation instruction information available in workshop manuals. Installers other than Ford dealership technicians also have seat belt installation information available because all workshop manual information, including seat belt replacement information, is made available to the general public on the Ford Motorcraft Web site and through aftermarket service information compilers such as Mitchell and Alldata.

Ford additionally argues that a significant portion of paragraph S4.1(k) appears to address a concern with proper installation of aftermarket seat belts into vehicles that were not originally equipped with these restraints. Ford also notes that SAE

J800c which is cited in the regulation involves installation of ''universal type seat belt assemblies,'' particularly where no seat belt had previously been installed, and that these concerns do not apply to the service seat belts. The vehicles involved in the instant petition have uniquely designed seat belt components and replacement seat belt assemblies are installed into the identical location from which the original parts were removed.

Ford also states that proper seat belt usage instructions are clearly laid out in the Owner Guide that is included with each new vehicle. There are no requirements for scheduled maintenance on the seat belt assemblies in the subject vehicles. Information concerning periodic inspection for wear and function of the seat belts, as well as for their proper usage is included in the vehicle Owner Guide and this information applies as equally to service seat belt assemblies as it does to the original equipment belts. All Ford Owner Guides, including those for the 2000–2004 Focus and 2001–2004 Escape, are also available to the public, free of charge on the Ford Motorcraft Web site.

Ford is not aware of any customer or field reports of service seat belt assemblies being incorrectly installed in the subject applications as a result of installation instructions not accompanying the service part. Ford also is not aware of any reports requesting installation instructions, which it believes to be indicative of the availability of this information from the sources listed above.

In summation, FORD states that it has corrected the problem that caused these errors so that they will not be repeated in future production and that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: Until September 29, 2007, by logging onto the DOT Docket Management System Web site at *http://dms.dot.gov* after September 28, 2007, by logging onto the Federal Docket Management System Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 5, 2007.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 27, 2007.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–19606 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28735; Notice 1]

Mazda North American Operations, Receipt of Petition for Decision of Inconsequential Noncompliance

Mazda North American Operations (Mazda) has determined that certain motor vehicle replacement equipment that it delivered prior to June 25, 2007 did not comply with paragraphs S4.1(k) and S4.1(l) of 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. MAZDA has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MAZDA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MAZDA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are an unspecified quantity of seat belt replacement assemblies delivered prior to June 25, 2007. Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require:

(k) Installation instructions. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Installations,'' November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

(l) Usage and maintenance instructions. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

MAZDA explains that three possible situations apply to the subject seat belt replacement assemblies.

In the first instance, the seat belt assembly instruction sheets included with the replacement assemblies appropriate for Mazda B-series pickup trucks and Mazda Navajo multipurpose passenger vehicles only identified the assemblies as applicable to the Ford Ranger pickup trucks or Ford Explorer multipurpose passenger vehicles, respectively. Although other information provided was accurate for the Mazda vehicles, the incorrect vehicle reference fails to comply with S4.1(k) of the standard.

Second, replacement seat belt assemblies produced for use in the

following vehicles did not include either the installation instructions or the instructions for the proper use and maintenance of the replacement seat belt assemblies. This fails to comply with both paragraph S4.1(k) and paragraph S4.1(l) of the standard:

1992–1995 MY Mazda 929, delivered from 1991 to 2007
1990–2002 MY Mazda 626, delivered from 1989 to 2007
1994–1995 MY Mazda MX–3, delivered from 1993 to 2007
1994–2007 MY Mazda MX–5, delivered from 1993 to 2007
1988–1997 MY Mazda MX–6, delivered from 1987 to 2007
1993–1995 MY Mazda RX–7, delivered from 1992 to 2007
1999–2003 MY Mazda Protege, delivered from 1998 to 2007
2001–2008 MY Mazda Tribute, delivered from 2000 to 2007
2004–2007 MY Mazda Mazda6, delivered from 2003 to 2007
2006–2007 MY Mazda 5, delivered from 2005 to 2007
2007 MY Mazda CX–9, delivered from 2006 to 2007
2007 MY Mazda B-Series Truck, delivered from 2006 to 2007

And finally, all remaining replacement seat belt assemblies produced for use in the United States and its territories did not include the instructions for the proper use and maintenance of the replacement seat belt assemblies. This fails to comply with S4.1(l) of the standard.

MAZDA makes the argument that the MAZDA parts ordering system used by Mazda dealers clearly identifies the correct service seat belt components for any given model/model year seat position combination. The parts are unique to each belt and are designed to assemble properly only in their intended application. When ordering Mazda replacement seat belt parts, the dealer must refer to the Mazda parts catalog to identify the ordering part number with the information on the specific vehicle model type, location and model year. Each replacement seat belt assembly is packaged individually with a specific part number label to ensure shipping the correct parts. Then, the dealer routinely checks to confirm that the part received matches the one ordered. Given the ordering system and process, the dealers could select, order, and obtain the correct parts. Also, installation instructions for seat belts are readily available in the Mazda workshop manuals and on the Internet. Therefore, the seat belt parts can be successfully installed with the information already available even though installation instructions did not accompany the replacement seat belt assemblies.

MAZDA further argues that since the instruction for proper use and maintenance is described in the owner's manual which is installed in the vehicle, incorrect usage and maintenance by the vehicle owner is highly unlikely.

MAZDA is not aware of any customer or field reports of service seat belt assemblies being incorrectly installed in the subject applications as a result of installation instructions not accompanying the service part.

MAZDA also stated that it is not aware of any reports requesting installation instructions, which it believed to be related to the noncompliances.

Upon discovery of the subject noncompliance, MAZDA took action to ensure that all replacement seat belt assemblies shipped in the future are packaged with the required installation instructions. MAZDA has also corrected all the replacement seat belt assemblies in the inventory for shipment to dealers.

In summation, MAZDA states that it has corrected the problem that caused these errors so that they will not be repeated in future production and that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. Electronically: until September 29, 2007, by logging onto the DOT Docket Management System Web site at *http://dms.dot.gov*; after September 28, 2007, by logging onto the Federal Docket Management System Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 5, 2007.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: September 27, 2007.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. E7–19604 Filed 10–3–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Notice of intent to seek approval of existing collection: Waybill Sample.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (Board) gives notice that it has submitted a request to the Office of Management and Budget (OMB) for approval of the currently existing collection of Waybill Sample data, which is described in detail below. The Board previously published a notice about these collections in the **Federal Register** on May 21, 2007, at 72 FR 28549. That notice allowed for a 60-day public review and comment period. No comments were received. Comments may now be submitted to OMB concerning (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Waybill Sample.
OMB Control Number: 2140–00.

STB Form Number: None.

Type of Review: Approval of existing collection.

Respondents: Any regulated railroad that terminated at least 4,500 carloads on its line in any of the three preceding years or that terminated at least 5% of the total revenue carloads that terminated in a particular state.

Number of Respondents: 64.

Estimated Time per Response: 75 minutes.

Frequency: 59 respondents report quarterly; 5 respondents report monthly.

Total Burden Hours (annually including all respondents): 370 hours.

Total ''Non-hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States. Under 49 CFR part 1244, a railroad is required to file carload-Waybill-Sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, it terminated 4500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular state. The information in the Waybill Sample is used by the Board, other Federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop testimony in Board proceedings. The Board has authority to collect this information under 49 U.S.C. 11144, 11145, and 11901(e).

DATES: Comments on this information collection should be submitted by December 3, 2007.

ADDRESSES: Comments should be faxed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Surface Transportation Board Desk Officer, at (202) 395–6974. When submitting comments, please refer to ''Paperwork Reduction Comments: Waybill Sample.''

For Further Information or To Obtain a Copy of Pertinent Regulations, Contact: Mac Frampton at (202) 245–0317 or at *hugh.frampton@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] These regulations are codified at 49 CFR parts 1244.1–1244.9 and are also available on the Web through *http://www.gpoaccess.gov/cfr/index.html.*

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3507(b) of the PRA, Federal agencies are required to provide, concurrent with their submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information.

Dated: October 4, 2007.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19612 Filed 10–3–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 209)]

Union Pacific Railroad Company—Discontinuance—in Utah County, UT

On September 14, 2007, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) an application for permission to discontinue service over a line of railroad known as the Elberta Line (Line). The Line consists of four end-to-end line segments consisting of the Tintic Industrial Lead from milepost 5.52 to milepost 26.00, the West Tintic Industrial Lead from milepost 26.00 to milepost 27.23, the Goshen Valley Branch from milepost 0.0 to milepost 3.80 (equation milepost 2.89 = milepost 2.98), and the Iron King Branch from milepost 0.0 to milepost 2.15, extending for a total distance of 27.57 miles in Utah County, Utah. The Line traverses U.S. Postal Service Zip Codes 84626, 84633, and 84651, and includes a station at Elberta.

The Line does contain federally granted rights-of-way.[1] Any documentation in UP's possession will be made available promptly to those requesting it. The applicant's entire case for discontinuance (case-in-chief) was filed with the application.

The Line has appeared on UP's system diagram map in category 1 since July 7, 2003.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.)—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case) by October 29, 2007. Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking and public use requests are not appropriate. Also, only offers of financial assistance (OFA) under 49 U.S.C. 10904 to subsidize (not purchase) the line will be entertained.

Persons opposing the discontinuance who wish to participate actively and fully in the process should file a protest. Persons who oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

In addition, a commenting party, or protestant may provide: (i) An OFA to subsidize rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); and (ii) recommended provisions for protection of the interests of employees.

The line sought to be discontinued will be available for subsidy for continued rail use, if the Board decides to permit the discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,300 filing fee. See 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning subsidy terms is set forth below.

Any filing in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 209) and must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) with a certificate of

[1] The Line contains several segments of federally granted rights-of-way that are reversionary and that collectively account for approximately 50% of the property affected by the proposed discontinuance.

service to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SEA has determined that this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8. Consequently, SEA concludes that this action does not require the preparation of an environmental assessment.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 27, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19504 Filed 10–3–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209830–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209830–96 (TD 8779), Estate and Gift Tax Marital Deduction.

DATES: Written comments should be received on or before December 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Robert Black, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Tax Marital Deduction.

OMB Number: 1545–1612.

Regulation Project Number: REG–209830–96.

Abstract: The information requested in regulation section 20.2056(b)–7(d)(3)(ii) is necessary to provide a method for estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain an extension of time to make the qualified terminable interest property (QTIP) election under section 2056(b)(7)(B)(v).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individual or households.

The estimated reporting burden in this regulation is reflected in the burden of Form 843, Claim for Refund and Request for Abatement, and Forms 706 and 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–19565 Filed 10–3–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 127367–07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 127367–07, 9100 Relief Under Sections 897 and 1445.

DATES: Written comments should be received on or before December 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at

Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: 9100 Relief Under Sections 897 and 1445.

OMB Number: 1545–XXXX.

Revenue Procedure Number: Revenue Procedure 127367–07.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. the information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make the relevant filings under section 897 and 1445.

Current Actions: This is a new revenue procedure.

Affected Public: Business or other for-profit institutions, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 1000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–19567 Filed 10–3–07; 8:45 am]

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Federal Register

Thursday,
October 4, 2007

Part II

Department of Homeland Security

8 CFR Parts 103, 204, 213a et al.
Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 213a, 299, and 322

[CIS No. 2098–00; DHS Docket No. USCIS–2007–0008]

RIN 1615–AA43

Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (''DHS'' or ''the Department'') regulations relating to intercountry adoptions by U.S. citizens. First, to facilitate the ratification of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, signed at The Hague on May 29, 1993 (''Convention''), the rule establishes new administrative procedures for the immigration of children who are habitually resident in Convention countries and who are adopted by U.S. citizens. Second, the rule makes other amendments to DHS regulations relating to the immigration of adopted children to reflect the changes to those provisions necessary to comply with the Convention. The Senate consented to ratification of the Convention in 2000 conditioned on the adoption of the necessary implementing regulations. Accordingly, this rule is necessary to establish the regulations necessary for the United States to ratify the Convention.

DATES: *Comment date:* Written comments must be submitted on or before December 3, 2007 to assure consideration.

Effective date: This rule is effective November 5, 2007.

ADDRESSES: You may submit comments to DHS, identified by DHS Docket No. USCIS–2007–0008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2007–0008 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Chief, Children's Issues, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd floor, Washington, DC 20529, telephone (202) 272–9176.

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the rule. DHS also invites comments that relate to the economic, environmental, or federalism effects of this rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number (USCIS–2007–0008) for this rulemaking. All comments received (including any personal information that may be included in the comment) will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

The Immigration and Nationality Act (''the Act''), 8 U.S.C. 1101, *et seq.*, provides three distinct provisions under which an adopted child may be considered, for immigration purposes, to be the child of his or her adoptive parents.[1] Section 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(E), relates to adoptions in general, and provides that an adopted child is considered the adoptive parent's child if certain custody and residence requirements are met. Section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F), facilitates the immigration of aliens who qualify as ''orphans,'' if they are adopted, or are coming to the United States to be adopted, by U.S. citizens. Section 101(b)(1)(G) of the Act, 8 U.S.C. 1101(b)(1)(G), added by section 302 of the Intercountry Adoption Act, Public Law 106–279, governs the immigration of children who are adopted, or are coming to the United States to be adopted, by U.S. citizens under the Convention. This background discussion provides an overview of each of these provisions.

A. Section 101(b)(1)(E) Adoptions

The first provision of the Act relating to adopted children is section 101(b)(1)(E). Under this provision, an adopted child is the adoptive parent's child for immigration purposes, if:

- The adoptive parent adopted the child before the child reached the age provided in that section, and
- The child has lived with, and been under the legal custody of, the adoptive parent for at least 2 years.

This two-year period of legal custody and joint residence can be satisfied by periods of legal custody and joint residence that pre-date the adoption. 8 CFR 204.2(d)(2)(vii)(C).

Until December 7, 1999, the definition in section 101(b)(1)(E) made immigration benefits available only to a child who had been adopted before the child's sixteenth birthday. Section 1(a)(1) of the Act of December 7, 1999, Public Law 106–139, however, amended

[1] The Reviser of Statutes has informally codified the Act as title 8 of the United States Code. Title 8, however, has not been enacted as positive law. For this reason, this rule will refer to each particular statutory provision by its section number in the Act itself. For ease of reference, the first reference to a particular section of the Act will include the corresponding citation in title 8, United States Code. Subsequent citations will be to the relevant section of the Act itself.

section 101(b)(1)(E) to extend the benefit to a child who was adopted after the child's sixteenth birthday, but before the child's eighteenth birthday. A child qualifies under this amendment if the child is the birth sibling of another adopted child who:

- Qualified for immigration under section 101(b)(1)(E) based on the child's adoption, while under the age of 16, by the same adoptive parent(s), or
- Qualified for immigration under section 101(b)(1)(F) of the Act based on an approved visa petition filed by the same adoptive parent(s).

Section 101(b)(1)(E) of the Act can be the basis of the approval of an immigrant visa petition filed by a U.S. citizen or an alien lawfully admitted for permanent residence on behalf of an adopted child whose adoption meets the requirements of section 101(b)(1)(E). However, section 101(b)(1)(E) also applies to adopted children in other situations. For example, under section 203(d) of the Act, 8 U.S.C. 1153(d), the child of an alien who qualifies for an immigrant visa under section 203(a) (family-based immigrants), section 203(b) (employment-based immigrants), or section 203(c) of the Act (diversity immigrants) is generally eligible for an immigrant visa in the same visa classification as the parent, if the child accompanies the parent to or follows to join the parent in the United States. An adopted child whose adoption met the requirements of section 101(b)(1)(E) of the Act is eligible to accompany or follow to join his or her parent under section 203(d). The same principle would apply in determining whether the adopted child could accompany, or follow to join, a nonimmigrant alien who is admitted as a student, temporary worker, exchange alien, or as any other nonimmigrant in a classification that permits spouses and children to come to the United States with the principal nonimmigrant alien.

The current regulations for the approval of immigrant visa petitions under section 101(b)(1)(E) of the Act are found at 8 CFR 204.2(d)(2)(vii). This rule does not discuss section 101(b)(1)(E) adoptions further, since it does not revise those requirements, except to reflect the upcoming ratification of the Convention.

B. Orphan Adoptions

The second provision of the Act relating to adopted children is section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F). This provision is designed specifically to permit the immigration of alien children who qualify as ''orphans,'' as defined by section 101(b)(1)(F), on the basis of their adoption by United States citizens. The two year legal custody and joint residence requirements of section 101(b)(1)(E) of the Act do not apply to orphan cases. That is, if the child qualifies as an orphan, the child can immigrate immediately either upon adoption abroad or even before adoption, if the adoptive parents intend to complete the adoption in the United States. The current regulations for approval of immigrant visa petitions on behalf of alien orphans are found at 8 CFR 204.3. This rule will not discuss section 101(b)(1)(F) adoptions further, since it does not revise those requirements, except to reflect the upcoming ratification of the Convention.

C. Convention Adoptions

Developed under the auspices of The Hague Conference on Private International Law, the Convention was opened for signature on May 29, 1993. A copy of the Convention is available on the Hague Conference Web site at *http://www.hcch.net.* The text of the Convention is also available on the public docket for this rule at *http://www.regulations.gov,* DHS Docket No. USCIS–2007–0008.

The Convention provides a framework of safeguards for protecting children and families involved in intercountry adoption. The Hague Conference on Private International Law makes available at *http://www.hcch.net* the current list of countries that have become Parties to the Convention. According to this Web site, 74 States have become Parties to the Convention. This Convention is one of the most widely-embraced and broadly-accepted conventions developed by the Hague Conference.

The Convention is the first multilateral international instrument to recognize that intercountry adoption could ''offer the advantage of a permanent home to a child for whom a suitable family cannot be found in his or her state of origin.'' (S Treaty Doc. 105–51, at 1). Some countries involved in the multilateral negotiations on the Convention sought to prohibit intercountry adoptions even for those children eligible for adoption for whom a permanent family placement in the child's country of origin could not be arranged. On the other hand, proponents of intercountry adoption at the Hague Conference believed that the best interests of a child would not be served by arbitrarily prohibiting a child in need of a permanent family placement from being matched with an adoptive family simply because the family resided in another country. The Convention reflects a consensus that an intercountry adoption may well be in an individual child's best interests.

If the Convention is in force between two countries, then any adoption of a child habitually resident in one country by a person habitually resident in the other country must comply with the requirements of the Convention. The objectives of the Convention are:

- To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights as recognized in international law;
- To establish a system of cooperation among contracting States to ensure that those safeguards are respected and thereby prevent the abduction, sale of, or traffic in children; and
- To secure the recognition in contracting states of adoptions made in accordance with the Convention.

The Convention also requires all parties to act expeditiously in the processing of intercountry adoptions.

To accomplish its goals, the Convention makes a number of significant modifications to current intercountry adoption practice, including three particularly important changes. First, the Convention mandates close coordination between the governments of contracting countries through a Central Authority in each Convention country. In its role as a coordinating body, the Central Authority is responsible for sharing information about the laws of its own and other Convention countries and for monitoring individual cases. Second, the Convention requires that each country involved make certain determinations before an adoption may proceed. The sending country must determine in advance: That the child is eligible to be adopted; that it is in the child's best interests to be adopted internationally; that the birth parents or other individuals, institutions or authorities who must, under the law of the country of origin, consent to the adoption have freely consented to the adoption in writing; and that the consent of the child, if required, has been obtained. The sending country must also prepare a background study on the child that includes the medical history of the child as well as other background information. Third, the receiving country must determine in advance: that the prospective adoptive parent(s) are eligible and suited to adopt; that they have received counseling and training, as necessary; and that the child will be eligible to enter and reside permanently in the

receiving country. The receiving country must also prepare a home study on the prospective adoptive parent(s). These advance determinations and studies are designed to ensure that the child is protected and that there are no obstacles to completing the adoption.

The United States signed the Convention on March 31, 1994. The Senate gave its consent to ratification on September 20, 2000. 146 Cong. Rec. S8866–8868 (daily ed. September 20, 2000). This consent was conditioned on the adoption of the necessary implementing legislation, and the completion of any steps that would enable the United States to carry out all the obligations of the Convention, as required by the implementing legislation. *Id.* at S8868, Resolution of Ratification at sections (a)(1) and (b)(1). Under article 46(2) of the Convention, the Convention will enter into force for the United States on the first day of the month that begins three months after the United States deposits the instrument of ratification. The Secretary of State will give notice in the **Federal Register** of the date on which the Convention enters into force for the United States. *See* 22 CFR 96.17.

In 2000, Congress passed the implementing legislation, the Intercountry Adoption Act (IAA), Pub. L. 106–279, 114 Stat. 825. Section 302 of the IAA enacted new section 101(b)(1)(G) of the Act, to be codified as 8 U.S.C. 1101(b)(1)(G). Section 101(b)(1)(G) of the Act, which will take effect when the Convention enters into force for the United States, provides for the classification of a Convention adoptee as the child of the U.S. citizen adoptive parent(s). By its terms, the Convention applies to any adoption by a person ''habitually resident'' in the United States of a child ''habitually resident'' in another Convention country, if the child ''has been, is being or is to be moved'' to the United States either after the adoption or for purposes of the adoption. Convention, article 2(1). Under section 101(b)(1)(G) of the Act, however, only a married U.S. citizen whose spouse also adopts the child, or an unmarried U.S. citizen who is at least 25 years old, may file an immigrant visa petition on behalf of a Convention adoptee. For this reason, it will not be possible for anyone who is habitually resident in the United States, but who is not a United States citizen, to bring a child habitually resident in another Convention country to the United States on the basis of a Convention adoption.

Classification as a child under section 101(b)(1)(G) of the Act is somewhat similar to classification as an orphan under section 101(b)(1)(F) of the Act. First, the child's adoption must be sought either by a United States citizen and the United States citizen's spouse, jointly, or by an unmarried United States citizen who is at least 25 years old. The visa petition must be filed before the child's sixteenth birthday. As with orphan cases, the two year legal custody and joint residence requirements of section 101(b)(1)(E) of the Act will not apply to Convention cases. Finally, as with orphans, a Convention adoptee may be adopted abroad, but may also be brought to the United States for the purpose of adoption.

There are, however, some notable differences. First, as a matter of jurisdiction, section 204(d)(2) of the Act, as amended by section 302(b) of the IAA, makes clear that section 101(b)(1)(G) of the Act relates only to adoptions in which the adopting parent is habitually resident in the United States, and the child is habitually resident in another country that is a Party to the Convention. Second, unlike sections 101(b)(1)(E) and (F) of the Act, section 101(b)(1)(G) applies only if the visa petition is filed before a child's sixteenth birthday, with no provision to allow the immigration of an older sibling adopted by the same parent(s). Third, the child does not have to be an ''orphan,'' as defined in 101(b)(1)(F) of the Act. The primary criteria for classification under section 101(b)(1)(G) of the Act are:

- The child's birth parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, or the child's abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, must have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption; and
- In the case of a child placed for adoption by his or her two living birth parents, the birth parents must be incapable of providing proper care for the child.

The Department notes that section 101(b)(1)(G) of the Act, like sections 101(b)(1)(E) and (F), use the term ''natural parents'' to describe the individuals to whom an adopted child was born. Adoption professionals generally recommend using the term ''birth parents,'' as some birth and adoptive parents consider ''natural parent'' offensive or insensitive. *See, e.g.*, ''Positive Adoptive Language,'' (Adoptive Families of America), available online at *http://www.adoptivefamilies.com/pdf/PositiveLanguage.pdf.* Since ''birth parent'' and ''natural parent'' are synonymous, this rule uses the term ''birth parent.''

D. USCIS Forms Used for Adoption Cases

Section 103(a)(3) of the Act, 8 U.S.C. 1103(a)(3), authorizes the Secretary of Homeland Security to prescribe the forms and other papers to be used in the administration of the Act. A U.S. citizen begins the immigration process for the citizen's alien child by filing a petition under section 204(a)(1)(A)(i) of the Act, 8 U.S.C. 1154(a)(1)(A)(i). Note that different immigrant visa petition forms are used for different types of adoption cases. The Form I–130, Petition for Alien Relative, is used for cases filed under section 101(b)(1)(E) of the Act and many other family-based petition cases. Form I–600A, Application for Advance Processing of Orphan Petition, is used for orphan cases, to give the prospective adoptive parents the option of seeking to establish their suitability as adoptive parents before they are actually matched with a specific child. Parents also have the option, under current 8 CFR 204.3, to file just a Form I–600, the Petition to Classify an Orphan as Immediate Relative. If they do so, then their suitability as adoptive parents and the child's eligibility for classification as an orphan are adjudicated in the same proceeding.

USCIS intends to create two similar forms, the Form I–800A and Form I–800, for Convention adoption cases. The new Form I–800A, Application for Determination of Suitability as Adoptive Parent(s) for a Convention Adoptee, corresponds to the Form I–600A for orphan cases. The Form I–800A includes three supplements. Form I–800A Supplement 1 will be used to identify additional adult members of the prospective adoptive parent(s)'s household. A prospective adoptive parent may complete Form I–800A Supplement 2 if he or she wants to give consent under the Privacy Act of 1976 for DHS to disclose information about the prospective adoptive parent's case to the adoption service provider. Form I–800A Supplement 3 may be used to obtain an extension of the approval of a Form I–800A, if no Form I–800 has yet been filed, as well as to submit an updated or amended home study after the Form I–800A has been approved. The Form I–800, Petition to Classify Convention Adoptee as Immediate Relative, corresponds to the Form I–600 for orphan cases.

Unlike the current practice for orphan cases, 8 CFR 204.3(d)(3), this rule requires a prospective adoptive parent

seeking to adopt a child from a Convention country to always file the Form I–800A first. Only once the Form I–800A is approved will the prospective adoptive parents file the Form I–800. This change is consistent with the requirements of article 5 of the Convention, as discussed later in section IV(C) of this **SUPPLEMENTARY INFORMATION**.

Note that the **SUPPLEMENTARY INFORMATION** section of this Preamble refers to the U.S. citizen (and his or her spouse, if any) seeking to adopt a Convention adoptee as the prospective adoptive parent(s). This term is used in the Supplementary Information because the same person (or couple) is the ''applicant'' at the Form I–800A stage, and the ''petitioner'' at the Form I–800 stage. The text of the new 8 CFR part 204, subpart C, however, uses the more precise terms, referring as appropriate to the ''applicant'' at the Form I–800A stage and the ''petitioner'' at the Form I–800 stage. Because the spouse of a married U.S. citizen must always sign the Form I–800A and Form I–800, and must also adopt the Convention adoptee, the singular terms are used to refer to both the U.S. citizen and to his or her spouse, if any.

III. The Purpose of This Rule

To facilitate the ratification of the Convention, this rule proposes to amend DHS regulations to provide for the adjudication of Convention adoption cases. This rule also makes amendments to the orphan provisions that govern cases under section 101(b)(1)(F) of the Act and to the regulations governing section 101(b)(1)(E) cases to reflect the new Convention procedures.

IV. The Changes Made by This Rule

A. Section 101(b)(1)(E) Cases

Under article 2 of the Convention, the Convention applies to any adoption, or proposed adoption, if:

- The child is habitually resident in one Convention country; and
- The adoptive parent(s) is (are) habitually resident in another Convention country; and
- The child has immigrated, or will immigrate, to the parent's country as a result of, or for purposes of, the adoption.

The only change that this rule makes to 8 CFR 204.2(d), as it relates to adopted children under section 101(b)(1)(E) of the Act, is to clarify when a child who is habitually resident in a Convention country and who is adopted by a U.S. citizen may be eligible to immigrate under section 101(b)(1)(E) of the Act, rather than under section 101(b)(1)(G) of the Act. For example, a U.S. citizen may have adopted a child from a Convention country while habitually resident in that Convention country, and without any present intention to bring the child to the United States. Some time after the adoption, the adoptive parent may decide to bring the child to the United States. In this situation, the adoption would not be subject to the Convention, since the child's immigration was not directly the result of the child's adoption by someone habitually resident in the United States. If the adoptive parent satisfies the two-year custody and residence requirement of section 101(b)(1)(E) of the Act by living with the child outside the United States, USCIS may approve the parent's Form I–130 for the child. Thus, the child will be eligible for classification under section 101(b)(1)(E) of the Act if the child meets those requirements, and it will not be necessary to comply with the requirements of section 101(b)(1)(G) of the Act.

If the adoptive parent seeks to bring the child to the United States without first satisfying the two-year custody and residence requirement, however, the adoptive parent will need to comply with the Convention, the IAA, and the regulations implementing the IAA, including this interim rule and the rules promulgated by the Department of State. Similarly, the rule addresses the case of a child from a Convention country who is already in the United States, whether as a nonimmigrant, parolee, or even without inspection and admission, but whose habitual residence was in a Convention country immediately before the child came to the United States. Such a child will still be deemed under this rule to be habitually resident in the other Convention country. If the adoptive parent seeks to adopt the child in the United States, it will still be necessary to comply with the Convention. Note that article 2(1) continues to apply to the adoption of a child habitually resident in another Convention country, even if the child already ''has been * * * moved to another Contracting State.''

B. Orphan Cases

This rule does not propose any major revisions to the processing of orphan cases that are filed under section 101(b)(1)(F) of the Act. The chief purpose of this rule is to establish procedures for Convention cases.

This rule does make one change to the orphan regulations that is necessary to reflect the implementation of the Convention. As noted, once the Convention enters into force for the United States, the Convention and section 101(b)(1)(G) of the Act will govern the immigration to the United States of any child who is habitually resident in a Convention country and who is adopted, or will be adopted, by a U.S. citizen who is habitually resident in the United States. It will no longer be possible for a child who is habitually resident in a Convention country and who is, or will be, adopted by a U.S. citizen habitually resident in the United States, to immigrate under section 101(b)(1)(F) of the Act. The adoptive parents will, instead, have to use the Convention procedures under section 101(b)(1)(G) of the Act and new 8 CFR part 204, subpart C. New 8 CFR 204.3(a)(2) incorporates this principle into the current orphan regulation. If, however, the prospective adoptive parent(s) filed the Form I–600A or Form I–600 before the date on which the Convention enters into force, section 505(b)(1) of the IAA provides that the case will continue to qualify as an orphan case even after the Convention enters into force. This rule also makes minor changes to 8 CFR 204.3(a)(1) and (a)(2) to remove unnecessary language, to delete non-binding procedural requirements, and to improve readability.

C. Convention Adoption Cases

1. Filing Fees

In orphan cases, the prospective adoptive parent(s) pay(s) one filing fee, either upon the filing of the Form I–600A or upon the filing of the Form I–600 if no Form I–600A was filed. 8 CFR 103.7(b)(1). For cases initiated with a Form I–600A, a new filing fee was required only if the Form I–600 was filed after the Form I–600A approval period expired or if the prospective adoptive parent(s) filed more than one Form I–600, for children who were not birth siblings. Id.

Convention adoption cases will not follow the traditional practice from orphan cases. A Form I–800A will be required in every case, and must be approved before the Form I–800 may be filed. This change will assist the Department in ensuring that the requirements of articles 5(a) and 17 of the Convention will be satisfied. Under articles 5(a) and 17, the receiving country must find that the prospective adoptive parent(s) is (are) suitable and eligible to adopt before the sending country matches them for adoption.

The rule retains the practice under which the Form I–800A filing fee reflects the cost of adjudicating both the Form I–800A and I–800. There will be

no filing fee when the prospective adoptive parent(s) file(s) one Form I–800 after approval of a Form I–800A. As with orphan cases, the cost of adjudicating one Form I–800 is included in the Form I–800A filing fee. If the prospective adoptive parent(s) file more than one Form I–800, a separate fee will be required for the second, and any subsequent, Form I–800. If the beneficiaries of the multiple Forms I–800, however, are already siblings before the proposed adoptions, then one filing fee will cover each sibling's Form I–800.

Because USCIS anticipates that the adjudication process and the workload for Convention cases will be essentially similar to orphan cases, this rule sets the filing fee at the same rate that applies for orphan cases. On February 1, 2007, DHS published the notice of proposed rulemaking, ''Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule'' proposing a rule that would establish a comprehensive revision of USCIS filing fees. 72 FR 4888. That rule proposed a fee of $670 for filing Form I–600A, Application for Advance Processing of Orphan Petition, and Form I–600, the Petition to Classify an Orphan as Immediate Relative. DHS published the fee adjustments as a final rule on May 30, 2007, at 72 FR 29851. This rule sets the Form I–800A and I–800 filing fees at the same amount as the proposed Form I–600A and I–600 fees.

2. New Subpart C to 8 CFR Part 204

The rule re-designates the current provisions in 8 CFR part 204 as subpart A to part 204, and adds new subparts B and C to 8 CFR part 204. This rule reserves subpart B. Subpart C governs Convention adoption cases. Each specific provision is discussed below. Before dealing with the details of the provisions, however, DHS is providing a summary of how the Convention adoption process is likely to work.

Under article 5 of the Convention and section 101(b)(1)(G)(i) of the Act, a U.S. citizen who wants to adopt a child habitually resident in a Convention country must first obtain a determination that he or she (and his or her spouse, if married) will provide proper care to a Convention adoptee. USCIS has the authority to make the determination that the prospective adoptive parent(s) is (are) suitable for adoption. The most critical item of evidence in making this determination is the home study. The first step that the prospective adoptive parent(s) should take is to work with an adoption service provider to obtain a home study. The home study must recommend that USCIS should find that the prospective adoptive parent(s) is (are) suitable for adoption. The home study preparer must be authorized under Department of State regulations at 22 CFR part 96 to complete home studies for Convention cases. He or she must also be authorized to conduct home studies under the law of the jurisdiction in which the home study is conducted. He or she must prepare the home study according to the standards specified in new 8 CFR 204.312. Moreover, if the home study preparer is not, under 22 CFR part 96, an accredited agency or temporarily accredited agency, then an accredited agency or temporarily accredited agency must review and approve the home study before it can be submitted to USCIS. This review requirement does not apply if a public domestic authority, as defined in 22 CFR 96.2, prepared the home study.

Once the prospective adoptive parent(s) has (have) obtained a favorable home study, the next step is to file Form I–800A with USCIS. In addition to the home study, the prospective adoptive parent(s) would submit proof of citizenship, marital status, age (if not married) and other evidence as described in new 8 CFR 204.310. In addition to the Form I–800A filing fee, the prospective adoptive parent(s) would also submit the standard biometrics fee for the applicant, his or her spouse, and for each adult member of the household. The definition of ''adult member of the household'' is discussed more fully in the discussion of new 8 CFR 204.301. USCIS would then arrange for the collection of fingerprints and other biometric information from these individuals. Once the fingerprint results are received, USCIS will weigh the evidence to determine whether to approve the Form I–800A. USCIS will approve it if the prospective adoptive parent(s) has (have) established, based on the evidence of record, that any child whom the prospective adoptive parent(s) may adopt will receive proper care. If USCIS denies the Form I–800A, the prospective adoptive parent(s) may appeal the denial to the Administrative Appeals Office, except in a narrow class of cases, discussed later in this rule, in which no appeal is permitted.

If USCIS approves the Form I–800A, the prospective adoptive parent(s) may arrange for the submission of the approval notice, the home study and other supporting evidence, to the Central Authority of the Convention country in which they hope to adopt a child. Note that the Convention permits the governmental entity that a Convention country designates as the Central Authority to delegate some Central Authority functions to other governmental or non-governmental entities. In this Preamble and in the rule itself, ''Central Authority'' refers not only to the country's designated Central Authority, but also to any individual or entity delegated Central Authority functions. If the Central Authority proposes a child for an adoption placement, the Central Authority will prepare a report addressing the factors that make the child eligible for adoption as a Convention adoptee. Once the prospective adoptive parent(s) have received this report and have decided to accept the placement, they would file Form I–800, with the report and other evidence specified in new 8 CFR 204.313. The Form I–800 must be filed *before* the prospective adoptive parent(s) have actually adopted or obtained legal custody of the child.

The office with which the prospective adoptive parent(s) files the Form I–800 may vary from case to case, or country to country. For example, the prospective adoptive parent(s) may file the Form I–800 with USCIS in the United States before traveling to the Convention country. In this situation, the parent(s) would file the Form I–800 and supporting evidence with the local USCIS office in the area where the parent(s) live. The prospective adoptive parent(s) may alternatively choose to file the Form I–800 after arrival in the Convention country, and while still physically present there. In such cases, the prospective adoptive parent(s) may file the Form I–800 either with an overseas USCIS office, or, if there is no USCIS office in the country, at the visa-issuing post at which he or she (they) will file the child's visa application. A Department of State officer will adjudicate a Form I–800 filed with a visa-issuing post, unless the Form I–800 is not clearly approvable. The Department of State will refer any Form I–800 that has been filed with a Department of State officer and that is not clearly approvable to a USCIS office for adjudication.

Whether it is a USCIS or a Department of State officer who adjudicates the Form I–800, the issue is fundamentally the same: Does the evidence show that the child qualifies for classification under section 101(b)(1)(G) of the Act, and will the proposed adoption or grant of custody be in compliance with the Convention? If so, the USCIS or Department of State officer will grant a provisional approval of the Form I–800. If USCIS grants the provisional approval, it would then forward the case to the Department of State officer at the visa issuing post. If the Department of

State officer grants the provisional approval, the Department of State officer will retain the Form I–800 for further action after the prospective adoptive parent(s) has (have) adopted or obtained custody of the child.

Once provisional approval is granted, the prospective adoptive parent(s) may file a visa application for the child with the visa issuing post with jurisdiction over the child's country of residence. The Department of State published in the **Federal Register** on June 22, 2006, at 71 FR 35847, a proposed rule that, once adopted as a final rule, will govern the adjudication of the visa application. If it appears to the Department of State officer that, based on the available information, the child would not be ineligible to receive an immigrant visa, the Department of State officer will annotate the visa application to reflect this conclusion. If the consular office is not aware of any ground(s) of inadmissibility that would preclude the child's admission to the United States following the adoption or grant of custody, the Department of State officer will then notify the Central Authority of the Convention country that the prospective adoptive parent(s) may proceed with the adoption, or with obtaining the grant of custody for purposes of adoption. If the Department of State officer becomes aware that the child may be subject to a ground of inadmissibility that was not already waived when the Form I–800 was provisionally approved, the Department of State officer will advise the prospective adoptive parent(s) concerning whether a waiver is available, and how to apply for it. The prospective adoptive parent(s) will then either complete the adoption in the Convention country or else obtain custody of the child for the purpose of bringing the child to the United States for adoption. Once this step is accomplished, the Department of State officer will, as required by section 301(a)(1)(B) of the IAA, perform a final verification of compliance with the Convention and the IAA. If the adoption or grant of custody complies with the Convention and the IAA, the Department of State officer will affix to the adoption or custody order a certification that the adoption or custody has been obtained in compliance with the requirements of the Convention and the IAA. The Department of State officer would then, on behalf of USCIS, grant final approval of the Form I–800. The Department of State officer would also issue the appropriate visa, unless the Department of State officer determines that the child is ineligible for a visa and inadmissible to the United States on a ground for which no waiver has been approved. Department of State regulations concerning the issuance of visas are codified at 22 CFR parts 40 through 42.

Once the Department of State officer issues the visa, the prospective adoptive parent(s) may bring the child to the United States. An adopted child who is admitted under section 101(b)(1)(G) of the Act, and who, after admission for permanent residence, actually resides in the United States with the adoptive parent(s) will acquire United States citizenship through naturalization by operation of law if the requirements of section 320 of the Act, 8 U.S.C. 1431, are met by the child's 18th birthday.[2] If the child will not actually reside in the United States, the child's lawful admission would facilitate the child's naturalization under section 322 of the Act, 8 U.S.C. 1433. Unlike section 320 of the Act, naturalization under section 322 of the Act does not occur by operation of law; a formal application for naturalization must be filed.

This rule retains for Convention cases the current practice described in the orphan provisions, 8 CFR 204.3(h)(11), that allows a Department of State officer to approve a petition, but not to deny. As under current practice, a Department of State officer will be required to forward to USCIS any Form I–800 that is not clearly approvable. If USCIS denies the Form I–800, the prospective adoptive parent(s) may appeal the denial to the Administrative Appeals Office, except in a narrow class of cases, discussed later in this rule, in which no appeal is permitted.

New 8 CFR 204.300—Scope of Subpart C

Section 204.300 defines the scope of new subpart C, which will apply to any Form I–800A or Form I–800 that is filed on or after the date the Convention enters into force for the United States. For orphan cases, if either the Form I–600A or Form I–600 was filed before that date, 8 CFR 204.3 will continue to apply.

New 8 CFR 204.300(b) makes clear that, once the Secretary of State gives notice as specified in 22 CFR 96.17 that the Convention has entered into force for the United States, this rule, section 101(b)(1)(G) of the Act, and the provisions of new subpart C will be the only way that an alien child who is habitually resident in a Convention country may immigrate to the United States as a direct result of an adoption by a U.S. citizen who is habitually resident in the United States. Even if the child may also qualify as an orphan under section 101(b)(1)(F) of the Act, the adoptive parents will be required to comply with the Convention procedures. Immigration under section 101(b)(1)(F) of the Act will be available to a child habitually resident in a Convention country only if the prospective adoptive parent(s) filed either the Form I–600A, or the Form I–600 before the Convention and this rule enter into force. New 8 CFR 204.2(d)(vii), discussed earlier in this Supplementary Information, addresses the circumstances under which a child habitually resident in a Convention country may immigrate under section 101(b)(1)(E) of the Act.

New 8 CFR 204.301—Definitions

New 8 CFR 204.301 provides the definitions that will apply in the adjudication of Convention adoption cases. For the most part, the new definitions replicate the definitions currently found in 8 CFR 204.3. USCIS added new definitions for ''Central Authority,'' ''Convention adoptee,'' ''Convention adoption,'' ''Convention,'' ''Convention country,'' ''Irrevocable consent,'' and ''Legal Custodian.'' These definitions will apply only to Convention adoption cases, not to orphan cases under 8 CFR 204.3. The definitions in 22 CFR 96.2 will also apply to Convention cases.

There are a number of definitions under the new section that warrant explanation. First, new 8 CFR 204.301 includes a definition of ''adoption.'' To qualify as an ''adoption,'' a custody order that is alleged to be an adoption must create the legal parent-child relationship between a minor and someone who is not already the minor's legal parent, and terminate the legal parent-child relationship between the minor and any prior legal parent(s). The definition is not actually new, but a codification of the Board of Immigration Appeals decisions in *Matter of Mozeb*, 15 I&N Dec. 430 (BIA 1975), and *Matter of Kong*, 14 I&N Dec. 649 (BIA 1974). The new definition also corresponds to the definition the Department of State has adopted at 22 CFR 96.2.

Some countries allow for ''simple'' or ''semi-plena'' adoptions, or a similar child custody arrangement that may be called ''adoption,'' but do not create a permanent legal parent-child relationship between the child and the custodian. Similarly, the Board of Immigration Appeals has noted that in countries that follow traditional Islamic

[2] Section 320 does not, itself, use the term ''naturalization.'' But ''naturalization'' encompasses any grant of citizenship that occurs after a person's birth. *See* INA section 101(a)(23), 8 U.S.C. 1101(a)(23).

law ''adoption'' in the sense required by the Act does not exist. *See, e.g., Matter of Mozeb, supra*; and *Matter of Ashree, Ahmed and Ahmed*, 14 I&N Dec. 305 (BIA 1973). The Board has also noted the distinction, under Burmese law, between Kittima adoption, which does create a legal parent-child relationship, and Appatittha adoption, which does not. *Matter of Kong, supra.* USCIS may not approve a Form I–800 based on one of these alternative custody arrangements, unless the alternative custody arrangement is cited, not as proof of the child's adoption, but as proof that the custodian has authority to bring the child to the United States for adoption here.

This rule also makes changes to the definition of an ''additional adult member of the household.'' The home study requirements for orphan cases, 8 CFR 204.3(e), require a home study preparer to address the presence in the household of adults other than the prospective adoptive parent(s). The orphan regulations define ''adult member of the household'' to include anyone over the age of 18 whose principal or only residence is the same as the residence of the prospective adoptive parent(s). 8 CFR 204.3(b). Someone who was under 18 when the Form I–600A is filed can also be considered an ''adult'' member of the household if ''the director has a specific reason, based on the facts of the particular case, for requiring an evaluation by a home study preparer and/or fingerprint check.'' This rule generally follows that practice; however, there are two significant changes. First, the reference to a person's ''principal or only'' residence has been revised. The new definition includes any person 18 years or older who has the same principal residence as the applicant. By removing the term ''only'' the definition is meant to clarify that it includes those individuals who may have another residence, such as an adult son or daughter who is away at college for most of the year, but who maintains the home being evaluated as their principal residence. Second, the current definition does not directly address the presence in the home of child care workers, or other household employees, who do not actually live there. To improve the ability to protect the best interests of adopted children, the revised definition has been expanded to specifically include as an ''additional adult member of the household'' any person who does not live in the home but whose regular presence in the home is relevant to the suitability of the prospective adoptive parents as the parents of a Convention adoptee. While this definition does expand the potential scope of the home study, the expansion will provide information that could be very relevant to the adjudication of the Form I–800A.

New 8 CFR 204.301 also includes a specific definition of ''custody for purposes of emigration and adoption'' that will apply to Convention cases, if the child will be adopted in the United States, rather than abroad. The prospective adoptive parent(s) will have to show that the prospective adoptive parent(s), or someone acting on behalf of the prospective adoptive parent(s), has (have) obtained ''custody for purposes of emigration and adoption.'' This definition is different from the provisions in 8 CFR 204.3(d)(iv)(B)(1) and (2), which apply only to orphan cases, under which the orphan's prospective adoptive parent(s) had to: (i) Show that he or she (they) had custody of the child, and that (ii) the individual or entity who had custody immediately before he or she (they) acquired it has ''released''the child for emigration and adoption. This two-step requirement can prove unwieldy and somewhat unnecessary. Once the prior custodian no longer has custody, it is not clear why that former custodian should be in a position to permit or object to the child's emigration. Under this rule, it will be sufficient for the prospective adoptive parent(s) to show that whatever court or entity granted custody also expressly authorized the custodian to bring the child to the United States for adoption. This authorization may be included in the same order that granted custody, but may also be included in a separate order.

Current 8 CFR 204.3(b) specifies who may complete a home study for an orphan case. The new definition of ''home study preparer'' for Convention adoption cases is significantly different. Only an individual who, or agency that, is authorized to do so under 22 CFR part 96 may complete a home study for a Convention case. In addition to meeting the requirements of 22 CFR part 96, the home study preparer must also hold any license or other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted. For example, if the home study is conducted in the United States, the preparer must hold whatever license or authorization which the law of the State may require home study preparers practicing in that State to have. If the home study is conducted outside the United States, the preparer must hold any license or authorization that may be required under the law of that country to conduct home studies there.

Under section 101(b)(1)(G) of the Act, if consent for the child's adoption is given by both of the child's birth parents, the prospective adoptive parent(s) must establish that the birth parents are incapable of providing proper care for the child. This rule adopts the same definition of ''incapable of providing proper care'' that is used in orphan cases under 8 CFR 204.3. In an orphan case, the ''incapable of providing proper care'' issue arises only if a sole or surviving parent releases the child for adoption. By contrast, in Convention cases this issue applies only if the child is placed for adoption by both birth parents. Under current USCIS policy for orphan cases, an officer is not limited to considering economic or financial concerns. Rather, the adjudicating officer should consider the entirety of the circumstances to determine whether, under the local standards of the country of the child's habitual residence, the child's birth parents were incapable of providing proper care. The revised definition incorporates this principle.

The rule uses, for Convention cases, a definition of ''irrevocable consent.'' Article 4(c)(4) of the Convention provides that a mother's consent to a child's adoption can be given only after the child's birth. This definition reflects that requirement. Further, the rule is actually broader than article 4(c)(4), in that the rule provides that in addition, a legal custodian who is not the child's birth parent may not give consent before the child's birth. This broader provision is simply the logical extension of article 4(c)(4), in that the mother would necessarily be required to terminate the legal parent-child relationship before any other legal custodian could properly consent to an adoption placement. As the child's mother cannot give this consent prior to the child's birth, no other individual or entity will have the authority to consent to an adoption placement until after the child's birth. Note, however, that this provision does not preclude a birth father from giving consent to the termination of his legal relationship to the child before the child's birth if the birth father is permitted to do so under the law of the country of the child's habitual residence.

Section 101(b)(1)(G)(i)(II) of the Act provides that the custodian must consent to the child's emigration and adoption. The definition of ''irrevocable consent'' does not specifically include this element, since it could prove impossible for a person to comply with it. For example, if a birth parent

surrendered his or her rights to the custody of a child long before the possibility of an intercountry adoption arose, it may not be possible to find the birth parent at the time the placement is made in order to obtain a more specific consent. But if the birth parent surrendered his or her custody rights, and those rights were terminated, the birth parent would no longer have a basis to object to the child's adoption. Under this rule, the fact that the Central Authority of the other Convention country permitted the prospective adoptive parent(s) to adopt or obtain custody of the child will be taken as sufficient to establish that the necessary consent to the child's emigration has been obtained from the relevant custodian. That is, if the Central Authority specifies that all the necessary consents have been obtained, it will be presumed that the consent was sufficient to establish the statutory requirement of consent to emigration and adoption.

In orphan cases, the term ''sole parent'' is defined by 8 CFR 204.3(b) strictly to include only the mother of a child born out of wedlock who has not been legitimated. Section 101(b)(1)(G) of the Act defines the term more broadly. For a Convention adoption, a child is deemed the child of a sole parent if the other parent has abandoned or deserted the child, or has disappeared from the child's life. This rule reflects this broader understanding of ''sole parent.'' A child will be deemed to be the child of a sole parent if the child has only one legal parent, based on the competent authority's determination that the other legal parent has either abandoned or deserted the child, or has disappeared from the child's life.

New 8 CFR 204.301 also incorporates an interpretation relating to stepparents that USCIS has adopted for orphan cases. *See* Adjudicator's Field Manual 21.5(d)(4). Under section 101(b)(2), a stepparent qualifies as a child's ''parent'' if the marriage creating the stepparent relationship occurred before the child's eighteenth birthday. For most situations, this provision is of great benefit, since it permits intact families to remain together. In the context of a Convention adoption petition, however, section 101(b)(2) can have an adverse impact. In some countries, a stepparent does not have a legal parent-child relationship with a stepchild. Thus, the stepparent may not have any right or duty to care for a child, and consequently, may not be able to perform any action terminating the non-existent rights and duties. Under the policy that USCIS has adopted, and that is incorporated into the definition of ''parent,'' a stepparent would not be considered a child's parent for purposes of approval or denial of a Convention adoption petition, if the prospective adoptive parent(s) establish(es) that, under the law of the child's habitual residence, a stepparent has no legal parent-child relationship to a stepchild. This exception would not apply if the stepparent actually adopted the stepchild as specified in section 101(b)(1)(E) of the Act, or if under the law of the child's habitual residence, the marriage between the parent and stepparent is itself enough to create a legal parent-child relationship between the stepparent and stepchild. If marrying the child's mother or father makes the stepparent, under the law of the Convention country, the child's legal parent, or if the stepparent adopted the child, it may be necessary to obtain the stepparent's consent. Consistent with the provisions concerning a sole or surviving parent, this consent would not be needed if the stepparent abandoned or deserted the child, or if the stepparent has disappeared from the child's life. Further, if it is established that the stepparent did not know of the child's existence, this fact may warrant a finding that the stepparent has disappeared from the child's life. Note that this definition does not restrict the ability to file an alien relative visa petition (Form I–130) based on a stepparent/stepchild relationship if the requirements of section 101(b)(1)(B) of the Act are met.

This rule also establishes a definition of ''suitability as adoptive parents.'' Section 101(b)(1)(G)(i)(I) of the Act requires that USCIS be ''satisfied that proper care will be furnished the child,'' before USCIS may approve a child's immigration as a Convention adoptee. The Convention, in turn, requires a finding of their ''suitability'' as adoptive parents. As the concept of ''suitability as an adoptive parent'' has essentially the same meaning as the concept that USCIS be ''satisfied that proper care will be furnished the child,'' this rule provides that the Convention requirement of ''suitability' is met if the evidence establishes the statutory requirement of ''proper care.''

New 8 CFR 204.302—Use of Adoption Service Providers

Most U.S. citizens seeking to complete an intercountry adoption use the services of an adoption agency. This assistance benefits both the prospective adoptive parents and USCIS since it is more likely that the home study will be properly prepared and that other necessary requirements will be properly met. New 8 CFR 204.302(a) makes clear that prospective adoptive parents may use such service providers. In Convention cases, however, certain adoption services may only be provided by individuals who, or agencies that, are authorized under 22 CFR part 96 to provide these services. An individual who, or agency that, is not authorized to do so under 22 CFR part 96 may not provide any of these six services, as listed in section 3(3) of the IAA:

- Identifying a child for adoption and arranging an adoption;
- Securing necessary consent to termination of parental rights and to adoption;
- Performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;
- Making non-judicial determinations of the best interests of a child and the appropriateness of adoptive placement for the child;
- Post-placement monitoring of a case until final adoption; and
- Where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

In some cases, USCIS has observed that it has appeared that an adoption service provider has prepared the Form I–600A or Form I–600 or other legal documents, and submitted them to USCIS. New 8 CFR 204.302(b) makes clear that an adoption service provider must be authorized under 8 CFR Part 292 to practice before USCIS if the adoption service provider will be ''representing'' the prospective adoptive parent(s) before USCIS. In order to engage in the regular practice of giving legal advice concerning what USCIS forms to complete and how to complete them, an individual must be an attorney (or supervised law student or graduate) or the accredited representative of a not-for-profit agency that has been authorized by the Board of Immigration Appeals to practice before USCIS. *See* 8 CFR 1.1(i), (j) and (k) and 8 CFR 292.1. An individual must also be an attorney (or supervised law student or graduate) or accredited representative in order to file a properly completed notice of appearance (Form G–28) (which must be filed by anyone claiming to represent a petitioner or applicant before USCIS), and to submit USCIS Forms to USCIS as the representative of the prospective adoptive parent(s). Someone who is not an attorney (or supervised law student or graduate) or accredited representative may only assist ''in the completion of blank spaces on printed [USCIS] forms.'' 8 CFR 1.1(k). Pursuant to section 201 of the IAA, new 8 CFR 204.302(b) also

makes clear that an attorney's or accredited representative's legal services may not include the provision of any of the six specific adoption services specified in section 3(3) of the IAA, unless the attorney or accredited representative, in addition to being authorized to practice law before USCIS, is also authorized to provide these services in Convention cases.

Furthermore, at least one of the prospective adoptive parent(s) must always be a U.S. citizen, who is therefore entitled to protection under the Privacy Act, 5 U.S.C. 552a. New 8 CFR 204.302(c) clarifies that, under the Privacy Act, USCIS will not disclose information about a Convention adoption case to an adoption service provider without the written consent of the prospective U.S. citizen adoptive parent(s). If the prospective adoptive parent(s) want(s) to give this consent, the prospective adoptive parent(s) may sign Form I–800A Supplement 2 and submit the Supplement 2 to DHS. Signing the Supplement 2, however, does not mean the service provider can act as the prospective adoptive parent(s)'s legal representative before DHS; it means only that DHS may provide information to the service provider that would otherwise be protected from disclosure by the Privacy Act. As with other records protected by the Privacy Act, the consent of the citizen adoptive parent(s) is not required in order for DHS to disclose information in a manner that qualifies as a routine use.[3]

New 8 CFR 204.303—Habitual Residence

The Convention and section 101(b)(1)(G) of the Act apply to the adoption of a child ''habitually resident'' in a Convention country by a U.S. citizen ''habitually resident'' in the United States. Neither the Convention nor section 101(b)(1)(G) of the Act defines this critical term. This interim rule gives this term an expansive scope. Any U.S. citizen who is actually domiciled in the United States is habitually resident here. Equating ''habitual residence'' with ''domicile,'' however, would unduly narrow the availability of the benefits of the Convention. In many cases a U.S. citizen will be residing abroad temporarily, and yet be seeking to bring an adopted child to the United States when the United States citizen returns here. To permit broad availability of the Convention procedures, new 8 CFR 204.303(a)(2) provides that, in addition to U.S. citizens who are actually domiciled in the United States, a U.S. citizen who has been living abroad will also be deemed to be ''habitually resident'' in the United States if the U.S. citizen will be returning to establish a domicile in the United States on or before the date of the child's admission with an immigrant visa. The U.S. citizen who is living abroad will also be considered to be habitually resident in the United States, for purposes of a Convention adoption, if the United States citizen will be bringing the child to the United States after the child's adoption and before the child's eighteenth birthday, so that the child may be naturalized under section 322 of the Act.

For the child whose adoption is sought, the child will, ordinarily, be deemed under new 8 CFR 204.303(b) to be habitually resident in the country of the child's citizenship. If the child lives in a country other than the country of citizenship, the child will be considered habitually resident there only if the child's status in that other country is sufficiently stable for that country properly to exercise jurisdiction over the child's adoption or custody. In the case of a child living outside the country of citizenship, USCIS will defer to the determination of that other country's Central Authority concerning whether the child's status in that country is sufficiently stable to permit that country to exercise jurisdiction over the child's adoption. Additionally, proposed 8 CFR 204.303(b) retains the provision in the definition of ''foreign sending country,'' in current 8 CFR 204.3(b), that precludes a child from being considered habitually resident in a country where the child is present only on a temporary basis, or ''to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.'' If the child's presence in a country other than the country of citizenship is only temporary, so that that country will not exercise jurisdiction, the child will be deemed to be habitually resident in the country of citizenship.

New 8 CFR 204.304—Improper Inducement Prohibited

Current 8 CFR 204.3(i) requires denial of a Form I–600 or Form I–600A if the prospective adoptive parent(s), or someone acting for the prospective adoptive parent(s), ''have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child.'' Article 4, paragraphs (c)(3) and (d)(4) of the Convention also precludes inducing any consent to adoption ''by payment or compensation of any kind.'' But note, this rule does not preclude paying legitimate expenses in connection with an adoption.

New 8 CFR 204.304(a) provides a clear statement of what 8 CFR 204.3(i) and article 4 are intended to prevent. The decision of a parent or other custodian to release a child for adoption must be a free act for the adoption to be valid. Any payment or other consideration, no matter how small, will lead to denial of the Form I–800 if the evidence of record establishes that the payment or other consideration was given specifically to induce the child's release.

New 8 CFR 204.304(b), in turn, identifies the type of payments that may generally be considered appropriate. This paragraph is modeled on the 1994 edition of the Uniform Adoption Act, as recommended by the National Conference of Commissioners on Uniform State Laws. The text of the Uniform Adoption Act is available on line at *http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uaa94.htm*. Certain payments to a prior parent may be proper, such as expenses related to the birth of the child, or to care of the child, or to care of a birth mother while pregnant and immediately after the child's birth. Any payment for any service related to an adoption will be reasonable only if it is permitted under the law where the payment is made, and if the amount is commensurate with the costs or living standards of the country in which the related service was provided. The new Form I–800 will require the petitioner to disclose the fees and other expenses paid in relation to the adoption.[4]

New 8 CFR 204.305—State Pre-Adoption Requirements

Rather than completing a Convention adoption abroad, a U.S. citizen may also bring a Convention adoptee to the

[3] Routine uses for information collected under this rule can be found in the current DHS Privacy Act System of Records Notice that applies generally to the DHS Central Index System (72 FR 1755, January 16, 2007) and in the DHS System of Records Notice for the DHS/USCIS–005 Intercountry Adoptions system (72 FR 31086, June 5, 2007).

[4] Note that new 8 CFR 204.304 does not exhaust the regulatory provisions relating to adoption fees. Article 32 of the Convention provides generally that only ''reasonable'' fees may be paid in connection with a Convention adoption. Article 32 also bars improper financial or other gain from Convention adoptions. The accreditation regulation adopted by the Department of State, at 22 CFR part 96, gives the broader regulatory framework for adoption service providers. New 8 CFR 204.304 only addresses the actual payment of an inducement to obtain consent to the child's adoption.

United States for purposes of completing the adoption in the United States. If the child will be adopted in the United States, section 101(b)(1)(G) of the Act requires that the prospective adoptive parents satisfy any pre-adoption requirements that apply to adoptions in the State where the child will be adopted. This requirement should ensure that the prospective adoptive parents will not be precluded from adopting the child, once the child is here. New 8 CFR 204.305 restates the pre-adoption requirements from current 8 CFR 204.3(f).

New 8 CFR 204.306—General Overview of Convention Adoption Cases

New 8 CFR 204.306 provides a general overview. As stated in section 204.306, a child may immigrate to the United States based on a proposed Convention adoption only if the adoptive parents establish that they are ''suitable and eligible to adopt'' and that the child qualifies as a Convention adoptee. The requirement of ''suitability and eligibility to adopt'' reflects the statutory requirement that DHS must be satisfied that the prospective adoptive parent(s) is (are) eligible to file a Form I–800 (a married couple adopting jointly or a single person who is at least 25 when the petition is filed) and that the child will receive proper care. A finding that these statutory requirements are met will also satisfy the requirements of article 5(a) of the Convention. New 8 CFR 204.306(b) reflects articles 5(a), 17(d) and 19(1) of the Convention, under which a Convention adoption may go forward only after the competent authorities of the State to which the child will move have determined that the prospective adoptive parent(s) is (are) ''eligible and suitable to adopt.'' Thus, unlike the current orphan procedure under 8 CFR 204.3(g)(4)—which allows for the ''concurrent'' filing of the Form I–600A by filing a Form I–600 supported by a home study and other evidence that would be filed with a Form I–600A—the prospective adoptive parent(s) in a Convention adoption case must file a Form I–800A, and may file the Form I–800 only if the Form I–800A is approved.

New 8 CFR 204.307—Who May File Form I–800A or I–800

Under section 101(b)(1)(G) of the Act, a Convention adoptee may be brought to the United States if the child has been adopted by a U.S. citizen and his or her spouse, jointly, or by an unmarried U.S. citizen who is at least 25 years old. This provision corresponds to the requirements under section 101(b)(1)(F) of the Act for orphan petitions. As required by statute, new 8 CFR 204.307(b) permits an unmarried applicant to file the Form I–800 only after he or she is 25 years old. Section 101(b)(1)(G) of the Act, like section 101(b)(1)(F), does not set a minimum age for the filing of a Form I–800A. Currently, USCIS regulations at 8 CFR 204.3(b) permit the unmarried U.S. citizen to file a Form I–600A, but only if the person is at least 24 years old. This interim rule, 8 CFR 204.307(a), applies this provision to Convention cases. As with orphan cases filed under section 101(b)(1)(F) of the Act, permitting the unmarried citizen who wants to complete a Convention adoption to file the Form I–800A on or after his or her 24th birthday is simply an accommodation. Because section 101(b)(1)(G) of the Act specifically requires that an unmarried citizen must be at least 25 years old in order to file an immigrant visa petition, an unmarried citizen cannot file the Form I–800 before his or her 25th birthday, even if USCIS approves the Form I–800A before that date.

New 8 CFR 204.307(c) is a provision that strengthens the provisions of 8 CFR 204.309(a) and (b)(3), discussed below, relating to the mandatory denial of a Form I–800A or Form I–800 based on specific types of misconduct. Under new 8 CFR 204.307(c), if USCIS denies a Form I–800A or a Form I–800 based on one of these grounds, the prospective adoptive parent(s) must wait at least one year before the prospective adoptive parent(s) may file a new Form I–800A or Form I–800. This one-year period, similar to current 8 CFR 204.3(h)(4), begins when the prior denial becomes final. If the prospective adoptive parent(s) appealed the prior denial, the one-year period will end one year after the Administrative Appeals Office affirms the denial, and the filing of a new Form I–800A or I–800 will also be barred while the appeal is pending. If there is no appeal, the one-year period begins on the date of the original denial. Even once this one-year period expires, USCIS may consider the prior misconduct in determining whether to approve a subsequent Form I–800A or Form I–800. The prospective adoptive parent(s) will be required to establish that the subsequent Form I–800A or Form I–800 should be approved, despite the prior misconduct. The prospective adoptive parent(s) may not use the later Form I–800A or Form I–800 as a vehicle to re-litigate whether the prior misconduct actually occurred.

New 8 CFR 204.307(c) is rooted in the requirement under section 101(b)(1)(G)(i)(I) of the Act that the Secretary must be satisfied that, if allowed to immigrate, a Convention adoptee will receive proper parental care. If the prospective adoptive parent(s) has (have) already engaged in improper conduct that was sufficiently great to warrant the denial of an earlier Form I–800A or Form I–800, USCIS must take note of this fact in any subsequent case.

New 8 CFR 204.308—Where to File Forms I–800A and I–800

Current 8 CFR 204.3(g) provides a detailed, and somewhat complex, framework for determining where to file a Form I–600A or a Form I–600 in orphan cases. New 8 CFR 204.308 is the corresponding jurisdictional provision for this rule. In more recent years, however, USCIS has not specified which office had jurisdiction to adjudicate a petition or application in the regulations governing adjudication of the petition or application. Rather, USCIS has used the form instructions to specify the correct jurisdiction. See, *e.g.*, 8 CFR 103.2(b)(6). This practice makes it possible for USCIS to adopt ''Direct Mail'' filing procedures and other improvements by changing the form instructions, rather than having to adopt a formal amendment to a regulation. New 8 CFR 204.308 follows this practice.

USCIS is studying the feasibility of allowing for electronic filing of orphan cases. To prepare for this possible change, proposed 8 CFR 204.308(d) provides that, if electronic, internet-based, or other digital filing becomes available, the submission of the information and evidence required for Form I–800A and Form I–800 cases through the digital filing protocol will be the equivalent to paper filing.

USCIS anticipates that, at least initially, the jurisdictional provisions relating to the filing of Forms I–800A and I–800 will closely follow current practice for orphan cases under section 101(b)(1)(F) of the Act. A flowchart showing the anticipated processing path of a Convention adoption case is included in the docket for this rule at *http://www.regulations.gov*, DHS Docket No. USCIS–2007–0008.

As with orphan cases under section 101(b)(1)(F) of the Act, both USCIS officers and Department of State officers will have jurisdiction to adjudicate a Form I–800. If the prospective adoptive parent(s) live in the United States or Canada and file the Form I–800 before traveling abroad to complete the child's adoption, the prospective adoptive parent(s) will file the Form I–800 with the USCIS office that has jurisdiction over the actual or, for those in Canada, intended place of residence in the

United States. If the prospective adoptive parent(s) live(s) in the United States, but travel abroad before filing the Form I–800, the Form I–800 may be filed with a USCIS office in the child's country of habitual residence, if the prospective adoptive parent(s) is (are) physically in that country at the time of filing. If the prospective adoptive parent(s) live(s) abroad, and USCIS has an office in the country in which they reside, the prospective adoptive parent(s) may file the Form I–800 with that office, although the prospective adoptive parent(s) may also file it with the USCIS office in the United States that has jurisdiction over the intended place of residence in the United States.

Filing the Form I–800 with a Department of State officer would be appropriate if: (i) The prospective adoptive parent(s) is (are) actually physically present in the consular district at the time of filing, and (ii) there is no USCIS office in that country.

There is one significant change from the practice that has been followed in orphan cases with respect to the way a Form I–800 will be adjudicated. Under article 5 of the Convention, a Convention adoption should not occur until the receiving State has determined that the child will be authorized to immigrate. USCIS, in consultation with the Department of State, has determined that a two-step approval process is needed in order to ensure compliance with the Convention. Thus, a Form I–800 will have to be provisionally approved before the prospective adoptive parent(s) actually adopt(s) or obtain(s) custody of the child. If the Form I–800 is filed with USCIS, the USCIS officer will decide whether to grant provisional approval. The Department of State officer will make this decision if the Form I–800 is filed with the Department of State officer and the Department of State officer finds that the Form I–800 is clearly approvable. Under this rule, the decision to grant final approval of a Form I–800 will generally be made by the Department of State officer who adjudicates the related visa application, rather than a USCIS officer. Regardless of where the Form I–800 is filed, it will, upon provisional approval, be forwarded to the appropriate Department of State officer for final approval. As with orphan cases, however, a Department of State officer will not have authority to deny a Form I–800. If the Department of State officer finds that he or she cannot clearly grant provisional or final approval, the Department of State officer will forward the case to the appropriate USCIS office for decision.

New 8 CFR 204.309—Factors Requiring Denial of a Form I–800A or I–800

As noted, current 8 CFR 204.3(e)(2)(iii)(D) permits USCIS to deny a Form I–600A or Form I–600 if the prospective adoptive parents conceal material facts or fail to cooperate in the completion of the home study. This principle is carried forward in new 8 CFR 204.309(a). Under the current rule, the question of whether to deny a Form I–600A or Form I–600 based on one of these improprieties is discretionary. New 8 CFR 204.309(a), by contrast, makes denial mandatory. Under section 101(b)(1)(G)(i)(I) of the Act, DHS may approve prospective adoptive parent(s) for intercountry adoption only if DHS is satisfied that any child that may be adopted will receive proper care. DHS is not willing to make this finding in any case in which the prospective adoptive parent(s) has (have) failed to disclose all facts concerning issues that may have a bearing on whether USCIS should find that the prospective adoptive parent(s) is (are) suitable for intercountry adoption.

New 8 CFR 204.309(b) lists certain factors that will require denial of a Form I–800. New 8 CFR 204.309(b)(1) requires denial of a Form I–800 if the adoptive parents adopted the child, or obtained custody of the child, before the provisional approval of the Form I–800. This provision reflects the requirement of article 5(c) and 17(d) of the Convention that the child's eligibility to immigrate is to be determined before the adoption occurs. USCIS acknowledges that the rule can work a hardship in cases in which the prospective adoptive parent(s), in good faith, adopted the child before beginning the Convention process. For this reason, new 8 CFR 204.309(b)(1) provides that, if the competent authority in the country of the child's habitual residence voids the adoption or custody order, then the fact that the prospective adoptive parent(s) had already adopted, or obtained custody of, the child before the Form I–800 was provisionally approved will no longer preclude provisional approval of the Form I–800. The prospective adoptive parent(s) would then adopt the child again, after complying with the Convention procedures, and after provisional approval of the Form I–800. The prospective adoptive parent(s) must have the prior adoption or custody order voided before the prospective adoptive parent may file the Form I–800.

Article 29 of the Convention restricts the ability of the prospective adoptive parents to have contact with the prospective adoptee's parents or other custodians. New 8 CFR 204.309(b)(2) provides that a Form I–800 must be denied if any such contact occurred before the contact was legally permitted. Generally, contact is permitted only after USCIS has approved a Form I–800A and after the Convention country has determined that the child is eligible for intercountry adoption and that the necessary consents to adoption have been given. Earlier contact is permitted only as allowed under the conditions established by the competent authority of the Convention country, or in the case of an intra-family adoption. In the case of a child who was adopted without compliance with the Convention requirements, if the other Convention country voids the adoption and allows the child to be adopted again after complying with the Convention, any contact that had occurred will be considered to have been approved.

New 8 CFR 204.309(b)(3) and (b)(4) are drawn from current 8 CFR 204.3(i) and (k)(2), respectively. As noted, 8 CFR 204.3(i) requires the denial of a case if there is a finding of ''child buying.'' New 8 CFR 204.309(b)(3) applies the same principle to Convention adoption cases.

Under 8 CFR 204.3(k)(2), a child who is already in the United States is generally not eligible for classification as an orphan. The only exception is for a child who has been paroled into the United States; even then, the child is eligible only if the child has not already been adopted in the United States. New 8 CFR 204.309(b)(4) would change this principle.

DHS has concluded that limiting the benefits of intercountry adoption to parolees, and barring this benefit to aliens admitted as nonimmigrants, can work a significant hardship. For example, some children are brought to the United States as nonimmigrants for emergency medical treatment. If the child later becomes eligible for intercountry adoption, current 8 CFR 204.3(k)(2) requires the child to leave the United States first in order to be eligible to qualify for an orphan petition. In at least some cases, however, the medical condition that warranted bringing the child here makes it difficult or ill-advised for the child to go abroad for adoption. The underlying purpose for current 8 CFR 204.3(k)(2) is to respect the jurisdiction of the country of the child's habitual residence over the child's placement and welfare. This interest, however, can be protected without having a rule as restrictive as current 8 CFR 204.3(k)(2).

As noted in the discussion of the proposed amendment to 8 CFR 204.2(d)(2)(vii), a child who has already

been brought to the United States will generally still be considered to be habitually resident in the Convention country. A child who is already present in the United States—as a parolee, nonimmigrant, or even in an unlawful status—will be able to be the beneficiary of a Convention adoption. It will, however, be necessary for the prospective adoptive parent(s) to comply with the Convention requirements and those of section 101(b)(1)(G) of the Act. This means that it will be necessary either to adopt the child in the Convention country, or to obtain custody of the child in the Convention country for purposes of adoption in the United States. To avoid unnecessary hardship to the child, however, the rule does not require the child to return abroad. Rather, it may be possible for USCIS to approve a Form I–800, if the Central Authority of the other Convention country will permit the prospective adoptive parents to complete the Convention process while the child remains in the United States.

Note that approval of a Form I–800 does not waive any substantive eligibility requirements that must be met for adjustment of status. As an immediate relative, the beneficiary of an approved Form I–800 would not be subject to ineligibility for adjustment under section 245(c)(2) of the Act, 8 U.S.C. 1255(c)(2), based on a failure to maintain lawful immigration status, nor under section 245(c)(4), based on having been admitted under the Visa Waiver Program. A child who is present without having been inspected and admitted, however, is ineligible for adjustment under section 245(a) of the Act, 8 U.S.C. 1255(a). Section 245(i) of the Act, 8 U.S.C. 1255(i), will not waive this requirement for Convention adoptees, since no Form I–800 will have been filed before April 30, 2001, as required by section 245(i). If the child would not be eligible for adjustment of status, the Form I–800 may be provisionally approved only if the child will, upon provisional approval, go abroad to obtain a visa.

New 8 CFR 204.309(b)(5) requires denial of a Form I–800 if it is filed before a Form I–800A has been approved, after an approval has expired, or after a Form I–800A has been denied. This provision is necessary to give effect to the principle that the prospective adoptive parent(s) must be found suitable for adoption before they may pursue the adoption of a specific child.

New 8 CFR 204.307(c) bars the filing of a new Form I–800A or Form I–800 within one year after a prior Form I–800A, I–800, I–600A, or I–600 was denied based on one of the specific types of misconduct stated in the rule. New 8 CFR 204.309(a)(4) and (b)(6) require the denial of any Form I–800A or I–800 filed during this one-year period. If a Form I–800A, or Form I–800 under 8 CFR 204.307(c), is denied, no administrative appeal will be available.

New 8 CFR 204.309(c) establishes that, before denying a case under the new 8 CFR 304.309(a) or (b), USCIS will issue a notice of intent to deny the Form I–800A or Form I–800, so that the prospective adoptive parent(s) will have an opportunity to counter the claim that 8 CFR 204.309(a) requires denial of the Form I–800A. The response period for a notice of intent to deny in a Convention case will be 30 days.

New 8 CFR 204.310—Form I–800A Filing Requirements

The general filing requirements for a Form I–800A are set forth in new 8 CFR 204.310. In general, this new provision corresponds to current 8 CFR 204.3(c). If a married couple files the Form I–800A, both spouses must sign the Form I–800A personally. This means that one spouse cannot sign for the other, even under a power of attorney or similar agency arrangement. If the prospective adoptive parent is not married, he or she must present his or her birth certificate, or other evidence to establish that he or she is at least 24 years old. This provision mirrors the provision that has been followed in orphan cases: Although, by statute, the unmarried prospective adoptive parent may not file the visa petition until he or she is at least 25, the unmarried prospective adoptive parent may begin the process by filing the application for approval as an adoptive parent at age 24. *Cf. 8 CFR 204.3(b) (definition of ''prospective adoptive parent'').* As contemplated by article 5(a) of the Convention, the prospective adoptive parent(s) seeking to adopt a Convention adoptee must file the Form I–800A before the prospective adoptive parent(s) has (have) adopted or obtained custody of the child.

The most significant change from 8 CFR 204.3(c) concerns the submission of the home study. Under current 8 CFR 204.3(c)(2), the prospective adoptive parent(s) in an orphan case may submit the home study up to one year after the filing of the Form I–600A. This provision serves little purpose. As the home study is the single most important item of evidence in determining the suitability of the prospective adoptive parent(s) for adoption, under new 8 CFR 204.310(a)(3)(vi) the home study must be submitted with the Form I–800A. If the home study is missing, USCIS will send a request for evidence, directing that the home study be submitted. If the home study is not submitted within the period specified in the request for evidence, the Form I–800A will be denied, without prejudice to the filing of a new Form I–800A, with a new filing fee.

Under new 8 CFR 204.310(b), USCIS will arrange for the fingerprinting of the prospective adoptive parent(s) and any additional adult household members once the Form I–800A is filed. This provision mirrors current practice. The rule also makes clear that, unlike some types of cases, there is no upper age limit after which a person need not be fingerprinted. For example, an applicant for adjustment of status who is over 79 years old generally is not required to submit fingerprints. Applying this exception to intercountry adoption cases is not consistent with the protection of a child's best interests, since an older person could have a history of crime, sexual abuse, or child abuse that would be relevant to whether a child should be placed in the home.

New 8 CFR 204.311—Convention Adoption Home Study Requirements

Drawn from current 8 CFR 204.3(e), new 8 CFR 204.311 establishes the requirements that a home study must meet, in order to be admissible as evidence in a Form I–800A case. The rule includes some important changes. The most important Convention-related change concerns who may conduct a home study. Sections 201 and 404 of the IAA make it unlawful for any individual or entity to provide any of the six adoption services identified in section 3(3) of the IAA in connection with a Convention adoption, unless specifically authorized to do so. The Department of State, as the U.S. Central Authority, published in the **Federal Register** on February 15, 2006, at 71 FR 8064, a comprehensive regulation governing the accreditation or approval of individuals and agencies as authorized adoption service providers in Convention adoption cases. As noted earlier, new 8 CFR 204.301 incorporates these requirements by reference into the definition of ''home study preparer'' that applies to Convention adoption cases.

New 8 CFR 204.311(a) restates the first sentence of current 8 CFR 204.3(e).

New 8 CFR 204.311(b) incorporates the requirement that only someone authorized to do so under 22 CFR part 96 may complete a home study for a Convention adoption.

New 8 CFR 204.311(c) gives a general overview, drawn from 8 CFR 204.3(e), of the general requirements that all home studies must meet.

New 8 CFR 204.311(d) restates provisions, from 8 CFR 204.3(e)(2)(i) and (iii)(D), concerning the applicant's duty to disclose all information relevant to the proper completion of the home study. In particular, new 8 CFR 204.311(d) states the general requirement that the applicant, and any additional adult household member, must answer, truthfully and completely, all questions relating to the proper completion of the home study. USCIS regularly encounters cases in which a person failed to disclose an arrest or conviction. When USCIS raises the issue, the person may respond that he or she did not think that it had to be disclosed because it had been dismissed, expunged, or subjected to some other amelioration. Section 101(a)(48) of the Act, 8 U.S.C. 1101(a)(48), however, makes it clear that the disposition of a case may constitute a conviction, for purposes of the Act, even if it is no longer a conviction for State law purposes. More fundamentally, any arrest, regardless of the disposition, has the potential to be relevant in determining a person's suitability as an adoptive parent. New 8 CFR 204.311(d) makes clear, therefore, that the applicant, and any additional adult household members, must disclose each and every arrest or conviction, even if it has been erased, dismissed, expunged, or ameliorated in any other way. New 8 CFR 204.311(f) requires the home study preparer to certify that he or she advised the prospective adoptive parent(s) of this duty to disclose.

New 8 CFR 204.311(e) restates the requirement in 8 CFR 204.3(e) that a home study must meet applicable State standards. This provision also corresponds to 22 CFR 96.47(b).

New 8 CFR 204.311(f) requires the home study preparer to sign the home study under penalty of perjury. In doing so, the home study preparer declares that he or she either conducted or supervised the completion of the home study and that the factual statements in the home study are true to the best of the signer's knowledge, information and belief. Currently, 8 CFR 204.3 does not expressly require the home study to be signed under penalty of perjury. Adding this requirement reflects the fact that the home study is evidence in a legal proceeding.

Current 8 CFR 204.3(e) requires the home study preparer to interview the prospective adoptive parent(s) in person and to visit the home. New 8 CFR 204.311(g) includes this requirement, but adds the requirement that the home study must state specifically when and where these interviews and visits took place. The home study preparer must also interview any additional adult members of the household. Unlike the interview(s) with the prospective adoptive parent(s), it is not strictly necessary to conduct face-to-face interviews of these other persons. The interview of an additional adult household member should be in person, if possible. If, for example, the additional adult household member is temporarily away at school, however, it may not be feasible to do the interview in person. Thus, new 8 CFR 204.311(g) allows the home study preparer to state that the interview with the additional adult household member was not done in person, and give a reason why the home study preparer decided it was appropriate to interview the person in this way. New 8 CFR 204.311(g)(3) and (4) restate the requirements of 8 CFR 204.3(e)(2)(i).

New 8 CFR 204.311(h) restates current 8 CFR 204.3(e)(2)(ii).

New 8 CFR 204.311(i) and (j) are drawn from current 8 CFR 204.3(e)(2)(iii), relating to the screening of prospective adoptive parents against child abuse registries. The rule includes a significant change. The home study preparer will be required under new 8 CFR 204.311(i)(1) to check the child abuse registries for any State or country in which the prospective adoptive parent(s) or additional adult household members has (have) lived since the age of 18. Current 8 CFR 204.3(e)(2)(iii)(A)(1) requires checking ''available'' registries, but does not specify the period that the checks must cover. Current 8 CFR 204.3(e)(2)(iii)(2) requires the home study preparer to ask whether a prospective adoptive parent or household member has any history of substance abuse, sexual abuse, child abuse, or domestic violence. The person must disclose any such history as an offender, even if there has never been an arrest or conviction. A single incidence of sexual abuse, child abuse, or family violence, under 8 CFR 204.311(c)(14), is enough to constitute a ''history.'' A history of substance abuse, by contrast, might not involve a single act of substance abuse. For substance abuse, the concern under 8 CFR 204.311(c)(15) is whether the person's abuse has resulted in an impairment that may adversely affect suitability as adoptive parent(s).

New 8 CFR 204.311(k) requires the applicant, and any adult member of the household, to disclose any criminal history (other than minor traffic offenses), in addition to any history involving sexual abuse, child abuse, or family violence. This provision is drawn from 8 CFR 204.3(e)(2)(v).

New 8 CFR 204.311(l), drawn from 8 CFR 204.3(e)(2)(iii)(C), describes the type of evidence to be submitted to establish that a person with a history of sexual abuse, child abuse, family violence, or any other criminal activity, may show sufficient rehabilitation to warrant approval of a Form I–800A. The new provision makes clear that a home study preparer may not make a favorable recommendation if the applicant, or an additional adult member of the household, is on probation due to a criminal conviction. Approval will be possible only once the person has completed, and been discharged from, the probation.

New 8 CFR 204.311(m) requires the home study preparer to address issues of physical, mental or emotional health, or behavioral issues of the prospective adoptive parent(s) and any additional adult members of the household, as these issues may affect the suitability of the prospective adoptive parent(s) for intercountry adoption. This provision is drawn from current 8 CFR 204.3(e)(2)(i).

New 8 CFR 204.311(n), like current 8 CFR 204.3(e)(2)(iv), requires the disclosure, and provision of a copy, of any prior home study that did not favorably recommend the prospective adoptive parent(s), or an additional adult member of the household, for adoption or other custodial care of a child. If a copy of the prior home study is no longer available, the applicant must explain why it is not available. To ensure that USCIS has a complete history, the rule also requires the disclosure of any prior home study process that was initiated, but terminated without a formal home study having been completed.

New 8 CFR 204.311(o) and (p) are drawn from current 8 CFR 204.3(e)(3) and 204.3(e)(4).

New 8 CFR 204.311(q) is drawn from section 203(b)(1)(A)(ii) of Pub. L. 106–279, 114 Stat. 833. Any home study for a proposed Convention adoption must specifically address whether the prospective adoptive parent(s) will actually be eligible to adopt or obtain custody of a child from the Convention country. To ensure that the United States and adoption service providers will be aware of these requirements, section 102(b)(2) and (3) of Pub. L. 106–279 requires the Department of State to obtain from other Convention countries, and make available to adoption service providers, any special requirements relating to eligibility to adopt in those countries. Once the Department of State has obtained this information and made it available, new 8 CFR 204.311(q) will require that the home study address those requirements. For example, if a

particular Convention country sets a maximum (or minimum) age for prospective adoptive parent(s), the home study will have to specifically state that requirement and assess whether the prospective adoptive parent(s) meet(s) the requirements. Note that USCIS will not deny a Form I–800A based solely on the other Convention country's requirements. It is for that other Convention country to determine how to apply its own law to a particular case. Including this information in the home study is meant to ensure that the prospective adoptive parent(s) is (are) aware of the requirements, that the home study preparer can assess the relevance of these requirements, and that the prospective adoptive parent(s) may make an informed decision about whether to attempt to adopt in a particular country.

New 8 CFR 204.311(r) is drawn from current 8 CFR 204.3(e)(6). The home study preparer must specifically recommend for or against approval of the prospective adoptive parent(s) as suitable as the adoptive parent(s) of a Convention adoptee. As noted, new 8 CFR 204.311(e) requires the home study preparer to prepare the home study according to the requirements that apply to home studies in the State of residence of the prospective adoptive parent(s). The home study must also specify the scope of the recommendation, and note whether the home study preparer recommends any restrictions concerning the age, gender, or other characteristics of the intended adopted child.

New 8 CFR 204.311(s) and (t) address the review of the home study. First, under 8 CFR 204.311(s), the home study preparer must specify the basis of the authority to complete the home study. As noted, only someone authorized under 22 CFR part 96 to complete a Convention home study may do so. If the home study preparer is not a public domestic authority or an accredited agency or temporarily accredited agency as defined in 22 CFR part 96, then, under 8 CFR 204.311(t)(2), an accredited agency or temporarily accredited agency must review and approve the home study before it can be submitted to USCIS. Finally, 8 CFR 204.311(t)(1) also requires review of the home study by the competent authority of the State in which the prospective adoptive parent(s) reside, if that State's law requires this review. New 8 CFR 204.311(t)(1) is drawn from current 8 CFR 204.3(e)(8).

New 8 CFR 204.311(u) is drawn from current 8 CFR 204.3(e)(9), relating to the need to amend or update a home study. An amended or updated home study is subject to the same review requirements, in new 8 CFR 204.311(s) and (t), that apply to the initial home study. It is not universally the case that an amended or updated home study is completed by the same home study preparer. For the sake of completeness, new 8 CFR 204.311(u) requires that any amended or updated home study must include a copy of the earlier home study (and all prior updates or amendments) and the preparer must specifically state that the preparer reviewed the prior home study (and any prior amendments or updates) and is aware of its contents. USCIS, of course, will already have a copy of the original home study and any prior update or amendment. Requiring the update or amendment to include the prior home study ensures that the home study preparer did, in fact, receive a copy of these prior documents.

If it becomes necessary to amend or update the home study while the Form I–800A is still pending, the prospective adoptive parent(s) need only submit it to USCIS. In some cases, however, the change that necessitates an amended or updated home study will occur after USCIS has approved the Form I–800A. The INS never developed a standardized process for submitting an amended or updated home study after approval of a Form I–600A. This rule fills that void. Rather than requiring a motion to reopen, new 8 CFR 204.311(u) allows the prospective adoptive parent(s) to submit the updated or amended home study with a properly completed Form I–800A Supplement 3, with the filing fee established by 8 CFR 103.7(b). The basis for calculating the Form I–800A Supplement 3 filing fee is discussed below, in relation to new 8 CFR 204.312(e)(3), governing the extension of the approval period for a Form I–800A. As noted in that discussion, the filing fee for the Form I–800A Supplement 3 is less than the fee for a motion to reopen. If USCIS finds that the updated or amended home study supports the validity of the decision approving the Form I–800A, USCIS will issue a new approval notice. The new notice will not extend the approval period; new 8 CFR 204.312(e)(3) covers that issue.

New 8 CFR 204.312—Adjudication of the Form I–800A

New 8 CFR 204.312(a) states the burden of proof and persuasion that must be met in order for USCIS to approve a Form I–800A. USCIS will approve the Form I–800A if the prospective adoptive parent(s) establish(es) that the prospective adoptive parent(s) is (are) eligible to file a Form I–800A (i.e., a married couple, at least one of whom is a United States citizen, or an unmarried United States citizen who is at least 24) and that the prospective adoptive parent(s) is (are) are suitable as the adoptive parent(s) of a Convention adoptee.

New 8 CFR 204.312(b) and (c) correspond to current 8 CFR 204.3(h)(2) and 204.3(h)(4) through (h)(7). First, new 8 CFR 204.312(b), like current 8 CFR 204.3(h)(2), makes it clear that it is for the USCIS officer, not the home study preparer, to decide whether the Form I–800A should be approved. Although the home study will have considerable evidentiary weight, the USCIS officer is not bound to approve a Form I–800A simply because the home study is favorable. The officer may consult the accredited or temporarily accredited agency, the home study preparer, the prospective adoptive parents, State or local child welfare agencies, or other professionals. If USCIS denies the Form I–800A, new 8 CFR 204.312(c) will require USCIS to inform the prospective adoptive parents of the reasons for the denial, and of the right to file an administrative appeal.

New 8 CFR 204.312(d) provides for the issuance of an approval notice, if USCIS approves the Form I–800A. The rule deletes, as no longer necessary, the current requirement in 8 CFR 204.3(j)(1) regarding the issuance of ''telegraphic notification'' of the approval to a visa issuing post. The availability of the National Visa Center, fax transmissions, and e-mails obviate the need for ''telegrams.'' New 8 CFR 204.312(d)(2) requires that, once the Form I–800A is approved, any submission of the home study to the Central Authority of the other Convention country must include the entire and complete text of the same home study, including any amendments or updates, that was submitted to USCIS. This requirement harmonizes DHS regulations with the accreditation standards found in 22 CFR 96.47(d).

New 8 CFR 204.312(e)(1) defines the approval period for a Form I–800A. Under current 8 CFR 204.3(h)(3)(i), the approval notice for a Form I–600A in an orphan case is valid for 18 months. Except for 8 CFR 204.3(h)(3)(ii), a special provision adopted in 2003 in response to the outbreak of Severe Acute Respiratory Syndrome (SARS), 8 CFR 204.3(h)(3) includes no provision for the extension of this approval period. If the Form I–600A approval expires before a child is located for adoption, the current rule requires the prospective adoptive parents either to file a new Form I–600A, or else to file with the Form I–600 the type of evidence necessary for approval of a Form I–600A.

The current rule presents two problems. From the point of view of the protection of an adopted child, the approval period is too long. Standard USCIS policy has been that the FBI's clearance of a person's fingerprints is valid for 15 months. After that period, USCIS will not assume that the person's criminal history remains unchanged. Thus, by making the approval of a Form I–600A valid for 18 months, there is some risk that a Form I–600 may be approved without the discovery of new, adverse information. From the perspective of prospective adoptive parents, by contrast, the inability to obtain an extension of the approval period creates uncertainty, since some countries will not match for adoption a prospective adoptive parent whose Form I–600A approval has expired, despite the ability to obtain a new approval.

DHS adopted a provisional remedy to this problem under the final fee rule, published on May 30, 2007, at 72 FR 29851. The fee rule amended 8 CFR 103.7(b) to permit the prospective adoptive parent(s) to make one request to extend the approval period of Form I–600A. Id. at 29874. No fee was established for this request, since the proposed rule did not include any provision on this issue.

New 8 CFR 204.312(e)(1) and (3) seek to provide a more comprehensive resolution to both problems. First, under new 8 CFR 204.312(e)(1), the initial approval period for a Form I–800A in a Convention case will be 15 months from the date USCIS received the initial FBI response for the fingerprints of the prospective adoptive parent(s) and any additional family members. If the initial 15-month period is about to expire, the fingerprints must be submitted again before approval, as specified in new 8 CFR 204.310. Moreover, under new 8 CFR 204.312(e)(3), the prospective adoptive parent(s) will be able to request an extension of the approval period for an additional 15 months. To obtain this extension, if the approval of the Form I–800A is about to expire but no Form I–800 has yet been filed, the prospective adoptive parent(s) will file Form I–800A Supplement 3, without having to pay the Supplement 3 filing fee (for the first request for an extension), with an updated or amended home study. If USCIS finds that approval of the Form I–800A remains warranted, USCIS will extend the approval period for an additional 15 months, from the date USCIS receives the new FBI response on the fingerprints.

As noted, if the prospective adoptive parents have not yet filed a Form I–800, no filing fee will be required to file Form I–800A Supplement 3 in order to obtain a first extension of the Form I–800A approval. This interim rule, however, is broader than the solution adopted in the final fee rule, in that under this interim rule there is no limit to the number of times the approval of a Form I–800A may be extended. As long as the prospective adoptive parents are still seeking to adopt a child, and are still suitable as adoptive parents, they may seek extensions as often as needed to keep the Form I–800A approval current. If the prospective adoptive parents will need to file a new Form I–800A Supplement 3 to obtain a second, or subsequent, extension of the approval of the Form I–800A, however, they will need to pay the Form I–800A Supplement 3 filing fee for the second or subsequent request. This interim rule adopts the filing fee for Form I–824, Application for Action on Approved Petition or Application, as the filing fee for Form I–800A Supplement 3 because USCIS anticipates that the cost of adjudicating an extension request will be substantially similar to the cost of adjudicating Form I–824. USCIS currently uses Form I–824 in a variety of situations in which a petitioner or applicant asks USCIS to take a specific act on an approved petition or application. USCIS will re-examine its fee structure again in 2 years in accordance with OMB requirements and all application and petition fees may be adjusted then. The actual experience of USCIS in adjudicating extension requests will be used to determine the fee for extension requests at that time. As noted, the Form I–800A Supplement 3 filing fee is considerably less than the fee for a motion to reopen or to file a new Form I–800A.

As a change in marital status is a considerable change in the facts supporting a prior approval, under 8 CFR 204.312(e)(2), approval of a Form I–800A will be revoked automatically if an unmarried prospective adoptive parent marries, or if the marriage of a prospective adoptive parent couple ends. Revocation of the approval of the Form I–800A will be without prejudice to the filing of a new Form I–800A and Form I–800, reflecting the change in marital status. As stated previously, when the prospective adoptive parents are married, both spouses must adopt the child. For this reason, 8 CFR 204.312(e)(2) also provides that approval of a Form I–800A is automatically revoked if either spouse withdraws his or her signature on the Form I–800A.

New 8 CFR 204.313—Filing and Adjudication of Form I–800

Once USCIS has approved a Form I–800A and the prospective adoptive parent(s) has (have) identified a child who may qualify for immigration as a Convention adoptee, the next step is to file Form I–800. New 8 CFR 204.313 governs the filing and adjudication of Forms I–800. The basic framework is drawn from current 8 CFR 204.3(d).

The most significant difference, in comparison with orphan cases, is that the prospective adoptive parent(s) must file the Form I–800 *before* they adopt or obtain custody of the child. This provision reflects the requirements of article 5(c) of the Convention. The fundamental Convention principle is that the child's eligibility for immigration, based on the proposed adoption, must be determined before the adoption or custody can take place.

For this reason, new 8 CFR 204.313 provides a two-step process. First, the prospective adoptive parent(s) must submit a properly completed Form I–800 and evidence that the alien child qualifies as a Convention adoptee. The most important items of evidence will be the Central Authority's reports that document the child's eligibility for intercountry adoption. If the USCIS or Department of State officer finds that the child qualifies as a Convention adoptee, the USCIS or Department of State officer will issue a provisional approval of the Form I–800. The provisional approval permits the prospective adoptive parent(s) to complete the adoption or, for a child who will be adopted in the United States, to obtain custody of the child for purposes of emigration and adoption. Note that one requirement under article 5(b) of the Convention is that all necessary counseling must be completed before the adoption takes place. The required counseling is described in 22 CFR 96.48. At the Form I–800A stage, the home study is required to discuss the extent to which counseling has been completed and outline a plan for further counseling. New 8 CFR 204.311(c)(8). Further, before the Form I–800 can be provisionally approved, the adoption service provider must submit evidence that the remaining required counseling has been completed. New 8 CFR 204.313(c)(3).

Section 101(b)(1)(G) of the Act requires that the visa petition in a Convention case must be filed before the child's sixteenth birthday. There is no authority to permit a later filing. This rule does establish, however, two special provisions for cases involving

children who are placed for adoption in cases initiated while the child is 15:

• If the prospective adoptive parent(s) filed the Form I–800A after the child's fifteenth birthday but before the child's sixteenth birthday, the Form I–800A filing date will be treated as the Form I–800 filing date, but only if the Form I–800 is filed within 180 days after the initial approval of the Form I–800A;

• If the Central Authority places the child for adoption more than 6 months after the child's 15th birthday but before the child's 16th birthday, and the reports that must accompany the Form I–800 are not yet available, the prospective adoptive parent(s) may file the Form I–800 without those reports, but the Form I–800 will not be provisionally approved until the reports are submitted.

When the Form I–800 is filed without the required reports, so as not to miss the filing deadline on the day before the child's sixteenth birthday, the prospective adoptive parents would, instead, present a declaration from the adoption service provider that the Central Authority has, in fact, made the decision to place the child with the prospective adoptive parent(s) for adoption.

The rule includes a special provision concerning the child's admissibility. Ordinarily, whether an alien beneficiary of a visa petition is admissible is not addressed in the visa petition proceeding. *Matter of O-,* 8 I&N Dec. 295 (BIA 1959). Article 5(c) of the Convention, however, provides that a Convention adoption should not occur, unless the child ''is or will be authorized to enter and reside permanently'' in the receiving country. For this reason, new 8 CFR 204.313(d)(5) permits the prospective adoptive parent(s) to file with the Form I–800 an application for any waiver that may be necessary to overcome a known or suspected ground of inadmissibility. Provisional approval of the Form I–800 will include approval of the waiver application, although the waiver will be void if the child does not actually immigrate on the basis of the approved Form I–800. If it is determined that the waiver application will be denied, provisional approval of the Form I–800 will not be granted.

Similarly, many Convention adoptees will not be subject to the affidavit of support requirement under section 213A of the Act, either because their adoptive parents already have 40 quarters of coverage under the Social Security Act or else because the children will acquire United States citizenship under section 320 of the Act upon admission. 8 CFR 213a.2(a)(2)(ii)(C) and (E). Thus, new 8 CFR 204.313(d)(6) permits the prospective adoptive parent(s) to file the Form I–864W, Intending Immigrant's I–864 Exemption, or, if needed, Form I–864, with the Form I–800.

New 8 CFR 204.313(f) provides authority to conduct an investigation before the provisional or final approval of a Form I–800. This investigation corresponds to the ''I–604 investigation'' that is conducted in orphan cases. *See* 8 CFR 204.3(k)(1). Unlike the ''I–604 investigation,'' new 8 CFR 204.313(f) does not require an investigation in every case. The respective roles of the Central Authorities should make it more readily apparent that the documents submitted with a Form I–800 are legally sufficient to establish that the child is eligible to immigrate as a Convention adoptee. USCIS anticipates that, as a general principle, it will accept the Central Authority's certification that the consents necessary to make the child eligible for adoption are valid. New 8 CFR 204.313(f) does, however, permit an investigation, if the USCIS officer or Department of State officer believes that an investigation is necessary to the proper adjudication of the case. Consequently, even when the Central Authority has provided a certification that appears proper, USCIS may deny a Form I–800 if, as a result of an investigation, USCIS finds that the purported consents are not valid, or that the child, for any other reason, does not qualify as a Convention adoptee.

The prospective adoptive parent(s) may either complete the adoption abroad, or else obtain custody of the child in order to bring the child to the United States for adoption, after (1) USCIS (or the Department of State officer acting on behalf of USCIS) has provisionally approved the Form I–800; (2) the consular officer has annotated the visa application as specified in the Department of State rule published in the **Federal Register** on June 22, 2006, at 71 FR 35847; and (3) the Department of State has provided the notice contemplated by article 5(c) of the Convention. Upon completing the above processes, the parents would then present the adoption or custody decree to the Department of State officer with jurisdiction to adjudicate the child's visa application. Once the Secretary of State has certified that the adoption or custody decree satisfies the Convention and IAA requirements, and all other steps required both by this regulation and the Department of State regulations have been completed, the Department of State officer, acting on behalf of USCIS, will give final approval of the Form I–800. As with provisional approvals, if the Department of State officer determines that the Form I–800 is not clearly approvable, the Department of State officer must refer the Form I–800 to USCIS for decision.

Under current 8 CFR 204.3, approval of a Form I–600 makes the alien beneficiary eligible to apply for an immigrant visa. Approval of a Form I–800 will have the same effect. In some cases, however, the intention is not for the child to live in the United States with the adoptive parent(s) immediately after the adoption. Rather, the intention is for the family to bring the child to the United States briefly, either after completing the adoption abroad or else to complete it in the United States, and then to return to the family's residence abroad. Use of an immigrant visa is not really designed for this situation. Moreover, acquisition of United States citizenship under section 320 of the Act occurs only if the child is ''residing in'' the United States with the United States citizen parent. To accommodate the situation of families living abroad, new 8 CFR 204.313(b)(2) provides that approval of a Form I–800 can support issuance of a nonimmigrant visa, as well as an immigrant visa, if the adoption is actually completed abroad. Admission of the child as a nonimmigrant will facilitate the child's naturalization under section 322 of the Act, rather than under section 320 of the Act. Admission with a nonimmigrant visa for purposes of naturalization under section 322 of the Act is not an option, if the child will be adopted in the United States.

New 8 CFR 204.314—Administrative Appeals

Under current 8 CFR 204.3, the prospective adoptive parent(s) may appeal to the Administrative Appeals Office from a decision denying a Form I–600A or Form I–600. New 8 CFR 204.314(a) retains this right to appeal for Convention adoption cases. There are four situations, however, in which the prospective adoptive parents will not be able to appeal the denial of a Form I–800 or Form I–800A. No appeal will be available if USCIS denies a: (i) Form I–800A because the Form I–800A was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I–800A; or (ii) Form I–800A for failure to timely file a home study as required by 8 CFR 204.310(a)(4)(viii); or (iii) Form I–800 because the Form I–800 was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I–800; or (iv) Form I–800 filed either before USCIS approved a Form I–800A or after the expiration of the approval of a Form I–800A.

3. Affidavits of Support Under Section 213A of the Act

Sections 212(a)(4) and 213A of the Act, 8 U.S.C. 1182(a)(4) and 1183a, require the submission of a legally-enforceable affidavit of support on behalf of most aliens who immigrate as immediate relatives and family-based immigrants. The affidavit of support rule, 8 CFR 213a.2, provides, however, that this requirement does not apply to an alien who has already earned, or can be credited with, 40 quarters of coverage under the Social Security Act. 8 CFR 213a.2(a)(2)(ii)(C). A child is credited with any quarters of coverage that the child's parents have already earned. Id. For this reason, many, and perhaps most, Convention adoptees will be exempt from the affidavit of support requirement under this provision.

The affidavit of support is also waived for alien children of United States citizens who will acquire United States citizenship by naturalization under section 320 of the Act, 8 U.S.C. 1431, immediately upon admission for permanent residence. Many, and perhaps most, Convention adoptees will be naturalized under section 320 of the Act immediately upon having been admitted for permanent residence. This rule makes a conforming amendment to 8 CFR 213a.2(a)(2)(ii)(E) to clarify that the affidavit of support requirement does not apply to Convention adoptees who will acquire United States citizenship upon admission under section 320 of the Act.

4. Applying for Naturalization Under Section 322 of the Act

As noted, approval of a Form I–800 may support the child's admission as a nonimmigrant, if the child will come to the United States for naturalization under section 322 of the Act and then return abroad to live with the adoptive parent(s). For orphan cases, 8 CFR 322.3 provides for the submission of the Form I–600 approval notice and supporting evidence, if the orphan seeks naturalization under section 322. This rule adopts a corresponding provision for Convention cases. If the child will seek naturalization under section 322, the Form I–800 approval notice and supporting evidence (other than the home study) will be submitted to establish the child's eligibility for naturalization under that provision.

V. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, permits DHS to publish this rule without prior notice and comment, because this rule implicates a foreign affairs function of the United States. 5 U.S.C. 553(a)(1). DHS has also determined that this rule is exempt from the APA's notice and comment requirements because those requirements are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

I. Foreign Affairs Function

This rule implicates a foreign affairs function and advances the foreign policy interests of the United States and is, therefore, exempt from the Administrative Procedure Act's (APA) notice and comment requirements. 5 U.S.C. 553(a)(1). The APA's foreign affairs exemption allows Federal agencies to forgo notice and comment when the request for comments may provoke undesirable international consequences. *Am. Association of Exporters & Importers* v. *U.S.,* 751 F.2d 1239 (Fed. Cir. 1985). *Cf, Zhang* v. *Slattery,* 55 F.3d 732, 736 (2d Cir. 1995) (holding that ''notice and comment provisions of Administrative Procedure Act are inapplicable to rules involving military or foreign affairs function of United States, presumably to avoid public airing of matters that might inflame or embarrass relations with other countries''). In *Am. Association of Exporters,* the court determined that the adoption of textile trade regulations by the Committee for Implementation of Textile Agreements was exempt from APA notice-and-comment requirements, since prior disclosure of the Government's intention to impose import restrictions would provoke undesirable international consequences. *Id.,* at 1241. The court first found that the underlying statute authorized regulations to carry out agreements with nations not covered by any agreement, so as to protect the textile trade program which the agreements established, and the subject multi-country arrangements announced as its purpose to negate unsatisfactory situations in world textile trade. The court also found that soliciting comments on the Committee's rules would disseminate market information to the detriment of market participants and parties to the agreement. *Id.*

Consistent with the rule established in *Am. Association of Exporters,* the present rule obviously implicates foreign policy. As stated above, the Convention has been ratified by 74 countries to, *inter alia,* establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and to secure the recognition of adoptions made in accordance with the Convention by contracting states. The United States Government has publicly committed to ratification of the Convention in 2007. See Testimony of Catherine Barry, Deputy Assistant Secretary for Overseas Citizens Services, U.S. Department Of State, before Subcommittee on Africa, Global Human Rights and International Operations of the Committee on International Relations House of Representatives (November 14, 2006). Since the United States is one of the primary destinations for children subject to intercountry adoption, ratification by the U.S. is necessary to advance the purposes of the Convention. The IAA assigned primary responsibility for implementation of the agreement to DOS; however, these regulations, promulgated after those of the Department of State and as required by statute, are necessary for ratification. Requesting public comments on issues already addressed by the DOS rules would make it very unlikely that the U.S. will ratify the Convention in 2007. Such a delay would be detrimental to the agreements made by the U.S. and damage the nation's foreign policy interests. If notice and comment precedes, rather than follows, the promulgation of this rule, the delays associated with soliciting comments will result in the inability of the United States to fulfill its commitment to ratify the Convention this year.

Until the United States becomes a party, the ability of the United States to advocate for wider acceptance of the Convention will be hampered. This result could have an impact on children in the United States, as well as abroad. This rule addresses the immigration of children into the United States. The Convention itself, however, also applies its protections to children who are habitually resident in the United States and who are adopted by adoptive parents living abroad. A delay in ratification of the Convention will result in a delay in the ability to extend the benefits of the Convention to such children.

This is further supported by well-established precedent. See *Int'l Brotherhood of Teamsters* v. *Pena*, 17 F.3d 1478, 1486 (D.C. Cir. 1994) (''foreign affairs function'' exception applied to rule promulgated to implement a memorandum of understanding between the United States and Mexico regarding recognition of each country's commercial drivers' licenses); *Mast Industries, Inc.* v. *Regan*, 596 F. Supp. 1567 (C.I.T. 1984) (''foreign affairs function'' exception applied to regulations to implement bilateral trade agreements); *WBEN, Inc.* v. *U.S.*, 396 F.2d 601 (2d Cir. 1968) (''foreign affairs function'' exception applied to FCC

broadcast rules required by agreement with Canada).

II. Impractical, Unnecessary, and Contrary to Public Interest

In addition, it would be unnecessary and impracticable for USCIS to seek comment on this interim rule. *See* 5 U.S.C. 553(b)(3)(A) (providing that notice and comment requirements do not apply ''when the agency for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to public interest''). The Senate consented to ratification of the Convention in 2000, and Congress enacted the implementing legislation that same year. The consent to ratification, and hence the effective date of title III of Public Law 106–279, was conditioned on the creation of the necessary administrative procedures. For DOS, adopting the ''necessary administrative procedures'' required the creation of a comprehensive, and entirely new, procedural mechanism for accrediting and regulating adoption service providers who handle Convention cases. DOS completed this rulemaking process with the publication of 22 CFR part 96 in the **Federal Register** on February 15, 2006, at 71 FR 8064.

This DHS interim rule, by contrast, has a more modest scope. Because DOS has established the accreditation process for these Convention cases, DHS is able to establish its necessary administrative procedures for these Convention cases. DHS has been able to adapt its existing regulations for orphan cases, which were promulgated after notice and comment on August 1, 1994, at 59 FR 38876, to reflect the accreditation requirements of 22 CFR part 96. An additional round of public comments on these accreditation issues, which DOS has already substantially addressed in its rule, would make it virtually impossible to ratify the Convention in 2007.

This rule also incorporates the requirement of articles 5 and 17 of the Convention, which provides that the adoptive parent's(s') suitability for adoption and the child's eligibility to immigrate must be determined before the actual adoption occurs. Notice and comment on those issues would be impracticable, since it would not be possible to ''implement'' the Convention while ignoring its key procedural requirements. Other aspects of this rule, such as the home study requirements, can most properly be characterized as clarifying, rather than significantly changing, the existing requirements that have been used in orphan cases for many years.

For these reasons, DHS is promulgating this rule before requesting public comment. Although pre-promulgation notice and comment is not legally required, the Department has elected not to publish this rule as a final rule, with no opportunity for public comment at all. By using, instead, an interim rule, the Department does invite notice and comment on all aspects of this rule. Any comments received will be considered in the formulation of the final rule. Because of the need for prompt ratification of the Convention, however, any changes made in the final rule will probably take effect after the Convention enters into force. The Department will adjudicate cases under this interim rule until the final rule is published.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * *, or any other law, to publish general notice of rule making for any rule.'' 5 U.S.C. 603(a). As noted, the Department has the authority to publish this rule without prior notice and comment, and has chosen to do so. Therefore, no RFA analysis is required for this rule. In any event, this rule applies to individuals, families, children, and adoptions and involves no effort to directly regulate the actions of small entities as defined by the RFA. Thus, the RFA does not apply.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this Interim Rule under Executive Order 12866. USCIS has conducted an analysis of the impacts on intercountry adoptions that are expected to result from this rule. This analysis relates only to the changes made by this interim rule itself, and not to changes resulting, for example, from the rules promulgated by the Department of State. Nonetheless, the costs and benefits associated with this rule may overlap with the costs and benefits of the DOS rules, as well as the costs and benefits of the ratification of the Convention and the enactment of the IAA.

This regulation is required by legislation that is intended to support intercountry adoptions. The United States, by ratifying the Convention and through passage of the IAA, recognizes that adoption of a child by parents in another country may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in the country of the child's habitual residence. Generally, governments regulate adoptions to make sure that the best interests of the adopted children are protected, rather than leave decisions regarding the welfare of a child to private organizations where placement of a child in a home may be based less on the child's best interest and the suitability of the prospective adoptive parent(s) and more on economic or other considerations. In any event, these intangible benefits of standardizing and improving the intercountry adoption process are difficult to quantify. Nonetheless, USCIS has performed an analysis of the impacts of this rule and summarized them below.

New Forms and Fee for Convention Adoptions

USCIS immigration benefit fees are established based on the amount that is necessary for the agency to recover the costs of the government resources expended to deliver the benefit. As stated earlier in this rule, because the adjudication process for Convention cases will be very similar to orphan cases, this rule sets the filing fee at the same rate that applies for orphan cases. Thus, the filing fee for the forms to be submitted for adoptions of children under the Convention, Forms I–800A and I–800, will be $670. There is one difference. In current orphan cases, a fee is required for Form I–600A or with Form I–600, if it is filed alone and no Form I–600A was filed. A new fee is required if Form I–600 was filed after

the approval of Form I–600A expired, or if the parent filed more than one Form I–600 for non-siblings. Since Convention adoption cases require an approved I–800A in every case before the Form I–800 may be filed, the fee payment sequence will not be the same as with the I–600/600A. As an I–800A is always required, an I–800A fee will always be required. There will not be a fee required for the first I–800. However, if the parents file more than one Form I–800, a separate fee will be required for the second, and any subsequent, Form I–800. The one exception will be if the second and subsequent I–800s are for adoption of pre-adoption siblings, in which case there is no required fee.

This interim rule adopts the same filing fee for Convention cases as USCIS has adopted for orphan cases. USCIS anticipates that the cost of adjudicating a Convention case will be substantially similar to the cost of adjudicating orphan cases. USCIS will re-examine its fee structure again in 2 years in accordance with OMB requirements and all application and petition fees may be adjusted then. The actual experience of USCIS in adjudicating Convention adoptions will be used to determine the fee for Convention adoptions at that time. Thus, although the fee charged by the agency for Convention adoptions will be established identical to that for non-Convention orphan adoption petitions, if actual experience is that there are variations in the complexity of adjudication of the petitions, the respective fees may differ in the future.

Monetized Impacts

This rule is expected to be revenue neutral to USCIS and the public. Although the number of applications and petitions for intercountry adoptions shifts each year between countries, general trends from recent years are expected to continue in a consistent fashion, unless there is an unforeseen disruption or surge in a particular country. After this rule, a prospective adoptive parent must file a Form I–800A and I–800 if they wish to adopt from a Convention country, unless an I–600A or I–600 had been filed prior to the effective date of this rule. Thus, following publication and implementation of this rule, adoptions from Convention countries are expected to shift from submission of the Form I–600 and 600A to Forms I–800A and I–800. Since the fees for both forms are equal, cost to the petitioner and fees collected by USCIS do not increase from shifts to Convention countries.

There were 13,241 U.S. intercountry adoptions in fiscal year 2005 from countries that have joined the Convention, and based on the average number of intercountry orphan adoptions over the past 5 years, approximately 61 percent of them have been from Convention countries. While the Convention provides benefits to countries that adopt its provisions, USCIS has no reliable data from which to estimate increases or decreases in the number of orphan adoptions, relative shifts in the number of adoptions from one country to another, or any other movement in adoption statistics that may occur as a result of this rule. Likewise, this analysis makes no estimate or assumptions as to how many additional countries will implement the Convention or how many countries that currently do not permit U.S. citizens to adopt children from their country will do so once this rule takes effect. If, for example, a country that historically has been the source of a large number of orphan adoptions that has not yet ratified the Convention, such as Russia, implements the requirements of the Convention, approximately 5000 I–600A/I–600 filings will shift to I–800A/800 filings. Nonetheless, the near-term impacts from such changes are not expected to be significant and current trends in the number of source countries for adoptions are expected to remain somewhat constant. The projected fee receipts from filing fees for petitions for Convention adoptions is approximately $8,710,000 per year (13,000 × $670). However, this figure does not represent a net increase or decrease in fees for adoption petitions because, as stated above, USCIS has not undertaken an analysis of potential increase or decrease in the number of orphan adoptions, shifts in adoptions from one country to another, or any other movement in adoption statistics. The projected fees from projected Form I–800A filings would have been collected from I–600A filings regardless of this rule. Thus, the actual net economic effect of this rule should be zero.

Non-Monetized Impacts

On its Web site, the Department of State lists the major advantages of the Convention and its implementation. See *http://travel.state.gov/family/adoption/convention/convention_2300.html*. With regard to the changes made by this rule, USCIS has identified the following qualitative benefits:

Expanded definition of adoptable child. The IAA eliminates the orphan restriction for those adoptions conducted under, and in accord with, the Convention. The broader definition of an eligible child under the Convention will no longer require that an internationally adopted child be a true orphan (*i.e.*, both parents deceased), be legally abandoned, or that both parents have disappeared, deserted, or become separated or lost from the child. Under the Convention, a child with two known birthparents can be eligible for adoption as long as the parents are both unable to meet the child's needs under the standards of the country of origin. Additionally, the definition of a sole parent is expanded for Convention adoptions. In orphan cases, the term ''sole parent'' is defined strictly to include only the mother of a child who was born out of wedlock and has not been legitimated. For a Convention adoption, a child is also deemed the child of the sole parent if the other parent has abandoned or deserted the child, or has disappeared from the child's life. A child will be deemed to be the child of a sole parent if the child has only one legal parent, based on the competent authority's determination that the other legal parent has abandoned or deserted the child, or has disappeared from the child's life. There will be no requirement that a sole or surviving parent be unable to provide proper care. Consequently, the expanded definition under the Convention provides a broader means for a child residing in a Convention country to qualify as a child eligible for adoption.

There are several advantages to the adoption process under the Convention. First, a United States citizen can bring a child into the United States immediately without undergoing the two year period of residence and legal custody required for an adopted child who is not an orphan. Many international adoptions that would have required the two year legal custody and joint residence requirement for non-orphan adoptions can now be adopted under Convention orphan rules. Second, many parents who adopt in courts abroad re-adopt in their home state in the United States out of a concern that the decrees from family courts or other forums in many foreign countries may not be recognized in the United States. Parents who complete Convention adoptions will receive a certification from DOS, and this certification will establish that the foreign adoption is entitled to recognition in the United States. Third, both Convention adoptees and orphans are immediate relatives exempt from numerical quotas. Fourth, birth mothers relinquishing children for adoption into the U.S. may no longer feel they have to lie about the existence of a father, as was sometimes the case, allowing adopting families access to more accurate information. As a result,

more children in Convention countries are expected to qualify as eligible children for adoption.

Standardization. By adopting the best interest of the child as its legal standard, a standard recognized both in the United States and internationally, the Convention places the focus on the child. The Convention mandates close coordination between the governments of contracting countries through a Central Authority in each Convention country that is responsible for sharing information about the laws of its own, and other Convention countries, and for monitoring individual cases. This cooperation is to ensure that safeguards are respected and to prevent the abduction, sale of, or traffic in children. The Convention also requires all parties to act expeditiously in the processing of intercountry adoptions, whether as sending or receiving country. This coordination and information sharing should result in less chance for irregularities and red tape in the adoption process.

Duration of approval and extensions. By providing that the approval period for a Form I–800A is 15 months instead of the current 18 months, this rule matches the approval of the family for the adoption with the duration of the FBI's clearance of a person's fingerprints. The FBI fingerprint clearance process is a critical component necessary to the determination that a person has been found eligible and suitable to adopt. The matching of these two periods of validity recognizes the importance of the fingerprint clearance process to the approval of the family for adoption. From the perspective of prospective adoptive parents, under this rule the prospective adoptive parent(s) who has (have) not yet filed a Form I–800 will be able to request an extension of the approval period for an additional 15 months by filing a Form I–800A Supplement 3. The first extension will be free. The required fee for a second or subsequent Supplement 3 is considerably less than the fee for a motion to reopen, and for a new Form I–800A.

Government Costs

This rule requires no outlays of Congressionally appropriated funds. The requirements of this rule and the associated benefits are funded by fees collected from persons requesting these benefits. The fees are deposited into the Immigration Examinations Fee Account and are used to fund the full cost of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services.

Reduction in multiple fee collections. When developing its fee schedule, USCIS heard from many intercountry adoption applicants that it is common for parents to have to repeat filings of applications as a result of expiration of the approval before the child has been matched with the family. USCIS has determined that collecting a full application fee for adjudication of an extension of the parent's approval was not justified in light of the lesser adjudicative burden for USCIS in approving extensions as compared to initial applications. Therefore, this rule provides that to request an extension of their period of approval for an additional 15 months, prior to the expiration of the approval, the parents must simply file a request for an extension and any additional documents from the original application that need updating, such as the home study. While the effects of this change are expected to be minor, USCIS has no reliable record of how many applications are updated in a typical year due to expiration of approval and, therefore, cannot accurately estimate the revenue impact of this change.

Public Cost

Paperwork Reduction Act. Section 503(c) of the IAA waives the requirement of the Paperwork Reduction Act with respect to information collected for use as a Convention record. Thus, USCIS has not conducted an analysis to estimate any changes to the agency's currently approved information collection burden that will result from this rule. Nonetheless, as stated above, this rule is not expected to result in a noticeable increase or decrease in the number of intercountry adoptions of orphans.

Requires Cooperation of Federal and State Authorities. Some adoption advocates are concerned that the IAA regulations will bring the federal government into adoption practices that have traditionally been under state purview. That is because the Convention and DOS accreditation requirements increase federal involvement and impose federal requirements on state and local entities in an area that has been governed mainly by states. Thus, states will have to adopt Convention requirements for such an adoption to proceed. Compliance with the Convention and the IAA will be a new task for states and will require close cooperation between DOS, state courts with family law jurisdiction, and USCIS to ensure that the United States meets its obligations under the Convention. However, states are not expected to have any major challenges or incur costs for complying with the USCIS petition requirements in this rule.

Orphans may no longer be available from certain countries. The Hague Conference lists Guatemala as a contracting party to the Convention. Currently, however, Guatemala's adoption procedures are not in compliance with the Convention. After this rule is published, USCIS will not approve immigrant visa petitions based on adoptions from Guatemala unless Guatemala's adoption process is changed to comply with the Convention. That would be a reduction of about 3500–4000 adoptions each year, unless those prospective adoptive parents decide to adopt children from another country that either is not a contracting party to the Convention or else has the established the procedures in place for determining, according to the principles of the Convention, whether children are eligible for adoption. However, while pointing out the possible negative effects on prospective adoptions from Guatemala, USCIS does not project whether or not Guatemala can take the necessary actions to be Convention compliant by the time the Convention enters into force for the United States and this rule takes effect.

Home study. The receiving country for the Convention adoptee must determine in advance that the prospective adoptive parent(s) is (are) eligible and suited to adopt; that they have received counseling and training, as necessary; and that the child will be eligible to enter and reside permanently in the receiving country. These advance determinations and studies are designed to ensure that the child is protected and that there are no obstacles to completing the adoption. For USCIS to determine that the child will receive proper care, this rule provides the requirements for the home study that must be submitted to permit USCIS to make an informed decision in exercising this authority. By requiring a home study to adjudicate the Convention adoption of a child, this rule technically imposes the costs of the home study. However, DOS regulations, not this USCIS rule, address an adoption service provider's obligations regarding fees. Regardless, Convention home study requirements are not projected to be much more onerous, if at all, than current home study requirements for adjudication of intercountry orphan adoptions. This rule simply standardizes these requirements to comply with the Convention. Further, DOS requires

adoption service providers to clearly disclose all fees so parents may accurately compare costs between adoption service providers.

Child background study. This rule incorporates the requirement of article 16(a) of the Convention, under which the sending Convention country must prepare a child background study that includes the medical history of the child as well as other background information addressing the factors that make the child eligible for adoption as a Convention adoptee. Once they have received this report and have decided to accept the placement, the prospective adoptive parents will file Form I–800, with the report and other evidence required by this rule. This study could add to the burden and costs of an intercountry adoption; thus, this requirement is added by this rule to USCIS petition requirements and is included here as an added burden. However, by standardizing the sending country requirements, and providing that the receiving country will accept the conclusions of the sending country rather than adjudicating the child's status itself, the child study may actually reduce the time, costs, and burden of orphan adoptions for Convention countries. The actual effects of this new requirement cannot be determined until after implementation occurs.

Summary

These regulations are required by legislation and are the final step for the United States to begin carrying out its obligations under the Convention. The effects of this rule are:

- This rule is to address immigration related determinations of how a United States citizen may obtain lawful custody, or adopt, a child from a number of countries.
- The U.S. is the largest receiving country for orphans from abroad, adopting more children from abroad than all other countries combined. The number of foreign children adopted annually by American citizens has doubled over the last decade from 11,340 to 22,739.
- USCIS expects to receive approximately 13,000 Convention adoption petitions per year. The resulting fee receipts are estimated at $8,710,000 per year. This does not, however, represent new fee income to USCIS, but a transfer of fees from non-Convention adoption petitions. The net economic effect of the rule should be zero.
- Under the Convention, an eligible child can have two known birth parents and still be eligible for adoption as long as the parents are both unable to meet the child's needs. The definition of sole parent is expanded and there is no requirement that a sole or surviving parent be unable to meet the child's needs.
- The Convention adopts the best interest of the child as its legal standard, a standard recognized internationally which places the focus on the welfare of the child.
- The Convention mandates close coordination between each Convention country, and requires all parties to act expeditiously in the processing of adoptions. This coordination should result in less chance for irregularities and red tape in the adoption process.
- This rule is expected to be revenue neutral to USCIS. This rule requires no outlays of Congressionally appropriated funds.
- This rule is not expected to result in a noticeable increase or decrease in the number of intercountry adoptions.
- This rule is estimated to require the same amount of time to complete its new petitions as it does for current forms. This rule is estimated to have no impact on the information collection burden imposed on the public.
- After this rule is published, and after the Convention enters into force with respect to the United States, USCIS will not approve adoptions from Guatemala unless Guatemala's adoption process is changed to comply with the Convention. This could have an impact on 3,500 to 4,000 adoptions per year.
- Adoptive parents must submit a ''home study'' and an application in order for USCIS to determine eligibility and suitability as adoptive parents prior to submission of the petition on behalf of a Convention adoptee.
- This rule requires that the sending Convention country prepare a child background study which could add to the burden and costs of an intercountry adoption.

USCIS is required by statute to promulgate this rule. As indicated in this analysis, the benefits of the requirements of this rule justify the costs to be imposed by it.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Section 503(a) of the IAA makes clear that neither it nor the Convention preempt State laws relating to intercountry adoption that are consistent with them. This rule respects corresponding State laws. For example, if prospective adoptive parents live in a particular State, the home study preparer must be authorized under that State's law to complete a home study for them. The home study itself must, in addition to the requirements of this rule, meet the requirements of that State's laws. A child who has not already been adopted abroad may not immigrate in order to be adopted in the United States unless the prospective adoptive parents comply with the adoption requirements of the State in which they will adopt the child.

There will be some impact on the States, as the States will have to adopt Convention requirements for these adoptions to proceed. However, such impact should not cause the States to have to incur any costs or experience any challenges complying with the USCIS petition requirements in this rule. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

As noted, USCIS intends to create two new forms, the Form I–800A and Form I–800, for use in Convention adoption cases. The use of these new forms is considered an information collection that, ordinarily, would be subject to review and clearance under the Paperwork Reduction Act procedures. Section 503(c) of the IAA, however, waives the requirement of the Paperwork Reduction Act with respect to information collected for use as a Convention record. Forms I–800A and I–800 will be included in the Convention record for a particular child's adoption.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

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

8 CFR Part 213a

Administrative practice and procedure, Aliens, Affidavits of support, Immigrants, Immigration and Nationality Act.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding the entries for Forms ''I–800'' and ''I–800A'', in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–800. For filing a petition to classify a Convention adoptee as an immediate relative.

—No fee for the first Form I–800 filed for a child on the basis of an approved Form I–800A, filed during the approval period.

—If more than one Form I–800 is filed during the approval period for different children, the fee is $670 for the second and each subsequent Form I–800 submitted.

—If the children are already siblings before the proposed adoption, however, only one filing fee of $670 is required, regardless of the sequence of submission of the Form I–800.

Form I–800A. For filing an application for determination of suitability to adopt a child from a Convention country—$670.

For filing a Form I–800A, Supplement 3, Request for Action on Approved Form I–800A—$340, except that this filing fee is not charged if no Form I–800 has been filed based on the approval of the Form I–800A, and Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A. * * *

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PART 204—IMMIGRANT PETITIONS

■ 3. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

Subpart A—[Added]

■ 4. In part 204, a subpart A heading is added to read as follows:

Subpart A—Immigrant Visa Petitions

■ 5. Sections 204.1 through 204.13, inclusive, are designated under subpart A.

■ 6. Section 204.1 is amended by:

■ a. Revising paragraph (a)(4);

■ b. Re-designating paragraph (a)(5) as paragraph (a)(6); and

■ c. Adding a new paragraph (a)(5).

The revisions and additions to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

(a) * * *

(4) A U.S. citizen seeking to have USCIS accord immediate relative status to a child based on the citizen's adoption of the child as an orphan, as defined in section 101(b)(1)(F) of the Act, must follow the procedures in § 204.3.

(5) A U.S. citizen seeking to have USCIS accord immediate relative status to a child under section 101(b)(1)(G) of the Act on the basis of a Convention adoption must:

(i) File a Form I–800A, Application to Determine Suitability as Adoptive Parents for a Convention adoptee; and

(ii) After USCIS approves the Form I–800A, file a Form I–800, Petition to Classify Convention adoptee as Immediate Relative, as provided in 8 CFR part 204, subpart C.

■ 7. Section 204.2 is amended by adding new paragraphs (d)(2)(vii)(D), (E) and (F), to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(D) On or after the Convention effective date, as defined in 8 CFR part 204.301, a United States citizen who is habitually resident in the United States, as determined under 8 CFR 204.303, may not file a Form I–130 under this section on behalf of child who was habitually resident in a Convention country, as determined under 8 CFR 204.303, unless the adoption was completed before the Convention effective date. In the case of any adoption occurring on or after the Convention effective date, a Form I–130 may be filed and approved only if the United States citizen petitioner was not habitually resident in the United States at the time of the adoption.

(E) For purposes of paragraph (d)(2)(vii)(D) of this section, USCIS will deem a United States citizen, 8 CFR 204.303 notwithstanding, to have been habitually resident outside the United States, if the citizen satisfies the 2-year joint residence and custody requirements by residing with the child outside the United States.

(F) For purposes of paragraph (d)(2)(vii)(D) of this section, USCIS will not approve a Form I–130 under section 101(b)(1)(E) of the Act on behalf of an alien child who is present in the United States based on an adoption that is entered on or after the Convention effective date, but whose habitual residence immediately before the child's arrival in the United States was in a Convention country. However, the U.S. citizen seeking the child's adoption may file a Form I–800A and Form I–800 under 8 CFR part 204, subpart C.

* * * * *

■ 8. Section 204.3 is amended by revising the section heading and paragraph (a) to read as follows:

§ 204.3 Orphan cases under section 101(b)(1)(F) of the Act (non-Convention cases).

(a) This section addresses the immigration classification of alien orphans as provided for in section 101(b)(1)(F) of the Act.

(1) Except as provided in paragraph (a)(2) of this section, a child who meets the definition of orphan contained in section 101(b)(1)(F) of the Act is eligible for classification as the immediate relative of a U.S. citizen if:

(i) The U.S. citizen seeking the child's immigration can document that the citizen (and his or her spouse, if any) are capable of providing, and will provide, proper care for an alien orphan; and

(ii) The child is an orphan under section 101(b)(1)(F) of the Act.

A U.S. citizen may submit the documentation necessary for each of these determinations separately or at one time, depending on when the orphan is identified.

(2) Form I–600A or Form I–600 may not be filed under this section on or after the Convention effective date, as defined in 8 CFR 204.301, on behalf of a child who is habitually resident in a Convention country, as defined in 8

CFR 204.301. On or after the Convention effective date, USCIS may approve a Form I–600 on behalf of a child who is habitually resident in a Convention country only if the Form I–600A or Form I–600 was filed before the Convention effective date.

* * * * *

Subpart B—[Added and Reserved]

■ 9. Subpart B is added and reserved.

■ 10. Subpart C is added to read as follows:

Subpart C—Intercountry Adoption of a Convention Adoptee

Sec.

204.300 Scope of this subpart.
204.301 Definitions.
204.302 Role of service providers.
204.303 Determination of habitual residence.
204.304 Improper inducement prohibited.
204.305 State preadoption requirements.
204.306 Classification as an immediate relative based on Convention adoption.
204.307 Who may file a Form I–800A or Form I–800.
204.308 Where to file Form I–800A or Form I–800.
204.309 Factors requiring denial of a Form I–800A or Form I–800.
204.310 Filing requirements for Form I–800A.
204.311 Convention adoption home study requirements.
204.312 Adjudication of the Form I–800A.
204.313 Filing and adjudication of the Form I–800.
204.314 Appeal.

Subpart C—Intercountry Adoption of a Convention Adoptee

§ 204.300 Scope of this subpart.

(a) *Convention adoptees.* This subpart governs the adjudication of a Form I–800A or Form I–800 for a Convention adoptee under section 101(b)(1)(G) of the Act. The provisions of this subpart enter into force on the Convention effective date, as defined in 8 CFR 204.301.

(b) *Orphan cases.* On or after the Convention effective date, no Form I–600A or I–600 may be filed under section 101(b)(1)(F) of the Act and 8 CFR 204.3 in relation to the adoption of a child who is habitually resident in a Convention country. If a Form I–600A or Form I–600 was filed before the Convention effective date, the case will continue to be governed by 8 CFR 204.3, as in effect before the Convention effective date.

(c) *Adopted children.* This subpart does not apply to the immigrant visa classification of adopted children, as defined in section 101(b)(1)(E) of the Act. For the procedures that govern classification of adopted children as defined in section 101(b)(1)(E) of the Act, see 8 CFR 204.2.

§ 204.301 Definitions.

The definitions in 22 CFR 96.2 apply to this subpart C. In addition, as used in this subpart C, the term:

Abandonment means:

(1) That a child's parent has willfully forsaken all parental rights, obligations, and claims to the child, as well as all custody of the child without intending to transfer, or without transferring, these rights to any specific individual(s) or entity.

(2) The child's parent must have actually surrendered such rights, obligations, claims, control, and possession.

(3) That a parent's knowledge that a specific person or persons may adopt a child does not void an abandonment; however, a purported act of abandonment cannot be conditioned on the child's adoption by that specific person or persons.

(4) That if the parent(s) entrusted the child to a third party for custodial care in anticipation of, or preparation for, adoption, the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) must have been authorized under the Convention country's child welfare laws to act in such a capacity.

(5) That, if the parent(s) entrusted the child to an orphanage, the parent(s) did not intend the placement to be merely temporary, with the intention of retaining the parent-child relationship, but that the child is abandoned if the parent(s) entrusted the child permanently and unconditionally to an orphanage.

(6) That, although a written document from the parent(s) is not necessary to prove abandonment, if any written document signed by the parent(s) is presented to prove abandonment, the document must specify whether the parent(s) who signed the document was (were) able to read and understand the language in which the document is written. If the parent is not able to read or understand the language in which the document is written, then the document is not valid unless the document is accompanied by a declaration, signed by an identified individual, establishing that that identified individual is competent to translate the language in the document into a language that the parent understands and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the document to the parent in a language that the parent understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

Adoption means the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor's legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).

Adult member of the household means:

(1) Any individual other than the applicant, who has the same principal residence as the applicant and who had reached his or her 18th birthday on or before the date a Form I–800A is filed; or

(2) Any person who has not yet reached his or her 18th birthday before the date a Form I–800A is filed, or who does not actually live at the same residence, but whose presence in the residence is relevant to the issue of suitability to adopt, if the officer adjudicating the Form I–800A concludes, based on the facts of the case, that it is necessary to obtain an evaluation of how that person's presence in the home affects the determination whether the applicant is suitable as the adoptive parent(s) of a Convention adoptee.

Applicant means the U.S. citizen (and his or her spouse, if any) who has filed a Form I–800A under this subpart C. The applicant may be an unmarried U.S. citizen who is at least 24 years old when the Form I–800A is filed, or a married U.S. citizen of any age and his or her spouse of any age. Although the singular term ''applicant'' is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

Birth parent means a ''natural parent'' as used in section 101(b)(1)(G) of the Act.

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country or, in the case of the United States, the United States Department of State. Except as specified in this Part, ''Central Authority'' also means, solely for purposes of this Part, an individual who or entity that is performing a Central Authority function, having been authorized to do so by the designated

Central Authority, in accordance with the Convention and the law of the Central Authority's country.

Competent authority means a court or governmental agency of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, opened for signature at The Hague on May 29, 1993.

Convention adoptee means a child habitually resident in a Convention country who is eligible to immigrate to the United States on the basis of a Convention adoption.

Convention adoption, except as specified in 8 CFR 204.300(b), means the adoption, on or after the Convention effective date, of an alien child habitually resident in a Convention country by a U.S. citizen habitually resident in the United States, when in connection with the adoption the child has moved, or will move, from the Convention country to the United States.

Convention country means a country that is a party to the Convention and with which the Convention is in force for the United States.

Convention effective date means the date on which the Convention enters into force for the United States as announced by the Secretary of State under 22 CFR 96.17.

Custody for purposes of emigration and adoption exists when:

(1) The competent authority of the country of a child's habitual residence has, by a judicial or administrative act (which may be either the act granting custody of the child or a separate judicial or administrative act), expressly authorized the petitioner, or an individual or entity acting on the petitioner's behalf, to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States.

(2) If the custody order shows that custody was given to an individual or entity acting on the petitioner's behalf, the custody order must indicate that the child is to be adopted in the United States by the petitioner.

(3) A foreign judicial or administrative act that is called an adoption but that does not terminate the legal parent-child relationship between the former parent(s) and the adopted child and does not create the permanent legal parent-child relationship between the petitioner and the adopted child will be deemed a grant of custody of the child for purposes of this part, but only if the judicial or administrative act expressly authorizes the custodian to take the child out of the country of the child's habitual residence and to bring the child to the United States for adoption in the United States by the petitioner.

Deserted or desertion means that a child's parent has willfully forsaken the child and has refused to carry out parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the Convention country.

Disappeared or Disappearance means that a child's parent has unaccountably or inexplicably passed out of the child's life so that the parent's whereabouts are unknown, there is no reasonable expectation of the parent's reappearance, and there has been a reasonable effort to locate the parent as determined by a competent authority in accordance with the laws of the Convention country. A stepparent who under the definition of ''Parent'' in this section is deemed to be a child's legal parent, may be found to have disappeared if it is established that the stepparent either never knew of the child's existence, or never knew of their legal relationship to the child.

Home study preparer means a person (whether an individual or an agency) authorized under 22 CFR part 96 to conduct home studies for Convention adoption cases, either as a public domestic authority, an accredited agency, a temporarily accredited agency, approved person, supervised provider, or exempted provider and who (if not a public domestic authority) holds any license or other authorization that may be required to conduct adoption home studies under the law of the jurisdiction in which the home study is conducted.

Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.

Irrevocable consent means a document which indicates the place and date the document was signed by a child's legal custodian, and which meets the other requirements specified in this definition, in which the legal custodian freely consents to the termination of the legal custodian's legal relationship with the child. If the irrevocable consent is signed by the child's birth mother or any legal custodian other than the birth father, the irrevocable consent must have been signed after the child's birth; the birth father may sign an irrevocable consent before the child's birth if permitted by the law of the child's habitual residence. This provision does not preclude a birth father from giving consent to the termination of his legal relationship to the child before the child's birth, if the birth father is permitted to do so under the law of the country of the child's habitual residence.

(1) To qualify as an irrevocable consent under this definition, the document must specify whether the legal custodian is able to read and understand the language in which the consent is written. If the legal custodian is not able to read or understand the language in which the document is written, then the document does not qualify as an irrevocable consent unless the document is accompanied by a declaration, signed, by an identified individual, establishing that that identified individual is competent to translate the language in the irrevocable consent into a language that the parent understands, and that the individual, on the date and at the place specified in the declaration, did in fact read and explain the consent to the legal custodian in a language that the legal custodian understands. The declaration must also indicate the language used to provide this explanation. If the person who signed the declaration is an officer or employee of the Central Authority (but not of an agency or entity authorized to perform a Central Authority function by delegation) or any other governmental agency, the person must certify the truth of the facts stated in the declaration. Any other individual who signs a declaration must sign the declaration under penalty of perjury under United States law.

(2) If more than one individual or entity is the child's legal custodian, the consent of each legal custodian may be recorded in one document, or in an additional document, but all documents, taken together, must show that each legal custodian has given the necessary irrevocable consent.

Legal custodian means the individual who, or entity that, has legal custody of a child, as defined in 22 CFR 96.2.

Officer means a USCIS officer with jurisdiction to adjudicate Form I–800A or Form I–800 or a Department of State officer with jurisdiction, by delegation from USCIS, to grant either provisional or final approval of a Form I–800.

Parent means any person who is related to a child as described in section 101(b)(1)(A), (B), (C), (D), (E), (F), or (G) and section 101(b)(2) of the Act, except

that a stepparent described in section 101(b)(1)(B) of the Act is not considered a child's parent, solely for purposes of classification of the child as a Convention adoptee, if the petitioner establishes that, under the law of the Convention country, there is no legal parent-child relationship between a stepparent and stepchild. This definition includes a stepparent if the stepparent adopted the child, or if the stepparent, under the law of the Convention country, became the child's legal parent by marrying the other legal parent. A stepparent who is a legal parent may consent to the child's adoption, or may be found to have abandoned or deserted the child, or to have disappeared from the child's life, in the same manner as would apply to any other legal parent.

Petitioner means the U.S. citizen (and his or her spouse, if any) who has filed a Form I–800 under this subpart C. The petitioner may be an unmarried U.S. citizen who is at least 25 years old when the Form I–800 is filed, or a married U.S. citizen of any age and his or her spouse of any age. Although the singular term ''petitioner'' is used in this subpart, the term includes both a married U.S. citizen and his or her spouse.

Sole parent means:

(1) The child's mother, when the competent authority has determined that the child's father has abandoned or deserted the child, or has disappeared from the child's life; or

(2) The child's father, when the competent authority has determined that the child's mother has abandoned or deserted the child, or has disappeared from the child's life; except that

(3) A child's parent is not a sole parent if the child has acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

Suitability as adoptive parent(s) means that USCIS is satisfied, based on the evidence of record, that it is reasonable to conclude that the applicant is capable of providing, and will provide, proper parental care to an adopted child.

Surviving parent means the child's living parent when the child's other parent is dead, and the child has not acquired another parent within the meaning of section 101(b)(2) of the Act and this section.

§ 204.302 Role of service providers.

(a) *Who may provide services in Convention adoption cases.* Subject to the limitations in paragraph (b) or (c) of this section, a U.S. citizen seeking to file a Form I–800A or I–800 may use the services of any individual or entity authorized to provide services in connection with adoption, except that the U.S. citizen must use the services of an accredited agency, temporarily accredited agency, approved person, supervised provider public domestic authority or exempted provider when required to do so under 22 CFR part 96.

(b) *Unauthorized practice of law prohibited.* An adoption agency or facilitator, including an individual or entity authorized under 22 CFR part 96 to provide the six specific adoption services identified in 22 CFR 96.2, may not engage in any act that constitutes the legal representation, as defined in 8 CFR 1.1(i), (j) and (m), of the applicant (for a Form I–800A case) or petitioner (for a Form I–800 case) unless authorized to do so as provided in 8 CFR part 292. An individual authorized under 8 CFR part 292 to practice before USCIS may provide legal services in connection with a Form I–800A or I–800 case, but may not provide any of the six specific adoption services identified in 22 CFR 96.2, unless the individual is authorized to do so under 22 CFR part 96 (for services provided in the United States) or under the laws of the country of the child's habitual residence (for services performed outside the United States). The provisions of 8 CFR 292.5 concerning sending notices about a case do not apply to an adoption agency or facilitator that is not authorized under 8 CFR part 292 to engage in representation before USCIS.

(c) *Application of the Privacy Act.* Except as permitted by the Privacy Act, 5 U.S.C. 552a and the relevant Privacy Act notice concerning the routine use of information, USCIS may not disclose or give access to any information or record relating to any applicant or petitioner who has filed a Form I–800A or Form I–800 to any individual or entity other than that person, including but not limited to an accredited agency, temporarily accredited agency, approved person, public domestic authority, exempted provider, or supervised provider, unless the applicant who filed the Form I–800A or the petitioner who filed Form I–800 has filed a written consent to disclosure, as provided by the Privacy Act, 5 U.S.C. 552a.

§ 204.303 Determination of habitual residence.

(a) *U.S. Citizens.* For purposes of this subpart, a U.S. citizen who is seeking to have an alien classified as the U.S. citizen's child under section 101(b)(1)(G) of the Act is deemed to be habitually resident in the United States if the individual:

(1) Has his or her domicile in the United States, even if he or she is living temporarily abroad; or

(2) Is not domiciled in the United States but establishes by a preponderance of the evidence that:

(i) The citizen will have established a domicile in the United States on or before the date of the child's admission to the United States for permanent residence as a Convention adoptee; or

(ii) The citizen indicates on the Form I–800 that the citizen intends to bring the child to the United States after adopting the child abroad, and before the child's 18th birthday, at which time the child will be eligible for, and will apply for, naturalization under section 322 of the Act and 8 CFR part 322. This option is not available if the child will be adopted in the United States.

(b) *Convention adoptees.* A child whose classification is sought as a Convention adoptee is, generally, deemed for purposes of this subpart C to be habitually resident in the country of the child's citizenship. If the child's actual residence is outside the country of the child's citizenship, the child will be deemed habitually resident in that other country, rather than in the country of citizenship, if the Central Authority (or another competent authority of the country in which the child has his or her actual residence) has determined that the child's status in that country is sufficiently stable for that country properly to exercise jurisdiction over the child's adoption or custody. This determination must be made by the Central Authority itself, or by another competent authority of the country of the child's habitual residence, but may not be made by a nongovernmental individual or entity authorized by delegation to perform Central Authority functions. The child will not be considered to be habitually resident in any country to which the child travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

§ 204.304 Improper inducement prohibited.

(a) *Prohibited payments.* Neither the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give to any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning:

(1) The placement of a child for adoption;

(2) The consent of a parent, a legal custodian, individual, or agency to the adoption of a child;

(3) The relinquishment of a child to a competent authority, or to an agency or person as defined in 22 CFR 96.2, for the purpose of adoption; or

(4) The performance by the child's parent or parents of any act that makes the child a Convention adoptee.

(b) *Permissible payments.* Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. A payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided. The permissible services are:

(1) The services of an adoption service provider in connection with an adoption;

(2) Expenses incurred in locating a child for adoption;

(3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child;

(4) Counseling services for a parent or a child for a reasonable time before and after the child's placement for adoption;

(5) Expenses, in an amount commensurate with the living standards in the country of the child's habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child;

(6) Expenses incurred in obtaining the home study;

(7) Expenses incurred in obtaining the reports on the child as described in 8 CFR 204.313(d)(3) and (4);

(8) Legal services, court costs, and travel or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency; and

(9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.

(c) *Department of State requirements.* See 22 CFR 96.34, 96.36 and 96.40 for additional regulatory information concerning fees in relation to Convention adoptions.

§ 204.305 State preadoption requirements.

State preadoption requirements must be complied with when a child is coming into the State as a Convention adoptee to be adopted in the United States. A qualified Convention adoptee is deemed to be coming to be adopted in the United States if either of the following factors exists:

(a) The applicant/petitioner will not complete the child's adoption abroad; or

(b) In the case of a married applicant/petitioner, the child was adopted abroad only by one of the spouses, rather than by the spouses jointly, so that it will be necessary for the other spouse to adopt the child after the child's admission.

§ 204.306 Classification as an immediate relative based on a Convention adoption.

(a) Unless 8 CFR 204.309 requires the denial of a Form I–800A or Form I–800, a child is eligible for classification as an immediate relative, as defined in section 201(b)(2)(A)(i) of the Act, on the basis of a Convention adoption, if the U.S. citizen who seeks to adopt the child establishes that:

(1) The United States citizen is (or, if married, the United States citizen and the United States citizen's spouse are) eligible and suitable to adopt; and

(2) The child is a Convention adoptee.

(b) A U.S. citizen seeking to have USCIS classify an alien child as the U.S. citizen's child under section 101(b)(1)(G) of the Act must complete a two-step process:

(1) First, the U.S. citizen must file a Form I–800A under 8 CFR 204.310;

(2) Then, once USCIS has approved the Form I–800A and a child has been identified as an alien who may qualify as a Convention adoptee, the U.S. citizen must file a Form I–800 under 8 CFR 204.313.

§ 204.307 Who may file a Form I–800A or Form I–800.

(a) *Eligibility to file Form I–800A.* Except as provided in paragraph (c) of this section, the following persons may file a Form I–800A:

(1) An unmarried United States citizen who is at least 24 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States, as determined under 8 CFR 204.303(a), and whose spouse will also adopt any child adopted by the citizen based on the approval of a Form I–800A; and

(3) The citizen's spouse must also be either a U.S. citizen, a non-citizen U.S. national, or an alien who, if living in the United States, holds a lawful status under U.S. immigration law. If an alien spouse is present in a lawful status other than the status of an alien lawfully admitted for permanent residence, such status will be a factor evaluated in determining whether the family's situation is sufficiently stable to support a finding that the applicant is suitable as the adoptive parents of a Convention adoptee.

(b) *Eligibility to file a Form I–800.* Except as provided in paragraph (c) of this section, the following persons may file a Form I–800:

(1) An unmarried United States citizen who is at least 25 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States as determined under 8 CFR 204.303(a), and whose spouse will also adopt the child the citizen seeks to adopt. The spouse must be either a United States citizen or a non-citizen U.S. national or an alien who, if living in the United States, holds a lawful status under U.S. immigration law; and

(3) The person has an approved and unexpired Form I–800A.

(c) *Exceptions.* (1) No applicant may file a Form I–800A, and no petitioner may file a Form I–800, if:

(i) The applicant filed a prior Form I–800A that USCIS denied under 8 CFR 204.309(a); or

(ii) The applicant filed a prior Form I–600A under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(h)(4); or

(iii) The petitioner filed a prior Form I–800 that USCIS denied under 8 CFR 204.309(b)(3); or

(iv) The petitioner filed a prior Form I–600 under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(i).

(2) This bar against filing a subsequent Form I–800A or Form I–800 expires one year after the date on which the decision denying the prior Form I–800A, I–600A, I–800 or I–600 became administratively final. If the applicant (for a Form I–800A or I–600A case) or the petitioner (for a Form I–800 or I–600 case) does not appeal the prior decision, the one-year period ends one year after the date of the original decision denying the prior Form I–800A, I–600A, I–800 or I–600. Any Form I–800A, or Form I–800 filed during this one-year period will be denied. If the applicant (for a Form I–800A or Form I–600A case) or petitioner (for a Form I–800 or I–600 case) appeals the prior decision, the bar to filing a new Form I–800A or I–800 applies while the appeal is pending and ends one year after the date of an Administrative Appeals Office decision affirming the denial.

(3) Any facts underlying a prior denial of a Form I–800A, I–800, I–600A, or I–600 are relevant to the adjudication of

any subsequently filed Form I–800A or Form I–800 that is filed after the expiration of this one year bar.

§ 204.308 Where to file Form I–800A or Form I–800.

(a) *Form I–800A.* An applicant must file a Form I–800A with the USCIS office identified in the instructions that accompany Form I–800A.

(b) *Form I–800.* After a Form I–800A has been approved, a petitioner may file a Form I–800 on behalf of a Convention adoptee with the stateside or overseas USCIS office identified in the instructions that accompany Form I–800. The petitioner may also file the Form I–800 with a visa-issuing post that would have jurisdiction to adjudicate a visa application filed by or on behalf of the Convention adoptee, when filing with the visa-issuing post is permitted by the instructions that accompany Form I–800.

(c) *Final approval of Form I–800.* Once a Form I–800 has been provisionally approved under 8 CFR 204.313(g) and the petitioner has either adopted or obtained custody of the child for purposes of emigration and adoption, the Department of State officer with jurisdiction to adjudicate the child's application for an immigrant or nonimmigrant visa has jurisdiction to grant final approval of the Form I–800. The Department of State officer may approve the Form I–800, but may not deny it; the Department of State officer must refer any Form I–800 that is ''not clearly approvable'' for a decision by a USCIS office having jurisdiction over Form I–800 cases. If the Department of State officer refers the Form I–800 to USCIS because it is ''not clearly approvable,'' then USCIS has jurisdiction to approve or deny the Form I–800. In the case of an alien child who is in the United States and who is eligible both under 8 CFR 204.309(b)(4) for approval of a Form I–800 and under 8 CFR part 245 for adjustment of status, the USCIS office with jurisdiction to adjudicate the child's adjustment of status application also has jurisdiction to grant final approval of the Form I–800.

(d) *Use of electronic filing.* When, and if, USCIS adopts electronic, internet-based or other digital means for filing Convention cases, the terms ''filing a Form I–800A'' and ''filing a Form I–800'' will include an additional option. Rather than filing the Form I–800A or Form I–800 and accompanying evidence in a paper format, the submission of the same required information and accompanying evidence may be filed according to the digital filing protocol that USCIS adopts.

§ 204.309 Factors requiring denial of a Form I–800A or Form I–800.

(a) *Form I–800A.* A USCIS officer must deny a Form I–800A if:

(1) The applicant or any additional adult member of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) about the applicant or any additional member of the household concerning the arrest, conviction, or history of substance abuse, sexual abuse, child abuse, and/or family violence, or any other criminal history as an offender; the fact that an arrest or conviction or other criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration does not relieve the applicant or additional adult member of the household of the obligation to disclose the arrest, conviction or other criminal history;

(2) The applicant, or any additional adult member of the household, failed to cooperate in having available child abuse registries checked in accordance with 8 CFR 204.311;

(3) The applicant, or any additional adult member of the household, failed to disclose, as required by 8 CFR 204.311, each and every prior adoption home study, whether completed or not, including those that did not favorably recommend for adoption or custodial care, the person(s) to whom the prior home study related; or

(4) The applicant is barred by 8 CFR 204.307(c) from filing the Form I–800A.

(b) *Form I–800.* A USCIS officer must deny a Form I–800 if:

(1) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I–800 filed with a new Form I–800A to reflect a change in marital status, the petitioner completed the adoption of the child, or acquired legal custody of the child for purposes of emigration and adoption, before the provisional approval of the Form I–800 under 8 CFR 204.313(g). This restriction will not apply if a competent authority in the country of the child's habitual residence voids, vacates, annuls, or terminates the adoption or grant of custody and then, after the provisional approval of the Form I–800, and after receipt of notice under article 5(c) of the Convention that the child is, or will be, authorized to enter and reside permanently in the United States, permits a new grant of adoption or custody. The prior adoption must be voided, vacated, annulled or otherwise terminated before the petitioner files a Form I–800.

(2) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I–800 filed with a new Form I–800A to reflect a change in marital status, the petitioner, or any additional adult member of the household had met with, or had any other form of contact with, the child's parents, legal custodian, or other individual or entity who was responsible for the child's care when the contact occurred, unless the contact was permitted under this paragraph. An authorized adoption service provider's sharing of general information about a possible adoption placement is not ''contact'' for purposes of this section. Contact is permitted under this paragraph if:

(i) The first such contact occurred only after USCIS had approved the Form I–800A filed by the petitioner, and after the competent authority of the Convention country had determined that the child is eligible for intercountry adoption and that the required consents to the adoption have been given; or

(ii) The competent authority of the Convention country had permitted earlier contact, either in the particular instance or through laws or rules of general application, and the contact occurred only in compliance with the particular authorization or generally applicable laws or rules. If the petitioner first adopted the child without complying with the Convention, the competent authority's decision to permit the adoption to be vacated, and to allow the petitioner to adopt the child again after complying with the Convention, will also constitute approval of any prior contact; or

(iii) The petitioner was already, before the adoption, the father, mother, son, daughter, brother, sister, uncle, aunt, first cousin (that is, the petitioner, or either spouse, in the case of a married petitioner had at least one grandparent in common with the child's parent), second cousin (that is, the petitioner, or either spouse, in the case of a married petitioner, had at least one great-grandparent in common with the child's parent) nephew, niece, husband, former husband, wife, former wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the child's parent(s).

(3) The USCIS officer finds that the petitioner, or any individual or entity acting on behalf of the petitioner has engaged in any conduct related to the adoption or immigration of the child that is prohibited by 8 CFR 204.304, or that the petitioner has concealed or misrepresented any material facts concerning payments made in relation to the adoption;

(4) The child is present in the United States, unless the petitioner, after compliance with the requirements of this subpart, either adopt(s) the child in the Convention country, or else, after having obtained custody of the child under the law of the Convention country for purposes of emigration and adoption, adopt(s) the child in the United States. This subpart does not require the child's actual return to the Convention country; whether to permit the child's adoption without the child's return is a matter to be determined by the Central Authority of the country of the child's habitual residence, but approval of a Form I–800 does not relieve an alien child of his or her ineligibility for adjustment of status under section 245 of the Act, if the child is present in the United States without inspection or is otherwise ineligible for adjustment of status. If the child is in the United States but is not eligible for adjustment of status, the Form I–800 may be provisionally approved only if the child will leave the United States after the provisional approval and apply for a visa abroad before the final approval of the Form I–800.

(5) Except as specified in 8 CFR 204.312(e)(2)(ii) with respect to a new Form I–800 filed with a new Form I–800A to reflect a change in marital status, the petitioner files the Form I–800:

(i) Before the approval of a Form I–800A, or

(ii) After the denial of a Form I–800A; or

(iii) After the expiration of the approval of a Form I–800A;

(6) The petitioner is barred by 8 CFR 204.307(c) from filing the Form I–800.

(c) *Notice of intent to deny.* Before denying a Form I–800A under paragraph (a) or a Form I–800 under paragraph (b) of this section, the USCIS officer will notify the applicant (for a Form I–800A case) or petitioner (for a Form I–800 case) in writing of the intent to deny the Form I–800A or Form I–800 and provide 30 days in which to submit evidence and argument to rebut the claim that this section requires denial of the Form I–800A or Form I–800.

(d) *Rebuttal of intent to deny.* If USCIS notifies the applicant that USCIS intends to deny a Form I–800A under paragraph (a) of this section, because the applicant or any additional adult member(s) of the household failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to cooperate in search of child abuse registries, or failed to disclose a prior home study, the applicant may rebut the intent to deny only by establishing, by clear and convincing evidence that:

(1) The applicant or additional adult member of the household did, in fact, disclose the information; or

(2) If it was an additional adult member of the household who failed to cooperate in the search of child abuse registries, or who failed to disclose to the home study preparer or to USCIS, or concealed or misrepresented, any fact(s) concerning the arrest, conviction, or history of substance abuse, sexual abuse or child abuse, and/or family violence, or other criminal history, or failed to disclose a prior home study, that that person is no longer a member of the household and that that person's conduct is no longer relevant to the suitability of the applicant as the adoptive parent of a Convention adoptee.

§ 204.310 Filing requirements for Form I–800A.

(a) *Completing and filing the Form.* A United States citizen seeking to be determined eligible and suitable as the adoptive parent of a Convention adoptee must:

(1) Complete Form I–800A, including a Form I–800A Supplement 1 for each additional adult member of the household, in accordance with the instructions that accompany the Form I–800A.

(2) Sign the Form I–800A personally. One spouse cannot sign for the other, even under a power of attorney or similar agency arrangement.

(3) File the Form I–800A with the USCIS office that has jurisdiction under 8 CFR 204.308(a) to adjudicate the Form I–800A, together with:

(i) The fee specified in 8 CFR 103.7(b)(1) for the filing of Form I–800A;

(ii) The additional biometrics information collection fee required under 8 CFR 103.7(b)(1) for the applicant and each additional adult member of the household;

(iii) Evidence that the applicant is a United States citizen, as set forth in 8 CFR 204.1(g), or, in the case of a married applicant, evidence either that both spouses are citizens or, if only one spouse is a United States citizen, evidence of that person's citizenship and evidence that the other spouse, if he or she lives in the United States, is either a non-citizen United States national or an alien who holds a lawful status under U.S. immigration law.

(iv) A copy of the current marriage certificate, unless the applicant is not married;

(v) If the applicant has been married previously, a death certificate or divorce or dissolution decree to establish the legal termination of all previous marriages, regardless of current marital status;

(vi) If the applicant is not married, his or her birth certificate, U.S. passport biographical information page, naturalization or citizenship certificate, or other evidence, to establish that he or she is at least 24 years old;

(vii) A written description of the preadoption requirements, if any, of the State of the child's proposed residence in cases where it is known that any child the applicant may adopt will be adopted in the United States, and of the steps that have already been taken or that are planned to comply with these requirements. The written description must include a citation to the State statutes and regulations establishing the requirements. Any preadoption requirements which cannot be met at the time the Form I–800A is filed because of the operation of State law must be noted and explained when the Form I–800A is filed.

(viii) A home study that meets the requirements of 8 CFR 204.311 and that bears the home study preparer's original signature. If the home study is not included with the Form I–800A, the director of the office that has jurisdiction to adjudicate the Form I–800A will make a written request for evidence, directing the applicant to submit the home study. If the applicant fails to submit the home study within the period specified in the request for evidence, the director of the office that has jurisdiction to adjudicate the Form I–800A will deny the Form I–800A. Denial of a Form I–800A under this paragraph for failure to submit a home study is not subject to appeal, but the applicant may file a new Form I–800A, accompanied by a new filing fee.

(b) *Biometrics.* Upon the proper filing of a Form I–800A, USCIS will arrange for the collection of biometrics from the applicant and each additional adult member of the household, as prescribed in 8 CFR 103.2(e), but with no upper age limit. It will be necessary to collect the biometrics of each of these persons again, if the initial collection expires before approval of the Form I–800A. USCIS may waive this requirement for any particular individual if USCIS determines that that person is physically unable to comply. However, USCIS will require the submission of affidavits, police clearances, or other evidence relating to whether that person

has a criminal history in lieu of collecting the person's biometrics.

(c) *Change in marital status.* If, while a Form I–800A is pending, an unmarried applicant marries, or the marriage of a married applicant ends, an amended Form I–800A and amended home study must be filed to reflect the change in marital status. No additional filing fee is required to file an amended Form I–800A while the original Form I–800A is still pending. See 8 CFR 204.312(e)(2) concerning the need to file a new Form I–800A if the marital status changes after approval of a Form I–800A.

§ 204.311 Convention adoption home study requirements.

(a) *Purpose.* For immigration purposes, a home study is a process for screening and preparing an applicant who is interested in adopting a child from a Convention country.

(b) *Preparer.* Only an individual or entity defined under 8 CFR 204.301 as a home study preparer for Convention cases may complete a home study for a Convention adoption. In addition, the individual or entity must be authorized to complete adoption home studies under the law of the jurisdiction in which the home study is conducted.

(c) *Study requirements.* The home study must:

(1) Be tailored to the particular situation of the applicant and to the specific Convention country in which the applicant intends to seek a child for adoption. For example, an applicant who has previously adopted children will require different preparation than an applicant who has no adopted children. A home study may address the applicant's suitability to adopt in more than one Convention country, but if the home study does so, the home study must separately assess the applicant's suitability as to each specific Convention country.

(2) If there are any additional adult members of the household, identify each of them by name, alien registration number (if the individual has one), and date of birth.

(3) Include an interview by the preparer of any additional adult member of the household and an assessment of him or her in light of the requirements of this section.

(4) Be no more than 6 months old at the time the home study is submitted to USCIS.

(5) Include the home study preparer's assessment of any potential problem areas, a copy of any outside evaluation(s), and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home. See 8 CFR 204.309(a) for the consequences of failure to disclose information or cooperate in completion of a home study.

(6) Include the home study preparer's signature, in accordance with paragraph (f) of this section.

(7) State the number of interviews and visits, the participants, date and location of each interview and visit, and the date and location of any other contacts with the applicant and any additional adult member of the household.

(8) Summarize the pre-placement preparation and training already provided to the applicant concerning the issues specified in 22 CFR 96.48(a) and (b), the plans for future preparation and training with respect to those issues, or with respect to a particular child, as specified in 22 CFR 96.48(c), and the plans for post-placement monitoring specified in 22 CFR 96.50, in the event that the child will be adopted in the United States rather than abroad.

(9) Specify whether the home study preparer made any referrals as described in paragraph (g)(4) of this section, and include a copy of the report resulting from each referral, the home study preparer's assessment of the impact of the report on the suitability of the applicant to adopt, and the home study preparer's recommended restrictions, if any, on the characteristics of the child to be placed in the home.

(10) Include results of the checks conducted in accordance with paragraph (i) of this section including that no record was found to exist, that the State or foreign country will not release information to the home study preparer or anyone in the household, or that the State or foreign country does not have a child abuse registry.

(11) Include each person's response to the questions regarding abuse and violence in accordance with paragraph (j) of this section.

(12) Include a certified copy of the documentation showing the final disposition of each incident which resulted in arrest, indictment, conviction, and/or any other judicial or administrative action for anyone subject to the home study and a written statement submitted with the home study giving details, including any mitigating circumstances about each arrest, signed, under penalty of perjury, by the person to whom the arrest relates.

(13) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of any applicant's or additional adult member of the household's history of abuse and/or violence as an offender, whether this history is disclosed by an applicant or any additional adult member of the household or is discovered by home study preparer, regardless of the source of the home study preparer's discovery. A single incident of sexual abuse, child abuse, or family violence is sufficient to constitute a ''history'' of abuse and/or violence.

(14) Contain an evaluation of the suitability of the home for adoptive placement of a child in light of disclosure by an applicant, or any additional adult member of the household, of a history of substance abuse. A person has a history of substance abuse if his or her current or past use of alcohol, controlled substances, or other substances impaired or impairs his or her ability to fulfill obligations at work, school, or home, or creates other social or interpersonal problems that may adversely affect the applicant's suitability as an adoptive parent.

(15) Include a general description of the information disclosed in accordance with paragraph (m) of this section concerning the physical, mental, and emotional health of the applicant and of any additional adult member of the household.

(16) Identify the agency involved in each prior or terminated home study in accordance with paragraph (o) of this section, when the prior home study process began, the date the prior home study was completed, and whether the prior home study recommended for or against finding the applicant or additional adult member of the household suitable for adoption, foster care, or other custodial care of a child. If a prior home study was terminated without completion, the current home study must indicate when the prior home study began, the date of termination, and the reason for the termination.

(d) *Duty to disclose.* (1) The applicant, and any additional adult members of the household, each has a duty of candor and must:

(i) Give true and complete information to the home study preparer.

(ii) Disclose any arrest, conviction, or other adverse criminal history, whether in the United States or abroad, even if the record of the arrest, conviction or other adverse criminal history has been expunged, sealed, pardoned, or the subject of any other amelioration. A person with a criminal history may be able to establish sufficient rehabilitation.

(iii) Disclose other relevant information, such as physical, mental or emotional health issues, or behavioral issues, as specified in paragraph (m) of

this section. Such problems may not necessarily preclude approval of a Form I–800A, if, for example, they have been or are being successfully treated.

(2) This duty of candor is an ongoing duty, and continues while the Form I–800A is pending, after the Form I–800A is approved, and while any subsequent Form I–800 is pending, and until there is a final decision admitting the Convention adoptee to the United States with a visa. The applicant and any additional adult member of the household must notify the home study preparer and USCIS of any new event or information that might warrant submission of an amended or updated home study.

(e) *State standards.* In addition to the requirements of this section, the home study preparer must prepare the home study according to the requirements that apply to a domestic adoption in the State of the applicant's actual or proposed residence in the United States.

(f) *Home study preparer's signature.* The home study preparer (or, if the home study is prepared by an entity, the officer or employee who has authority to sign the home study for the entity) must personally sign the home study, and any updated or amended home study. The home study preparer's signature must include a declaration, under penalty of perjury under United States law, that:

(1) The signer personally, and with the professional diligence reasonably necessary to protect the best interests of any child whom the applicant might adopt, either actually conducted or supervised the home study, including personal interview(s), the home visits, and all other aspects of the investigation needed to prepare the home study; if the signer did not personally conduct the home study, the person who actually did so must be identified;

(2) The factual statements in the home study are true and correct, to the best of the signer's knowledge, information and belief; and

(3) The home study preparer has advised the applicant of the duty of candor under paragraph (d) of this section, specifically including the on-going duty under paragraph (d)(2) of this section concerning disclosure of new events or information warranting submission of an updated or amended home study.

(g) *Personal interview(s) and home visit(s).* The home study preparer must:

(1) Conduct at least one interview in person, and at least one home visit, with the applicant.

(2) Interview, at least once, each additional adult member of the household, as defined in 8 CFR 204.301. The interview with an additional adult member of the household should also be in person, unless the home study preparer determines that interviewing that individual in person is not reasonably feasible and explains in the home study the reason for this conclusion.

(3) Provide information on and assess the suitability of the applicant as the adoptive parent of a Convention adoptee based on the applicant's background, family and medical history (including physical, mental and emotional health), social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the child(ren) for whom they would be qualified to care.

(4) Refer the applicant to an appropriate licensed professional, such as a physician, psychiatrist, clinical psychologist, clinical social worker, or professional substance abuse counselor, for an evaluation and written report, if the home study preparer determines that there are areas beyond his or her expertise that need to be addressed. The home study preparer must also make such a referral if such a referral would be required for a domestic adoption under the law of the State of the applicant's actual or proposed place of residence in the United States.

(5) Apply the requirements of this paragraph to each additional adult member of the household.

(h) *Financial considerations.* (1) Assessment of the finances of the applicant must include:

(i) A description of the applicant's income, financial resources, debts, and expenses.

(ii) A statement concerning the evidence that was considered to verify the source and amount of income and financial resources.

(2) Any income designated for the support of one or more children in the applicant's care and custody, such as funds for foster care, or any income designated for the support of another member of the household, must not be counted towards the financial resources available for the support of a prospective adoptive child.

(3) USCIS will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, USCIS reserves the right to ask for such detailed documentation.

(i) *Checking available child abuse registries.* The home study preparer must ensure that a check of the applicant, and of each additional adult member of the household, has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th birthday. USCIS may also conduct its own check of any child abuse registries to which USCIS has access. Depending on the extent of access to a relevant registry allowed by the State or foreign law, the home study preparer must take one of the following courses of action:

(1) If the home study preparer is allowed access to information from the child abuse registries, he or she must make the appropriate checks for the applicant and each additional adult member of the household;

(2) If the State or foreign country requires the home study preparer to secure permission from the applicant and each additional adult member of the household before gaining access to information in such registries, the home study preparer must secure such permission from those individuals and make the appropriate checks;

(3) If the State or foreign country will only release information directly to an individual to whom the information relates, then the applicant and the additional adult member of the household must secure such information and provide it to the home study preparer.

(4) If the State or foreign country will release information neither to the home study preparer nor to the person to whom the information relates, or has not done so within 6 months of a written request for the information, this unavailability of information must be noted in the home study.

(j) *Inquiring about history of abuse or violence as an offender.* The home study preparer must ask each applicant and each additional adult member of the household whether he or she has a history as an offender, whether in the United States or abroad, of substance abuse, sexual abuse, or child abuse, or family violence, even if such history did not result in an arrest or conviction. This evaluation must include:

(1) The dates of each arrest or conviction or history of substance abuse, sexual abuse or child abuse, and/or family violence; or,

(2) If not resulting in an arrest, the date or time period (if occurring over an extended period of time) of each occurrence and

(3) Details including any mitigating circumstances about each incident.

Each statement must be signed, under penalty of perjury, by the person to whom the incident relates.

(k) *Criminal history.* The applicant, and any additional adult members of the household, must also disclose to the home study preparer and USCIS any history, whether in the United States or abroad, of any arrest and/or conviction

(other than for minor traffic offenses) in addition to the information that the person must disclose under paragraph (j) of this section. If an applicant or an additional adult member of the household has a criminal record, the officer may still find that the applicant will be suitable as the adoptive parent of a Convention adoptee, if there is sufficient evidence of rehabilitation as described in paragraph (l) of this section.

(l) *Evidence of rehabilitation.* If an applicant, or any additional adult member of the household, has a history of substance abuse, sexual abuse or child abuse, and/or family violence as an offender, or any other criminal history, the home study preparer may, nevertheless, make a favorable finding if the applicant has demonstrated that the person with this adverse history has achieved appropriate rehabilitation. A favorable recommendation cannot be made based on a claim of rehabilitation while an applicant or any additional adult member of the household is on probation, parole, supervised release, or other similar arrangement for any conviction. The home study must include a discussion of the claimed rehabilitation, which demonstrates that the applicant is suitable as the adoptive parent(s) of a Convention adoptee. Evidence of rehabilitation may include:

(1) An evaluation of the seriousness of the arrest(s), conviction(s), or history of abuse, the number of such incidents, the length of time since the last incident, the offender's acceptance of responsibility for his or her conduct, and any type of counseling or rehabilitation programs which have been successfully completed, or

(2) A written opinion from an appropriate licensed professional, such as a psychiatrist, clinical psychologist, or clinical social worker.

(m) *Assessment with respect to physical, mental and emotional health or behavioral issues.* The home study must address the current physical, mental and emotional health of the applicant, or any additional adult member of the household, as well as any history of illness or of any mental, emotional, psychological, or behavioral instability if the home study preparer determines, in the exercise of reasonable professional judgment, that the suitability of the applicant as an adoptive parent may be affected adversely by such history. Paragraph (g)(4) of this section, regarding referral to professionals, applies to any home study involving prior psychiatric care, or issues arising from sexual abuse, child abuse, or family violence issues if, in the home study preparer's reasonable professional judgment, such referral(s) may be necessary or helpful to the proper completion of the home study.

(n) *Prior home study.* The home study preparer must ask each applicant, and any additional adult member of the household, whether he or she previously has had a prior home study completed, or began a home study process in relation to an adoption or to any form of foster or other custodial care of a child that was not completed, whether or not the prior home study related to an intercountry adoption, and must include each individual's response to this question in the home study report. A copy of any previous home study that did not favorably recommend the applicant or additional adult member of the household must be attached to any home study submitted with a Form I–800A. If a copy of any prior home study that did not favorably recommend the applicant or additional adult member of the household is no longer available, the current home study must explain why the prior home study is no longer available. The home study preparer must evaluate the relevance of any prior unfavorable or uncompleted home study to the suitability of the applicant as the adoptive parent of a Convention adoptee.

(o) *Living accommodations.* The home study must include a detailed description of the living accommodations where the applicant currently resides. If the applicant is planning to move, the home study must include a description of the living accommodations where the child will reside with the applicant, if known. If the applicant is residing abroad at the time of the home study, the home study must include a description of the living accommodations where the child will reside in the United States with the applicant, if known. Each description must include an assessment of the suitability of accommodations for a child and a determination whether such space meets applicable State requirements, if any.

(p) *Handicapped or special needs child.* A home study conducted in conjunction with the proposed adoption of a special needs or handicapped child must contain a discussion of the preparation, willingness, and ability of the applicant to provide proper care for a child with the handicap or special needs. This information will be used to evaluate the suitability of the applicant as the adoptive parent of a special needs or handicapped child. If this information is not included in the home study, an updated or amended home study will be necessary if the applicant seeks to adopt a handicapped or special needs child.

(q) *Addressing a Convention country's specific requirements.* If the Central Authority of the Convention country has notified the Secretary of State of any specific requirements that must be met in order to adopt in the Convention country, the home study must include a full and complete statement of all facts relevant to the applicant's eligibility for adoption in the Convention country, in light of those specific requirements.

(r) *Specific approval for adoption.* If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child from the specific Convention country or countries, and a discussion of the reasons for such approval. The home study must include the number of children the applicant may adopt at the same time. The home study must state whether there are any specific restrictions to the adoption based on the age or gender, or other characteristics of the child. If the home study preparer has approved the applicant for a handicapped or special needs adoption, this fact must be clearly stated.

(s) *Home study preparer's authority to conduct home studies.* The home study must include a statement in which the home study preparer certifies that he or she is authorized under 22 CFR part 96 to complete home studies for Convention adoption cases. The certification must specify the State or country under whose authority the home study preparer is licensed or authorized, cite the specific law or regulation authorizing the preparer to conduct home studies, and indicate the license number, if any, and the expiration date, if any, of this authorization or license. The certification must also specify the basis under 22 CFR part 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention adoption home studies.

(t) *Review of home study.* (1) If the law of the State in which the applicant resides requires the competent authority in the State to review the home study, such a review must occur and be documented before the home study is submitted to USCIS.

(2) When the home study is not performed in the first instance by an accredited agency or temporarily accredited agency, as defined in 22 CFR part 96, then an accredited agency or temporarily accredited agency, as defined in 22 CFR part 96, must review

and approve the home study as specified in 22 CFR 96.47(c) before the home study is submitted to USCIS. This requirement for review and approval by an accredited agency or temporarily accredited agency does not apply to a home study that was actually prepared by a public domestic authority, as defined in 22 CFR 96.2.

(u) *Home study updates and amendments.* (1) A new home study amendment or update will be required if there is:

(i) A significant change in the applicant's household, such as a change in residence, marital status, criminal history, financial resources; or

(ii) The addition of one or more children in the applicant's home, whether through adoption or foster care, birth, or any other means. Even if the original home study provided for the adoption of more than one adopted child, the applicant must submit an amended home study recommending adoption of an additional child, because the addition of the already adopted child(ren) to the applicant's household is a significant change in the household that should be assessed before the adoption of any additional child(ren);

(iii) The addition of other dependents or additional adult member(s) of the household to the family prior to the prospective child's immigration into the United States;

(iv) A change resulting because the applicant is seeking to adopt a handicapped or special needs child, if the home study did not already address the applicant's suitability as the adoptive parent of a child with the particular handicap or special need;

(v) A change to a different Convention country. This change requires the updated home study to address suitability under the requirements of the new Convention country;

(vi) A lapse of more than 6 months between the date the home study is completed and the date it is submitted to USCIS; or

(vii) A change to the child's proposed State of residence. The preadoption requirements of the new State must be complied with in the case of a child coming to the United States to be adopted.

(2) Any updated or amended home study must:

(i) Meet the requirements of this section;

(ii) Be accompanied by a copy of the home study that is being updated or amended, including all prior updates and amendments;

(iii) Include a statement from the preparer that he or she has reviewed the home study that is being updated or amended and is personally and fully aware of its contents; and

(iv) Address whether the home study preparer recommends approval of the proposed adoption and the reasons for the recommendation.

(3) If submission of an updated or amended home study becomes necessary before USCIS adjudicates the Form I–800A, the applicant may simply submit the updated or amended home study to the office that has jurisdiction over the Form I–800A.

(4) If it becomes necessary to file an updated or amended home study after USCIS has approved the Form I–800A, the applicant must file a Form I–800A Supplement 3 with the filing fee specified in 8 CFR 103.7(b)(1) and the amended or updated home study. If USCIS determines that the amended or updated home study shows that the applicant remains suitable as the adoptive parent(s) of a Convention adoptee, USCIS will issue a new approval notice that will expire on the same date as the original approval. If the applicant also wants to have USCIS extend the approval period for the Form I–800A, the applicant must submit the updated or amended home study with an extension request under 8 CFR 204.312(e)(3), rather than under this paragraph (u) of this section.

(5) Each update must indicate that the home study preparer has updated the screening of the applicant and any additional adult member of the household under paragraphs (i) through (l) of this section, and must indicate the results of this updated screening.

§ 204.312 Adjudication of the Form I–800A.

(a) *USCIS action.* The USCIS officer must approve a Form I–800A if the officer finds, based on the evidence of record, that the applicant is eligible under 8 CFR 204.307(a) to file a Form I–800A and the USCIS officer is satisfied that the applicant is suitable as the adoptive parent of a child from the specified Convention country. If the applicant sought approval for more than one Convention country, the decision will specify each country for which the Form I–800A is approved, and will also specify whether the Form I–800A is denied with respect to any particular Convention country.

(b) *Evaluation of the home study.* In determining suitability to adopt, the USCIS officer will give considerable weight to the home study, but is not bound by it. Even if the home study is favorable, the USCIS officer must deny the Form I–800A if, on the basis of the evidence of record, the officer finds, for a specific and articulable reason, that the applicant has failed to establish that he or she is suitable as the adoptive parent of a child from the Convention country. The USCIS officer may consult the accredited agency or temporarily accredited agency that approved the home study, the home study preparer, the applicant, the relevant State or local child welfare agency, or any appropriate licensed professional, as needed to clarify issues concerning whether the applicant is suitable as the adoptive parent of a Convention adoptee. If this consultation yields evidence that is adverse to the applicant, the USCIS officer may rely on the evidence only after complying with the provisions of 8 CFR 103.2(b)(16) relating to the applicant's right to review and rebut adverse information.

(c) *Denial of application.* (1) The USCIS officer will deny the Form I–800A if the officer finds that the applicant has failed to establish that the applicant is:

(i) Eligible under 8 CFR 204.307(a) to file Form I–800A; or

(ii) Suitable as the adoptive parent of a child from the Convention country.

(2) Before denying a Form I–800A, the USCIS officer will comply with 8 CFR 103.2(b)(16), if required to do so under that provision, and may issue a request for evidence or a notice of intent to deny under 8 CFR 103.2(b)(8).

(3) A denial will be in writing, giving the reason for the denial and notifying the applicant of the right to appeal, if any, as provided in 8 CFR 204.314.

(4) It is for the Central Authority of the other Convention country to determine how its own adoption requirements, as disclosed in the home study under 8 CFR 204.311(q), should be applied in a given case. For this reason, the fact that the applicant may be ineligible to adopt in the other Convention country under those requirements, will not warrant the denial of a Form I–800A, if USCIS finds that the applicant has otherwise established eligibility and suitability as the adoptive parent of a Convention adoptee.

(d) *Approval notice.* (1) If USCIS approves the Form I–800A, USCIS will notify the applicant in writing as well as the Department of State. The notice of approval will specify:

(i) The expiration date for the notice of approval, as determined under paragraph (e) of this section, and

(ii) The name(s) and marital status of the applicant; and

(iii) If the applicant is not married and not yet 25 years old, the applicant's date of birth.

(2) Once USCIS approves the Form I–800A, or extends the validity period for a prior approval under paragraph (e) of

this section, any submission of the home study to the Central Authority of the country of the child's habitual residence must consist of the entire and complete text of the same home study and of any updates or amendments submitted to USCIS.

(e) *Duration or revocation of approval.* (1) A notice of approval expires 15 months after the date on which USCIS received the FBI response on the applicant's, and any additional adult member of the household's, biometrics, unless approval is revoked. If USCIS received the responses on different days, the 15-month period begins on the earliest response date. The notice of approval will specify the expiration date. USCIS may extend the validity period for the approval of a Form I–800A only as provided in paragraph (e)(3) of this section.

(2) (i) The approval of a Form I–800A is automatically revoked if before the final decision on a Convention adoptee's application for admission with an immigrant visa or for adjustment of status:

(A) The marriage of the applicant terminates; or

(B) An unmarried applicant marries; or

(C) In the case of a married applicant, either spouse files with a USCIS or Department of State officer a written document withdrawing his or her signature on the Form I–800A.

(ii) This revocation is without prejudice to the filing of a new Form I–800A, with fee, accompanied by a new or amended home study, reflecting the change in marital status. If a Form I–800 had already been filed based on the approval of the prior Form I–800A, a new Form I–800 must also be filed with the new Form I–800A under this paragraph. The new Form I–800 will be adjudicated only if the new Form I–800A is approved. The new Form I–800 will not be subject to denial under 8 CFR 204.309(b)(1) or (2), unless the original Form I–800 would have been subject to denial under either of those provisions.

(3)(i) If the 15-month validity period for a Form I–800A approval is about to expire, and the applicant has not filed a Form I–800, the applicant may file Form I–800A Supplement 3, with the filing fee under 8 CFR 103.7(b)(1), if required. The applicant may not file a Form I–800A Supplement 3 seeking extension of an approval notice more than 90 days before the expiration of the validity period for the Form I–800A approval, but must do so on or before the date on which the validity period expires. The applicant is not required to pay the Form I–800A Supplement 3 filing fee for the first request to extend the approval of a Form I–800A. If the applicant files a second or subsequent Form I–800A Supplement 3 to obtain a second or subsequent extension, however, the applicant must pay the Form I–800A Supplement 3 filing fee, as specified in 8 CFR 103.7(b), for the second, or any subsequent, Form I–800A Supplement 3 that is filed to obtain a second or subsequent extension. Any Form I–800A Supplement 3 that is filed to obtain an extension of the approval of a Form I–800A must be accompanied by:

(A) A statement, signed by the applicant under penalty of perjury, detailing any changes to the answers given to the questions on the original Form I–800A;

(B) An updated or amended home study as required under 8 CFR 204.311(u); and

(C) A photocopy of the Form I–800A approval notice.

(ii) Upon receipt of the Form I–800A Supplement 3, USCIS will arrange for the collection of the biometrics of the applicant and of each additional adult member of the applicant's household.

(iii) If USCIS continues to be satisfied that the applicant remains suitable as the adoptive parent of a Convention adoptee, USCIS will extend the approval of the Form I–800A to a date not more than 15 months after the date on which USCIS received the new biometric responses. If new responses are received on different dates, the new 15-month period begins on the earliest response date. The new notice of approval will specify the new expiration date.

(iv) There is no limit to the number of extensions that may be requested and granted under this section, so long as each request is supported by an updated or amended home study that continues to recommend approval of the applicant for intercountry adoption and USCIS continues to find that the applicant remain suitable as the adoptive parent(s) of a Convention adoptee.

(4) In addition to the automatic revocation provided for in paragraph (e)(2) of this section, the approval of a Form I–800A may be revoked pursuant to 8 CFR 205.1 or 205.2.

§ 204.313 Filing and adjudication of a Form I–800.

(a) *When to file.* Once a Form I–800A has been approved and the Central Authority has proposed placing a child for adoption by the petitioner, the petitioner may file the Form I–800. The petitioner must complete the Form I–800 in accordance with the instructions that accompany the Form I–800, and must sign the Form I–800 personally. In the case of a married petitioner, one spouse cannot sign for the other, even under a power of attorney or similar agency arrangement. The petitioner may then file the Form I–800 with the stateside or overseas USCIS office or the visa issuing post that has jurisdiction under 8 CFR 204.308(b) to adjudicate the Form I–800, together with the evidence specified in this section and the filing fee specified in 8 CFR 103.7(b)(1), if more than one Form I–800 is filed for children who are not siblings.

(b) *What to include on the Form.* (1) The petitioner must specify on the Form I–800 either that:

(i) The child will seek an immigrant visa, if the Form I–800 is approved, because the child will reside in the United States with the petitioner (in the case of a married petitioner, if only one spouse is a United States citizen, with that spouse) after the child's admission to the United States on the basis of the proposed adoption; or

(ii) The child will seek a nonimmigrant visa, in order to travel to the United States to obtain naturalization under section 322 of the Act, because the petitioner intends to complete the adoption abroad and the petitioner and the child will continue to reside abroad immediately following the adoption, rather than residing in the United States with the petitioner. This option is not available if the child will be adopted in the United States.

(2) In applying this paragraph (b), if a petitioner is a United States citizen who is domiciled in the United States, but who is posted abroad temporarily under official orders as a member of the Uniformed Services as defined in 5 U.S.C. 2101, or as a civilian officer or employee of the United States Government, the child will be deemed to be coming to the United States to reside in the United States with that petitioner.

(c) *Filing deadline.* (1) The petitioner must file the Form I–800 before the expiration of the notice of the approval of the Form I–800A and before the child's 16th birthday. Paragraphs (c)(2) and (3) of this section provide special rules for determining that this requirement has been met.

(2) If the appropriate Central Authority places the child with the petitioner for intercountry adoption more than 6 months after the child's 15th birthday but before the child's 16th birthday, the petitioner must still file the Form I–800 before the child's 16th birthday. If the evidence required by paragraph (d)(3) or (4) of this section is not yet available, instead of that

evidence, the petitioner may submit a statement from the primary provider, signed under penalty of perjury under United States law, confirming that the Central Authority has, in fact, made the adoption placement on the date specified in the statement. Submission of a Form I–800 with this statement will satisfy the statutory requirement that the petition must be submitted before the child's 16th birthday, but no provisional or final approval of the Form I–800 will be granted until the evidence required by paragraph (d)(3) or (4) of this section has been submitted. When submitted, the evidence required by paragraph (d)(3) and (4) must affirmatively show that the Central Authority did, in fact, make the adoption placement decision before the child's 16th birthday.

(3) If the Form I–800A was filed after the child's 15th birthday but before the child's 16th birthday, the filing date of the Form I–800A will be deemed to be the filing date of the Form I–800, provided the Form I–800 is filed not more than 180 days after the initial approval of the Form I–800A.

(d) *Required evidence.* Except as specified in paragraph (c)(2) of this section, the petitioner must submit the following evidence with the properly completed Form I–800:

(1) The Form I–800A approval notice and, if applicable, proof that the approval period has been extended under 8 CFR 204.312(e);

(2) A statement from the primary provider, as defined in 22 CFR 96.2, signed under penalty of perjury under United States law, indicating that all of the pre-placement preparation and training provided for in 22 CFR 96.48 has been completed;

(3) The report required under article 16 of the Convention, specifying the child's name and date of birth, the reasons for making the adoption placement, and establishing that the competent authority has, as required under article 4 of the Convention:

(i) Established that the child is eligible for adoption;

(ii) Determined, after having given due consideration to the possibility of placing the child for adoption within the Convention country, that intercountry adoption is in the child's best interests;

(iii) Ensured that the legal custodian, after having been counseled as required, concerning the effect of the child's adoption on the legal custodian's relationship to the child and on the child's legal relationship to his or her family of origin, has freely consented in writing to the child's adoption, in the required legal form;

(iv) Ensured that if any individual or entity other than the legal custodian must consent to the child's adoption, this individual or entity, after having been counseled as required concerning the effect of the child's adoption, has freely consented in writing, in the required legal form, to the child's adoption;

(v) Ensured that the child, after having been counseled as appropriate concerning the effects of the adoption; has freely consented in writing, in the required legal form, to the adoption, if the child is of an age that, under the law of the country of the child's habitual residence, makes the child's consent necessary, and that consideration was given to the child's wishes and opinions; and

(vi) Ensured that no payment or inducement of any kind has been given to obtain the consents necessary for the adoption to be completed.

(4) The report under paragraph (d)(3) of this section must be accompanied by:

(i) A copy of the child's birth certificate, or secondary evidence of the child's age; and

(ii) A copy of the irrevocable consent(s) signed by the legal custodian(s) and any other individual or entity who must consent to the child's adoption unless, as permitted under article 16 of the Convention, the law of the country of the child's habitual residence provides that their identities may not be disclosed, so long as the Central Authority of the country of the child's habitual residence certifies in its report that the required documents exist and that they establish the child's age and availability for adoption;

(iii) A statement, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person), certifying that the report is a true, correct, and complete copy of the report obtained from the Central Authority of the Convention country;

(iv) A summary of the information provided to the petitioner under 22 CFR 96.49(d) and (f) concerning the child's medical and social history. This summary, or a separate document, must include:

(A) A statement concerning whether, from any examination as described in 22 CFR 96.49(e) or for any other reason, there is reason to believe that the child has any medical condition that makes the child inadmissible under section 212(a)(1) of the Act; if the medical information that is available at the provisional approval stage is not sufficient to assess whether the child may be inadmissible under section 212(a)(1), the submission of this information may be deferred until the petitioner seeks final approval of the Form I–800;

(B) If both of the child's birth parents were the child's legal custodians and signed the irrevocable consent, the factual basis for determining that they are incapable of providing proper care for the child, as defined in 8 CFR 204.301;

(C) Information about the circumstances of the other birth parent's death, if applicable, supported by a copy of the death certificate, unless paragraph (d)(4)(ii) of this section makes it unnecessary to provide a copy of the death certificate;

(D) If a sole birth parent was the legal custodian, the circumstances leading to the determination that the other parent abandoned or deserted the child, or disappeared from the child's life; and

(E) If the legal custodian was the child's prior adoptive parent(s) or any individual or entity other than the child's birth parent(s), the circumstances leading to the custodian's acquisition of custody of the child and the legal basis of that custody.

(v) If the child will be adopted in the United States, the primary provider's written report, signed under penalty of perjury by the primary provider (or an authorized representative if the primary provider is an agency or other juridical person) detailing the primary adoption service provider's plan for post-placement duties, as specified in 22 CFR 96.50; and

(5) If the child may be inadmissible under any provision of section 212(a) for which a waiver is available, a properly completed waiver application for each such ground; and

(6) Either a Form I–864W, Intending Immigrant's I–864 Exemption, or a Form I–864, Affidavit of Support, as specified in 8 CFR 213a.2.

(e) *Obtaining the home study and supporting evidence.* The materials from the Form I–800A proceeding will be included in the record of the Form I–800 proceeding.

(f) *Investigation.* An investigation concerning the alien child's status as a Convention adoptee will be completed before the Form I–800 is adjudicated in any case in which the officer with jurisdiction to grant provisional or final approval of the Form I–800 determines, on the basis of specific facts, that completing the investigation will aid in the provisional or final adjudication of the Form I–800. Depending on the circumstances surrounding the case, the investigation may include, but is not limited to, document checks, telephone checks, interview(s) with the birth or

prior adoptive parent(s), a field investigation, and any other appropriate investigatory actions. In any case in which there are significant differences between the facts presented in the approved Form I–800A or Form I–800 and the facts uncovered by the investigation, the office conducting the investigation may consult directly with the appropriate USCIS office. In any instance where the investigation reveals negative information sufficient to sustain a denial of the Form I–800 (including a denial of a Form I–800 that had been provisionally approved) or the revocation of the final approval of the Form I–800, the results of the investigation, including any supporting documentation, and the Form I–800 and its supporting documentation will be forwarded to the appropriate USCIS office for action. Although USCIS is not precluded from denying final approval of a Form I–800 based on the results of an investigation under this paragraph, the grant of provisional approval under paragraph (g), and the fact that the Department of State has given the notice contemplated by article 5(c) of the Convention, shall constitute prima facie evidence that the grant of adoption or custody for purposes of adoption will, ordinarily, warrant final approval of the Form I–800. The Form I–800 may still be denied, however, if the Secretary of State declines to issue the certificate provided for under section 204(d)(2) of the Act or if the investigation under this paragraph establishes the existence of facts that clearly warrant denial of the petition.

(g) *Provisional approval.* (1) The officer will consider the evidence described in paragraph (d) of this section and any additional evidence acquired as a result of any investigation completed under paragraph (f) of this section, to determine whether the preponderance of the evidence shows that the child qualifies as a Convention adoptee. Unless 8 CFR 204.309(b) prohibits approval of the Form I–800, the officer will serve the petitioner with a written order provisionally approving the Form I–800 if the officer determines that the child does qualify for classification as a ''child'' under section 101(b)(1)(G), and that the proposed adoption or grant of custody will meet the Convention requirements.

(i) The provisional approval will expressly state that the child will, upon adoption or acquisition of custody, be eligible for classification as a Convention adoptee, adjudicate any waiver application and (if any necessary waiver of inadmissibility is granted) direct the petitioner to obtain and present the evidence required under paragraph (h) of this section in order to obtain final approval of the Form I–800.

(ii) The grant of a waiver of inadmissibility in conjunction with the provisional approval of a Form I–800 is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the United States based on the final approval of the same Form I–800. If the Form I–800 is finally denied or the immigrant or nonimmigrant visa application is denied, the waiver is void.

(2) If the petitioner filed the Form I–800 with USCIS and the child will apply for an immigrant or nonimmigrant visa, then, upon provisional approval of the Form I–800, the officer will forward the notice of provisional approval, Form I–800, and all supporting evidence to the Department of State. If the child will apply for adjustment of status, USCIS will retain the record of proceeding.

(h) *Final approval.* (1) To obtain final approval of a provisionally approved Form I–800, the petitioner must submit to the Department of State officer who has jurisdiction of the child's application for an immigrant or nonimmigrant visa, or to the USCIS officer who has jurisdiction of the child's adjustment of status application, a copy of the following document(s):

(i) If the child is adopted in the Convention country, the adoption decree or administrative order from the competent authority in the Convention country showing that the petitioner has adopted the child; in the case of a married petitioner, the decree or order must show that both spouses adopted the child; or

(ii) If the child will be adopted in the United States:

(A) The decree or administrative order from the competent authority in the Convention country giving custody of the child for purposes of emigration and adoption to the petitioner or to an individual or entity acting on behalf of the petitioner. In the case of a married petitioner, an adoption decree that shows that the child was adopted only by one spouse, but not by both, will be deemed to show that the petitioner has acquired sufficient custody to bring the child to the United States for adoption by the other spouse;

(B) If not already provided before the provisional approval (because, for example, the petitioner thought the child would be adopted abroad, but that plan has changed so that the child will now be adopted in the United States), a statement from the primary provider, signed under penalty of perjury under United States law, summarizing the plan under 22 CFR 96.50 for monitoring of the placement until the adoption is finalized in the United States;

(C) If not already provided before the provisional approval (because, for example, the petitioner thought the child would be adopted abroad, but that plan has changed so that the child will now be adopted in the United States), a written description of the preadoption requirements that apply to adoptions in the State of the child's proposed residence and a description of when and how, after the child's immigration, the petitioner intends to complete the child's adoption. The written description must include a citation to the relevant State statutes or regulations and specify how the petitioner intends to comply with any requirements that can be satisfied only after the child arrives in the United States.

(2) If the Secretary of State, after reviewing the evidence that the petitioner provides under paragraph (h)(1)(i) or (ii) of this section, issues the certificate required under section 204(d)(2) of the Act, the Department of State officer who has jurisdiction over the child's visa application has authority, on behalf of USCIS, to grant final approval of a Form I–800. In the case of an alien who will apply for adjustment of status, the USCIS officer with jurisdiction of the adjustment application has authority to grant this final approval upon receiving the Secretary of State's certificate under section 204(d)(2) of the Act.

(i) *Denial of Form I–800.* (1) A USCIS officer with authority to grant provisional or final approval will deny the Form I–800 if the officer finds that the child does not qualify as a Convention adoptee, or that 8 CFR 204.309(b) of this section requires denial of the Form I–800. Before denying a Form I–800, the officer will comply with the requirements of 8 CFR 103.2(b)(16)), if required to do so under that provision, and may issue a request for evidence or a notice of intent to deny under 8 CFR 103.2(b)(8).

(2) The decision will be in writing, specifying the reason(s) for the denial and notifying the petitioner of the right to appeal, if any, as specified in 8 CFR 204.314.

(3) If a Department of State officer finds, either at the provisional approval stage or the final approval stage, that the Form I–800 is ''not clearly approvable,'' or that 8 CFR 204.309(b) warrants denial of the Form I–800, the Department of State officer will forward the Form I–800 and accompanying evidence to the USCIS office with jurisdiction over the place of the child's habitual residence for review and decision.

§ 204.314 Appeal.

(a) *Decisions that may be appealed.*

(1) Except as provided in paragraph (b) of this section:

(i) An applicant may appeal the denial of a Form I–800A (including the denial of a request to extend the prior approval of a Form I–800A) and

(ii) A petitioner may appeal the denial of a Form I–800.

(2) The provisions of 8 CFR 103.3, concerning how to file an appeal, and how USCIS adjudicates an appeal, apply to the appeal of a decision under this subpart C.

(b) *Decisions that may not be appealed.* There is no appeal from the denial of:

(1) Form I–800A because the Form I–800A was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I–800A; or

(2) Form I–800A for failure to timely file a home study as required by 8 CFR 204.310(a)(3)(viii); or

(3) Form I–800 that is denied because the Form I–800 was filed during any period during which 8 CFR 204.307(c) bars the filing of a Form I–800;

(4) Form I–800 filed either before USCIS approved a Form I–800A or after the expiration of the approval of a Form I–800A.

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

■ 11. The authority citation for part 213a continues to read as follows:

Authority: 8 U.S.C. 1183a; 8 CFR part 2.

■ 12. Section 213a.2(a)(2)(ii)(E) is amended by adding two new sentences at the end, to read as follows:

§ 213a.2 Use of affidavit of support.

(a) * * *

(2) * * *

(ii) * * *

(E) * * * In the case of a child who immigrates as a Convention adoptee, as defined in 8 CFR 204.301, this exception applies if the child was adopted by the petitioner in the Convention country. An affidavit of support under this part is still required in the case of a child who immigrates as a Convention adoptee if the petitioner will adopt the child in the United States only after the child's acquisition of permanent residence.

* * * * *

PART 299—PRESCRIBED FORMS

■ 13. The authority citation in part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

■ 14. Section 299.1 is amended in the table by adding the entries ''I–800 and I–800A'', in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * * * *
I–800	09–21–07	Petition to Classify a Convention Adoptee as an Immediate Relative.
I–800A	09–21–07	Application for Determination of Suitability to Adopt a Child from a Convention Country.
*	*	* * * * *

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 15. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

■ 16. Section 322.3 is amended by:

■ a. Removing the word ''and'' at the end of paragraph (b)(1)(xi);

■ b. Redesignating paragraph (b)(1)(xii) as paragraph (b)(1)(xiii); and by

■ c. Adding a new paragraph (b)(1)(xii). The addition read as follows.

§ 322.3. How, where, and what forms and other documents should the United States citizen parent(s) file?

* * * * *

(b) * * *

(1) * * *

(xii) For a Convention adoptee applying under section 322 of the Act, a copy of the notice of approval of the Form I–800 and the supporting documents submitted with the Form I–800 (except the home study); and

* * * * *

Dated: September 21, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–18992 Filed 10–3–07; 8:45 am]

BILLING CODE 4411–10–P

Federal Register

Thursday,
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Part III

The President

Memorandum of September 28, 2007—Assignment of Specified Reporting and Determination Functions Relating to Afghanistan, Pakistan, Saudi Arabia, and Certain Education Abroad

Presidential Determination No. 2007–34 of September 28, 2007—Presidential Determination on Energy Assistance for the Democratic People's Republic of Korea

Presidential Determination No. 2007–35 of September 28, 2007—Waiver of Limitation on Obligation and Expenditure of $1,051.6 Million in Fiscal Year 2007 Economic Support Funds for Iraq

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Presidential Documents

Title 3—

The President

Memorandum of September 28, 2007

Assignment of Specified Reporting and Determination Functions Relating to Afghanistan, Pakistan, Saudi Arabia, and Certain Education Abroad

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Director of National Intelligence

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to the Secretary of State the functions of the President under sections 2041(d)(3), 2042(c)(1), 2042(d), and 2043(c)(1) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110–53)(the ''9/11 Act'') and section 7114(b)(6) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), as amended.

The Secretary of State shall consult with:

(1) the Secretary of Defense in the performance of the functions in section 2041(d)(3) of the 9/11 Act; and

(2) the Secretary of Defense and the Director of National Intelligence in the performance of the functions in section 2043(c)(1) of the 9/11 Act.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 28, 2007.

[FR Doc. 07–4952
Filed 10–3–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–34 of September 28, 2007

Presidential Determination on Energy Assistance for the Democratic People's Republic of Korea

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby determine that it is necessary for the purposes of the Act that $25 million in FY07 funds available for assistance for Eastern Europe and the Baltic States under the Act and the Support for East European Democracy (SEED) Act be transferred to and consolidated with funds made available for chapter 4 of part II of the Act, and such funds are hereby transferred and consolidated.

In addition, pursuant to the authority vested in me by section 614(a)(1) of the Act, I hereby determine that it is important to the security interests of the United States to furnish up to $25 million in funds made available pursuant to chapter 4 of part II of the Act, comprised of funds transferred pursuant to this determination, for energy assistance for the Democratic People's Republic of Korea without regard to any provision of law within the purview of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, September 28, 2007.

[FR Doc. 07–4953
Filed 10–3–07; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2007–35 of September 28, 2007

Waiver of Limitation on Obligation and Expenditure of $1,051.6 Million in Fiscal Year 2007 Economic Support Funds for Iraq

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 1314(c)(2) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28) (the ''Act''), I hereby waive the requirements of section 1314(c)(1) for $1,051.6 million of Fiscal Year 2007 Economic Support Funds for Iraq and direct you to submit to the Congress this determination along with the certification in accordance with section 1314(c)(2) of the Act.

You are authorized and directed to publish this determination in the Federal Register.

THE WHITE HOUSE,
Washington, September 28, 2007.

[FR Doc. 07–4954
Filed 10–3–07; 8:45 am]
Billing code 4710–10–P

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October 4, 2007

Part IV

The President

Proclamation 8183—National Domestic Violence Awareness Month, 2007

Proclamation 8184—Child Health Day, 2007

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Presidential Documents

Title 3—

The President

Proclamation 8183 of October 1, 2007

National Domestic Violence Awareness Month, 2007

By the President of the United States of America

A Proclamation

Families are indispensable to a stable society, and they should be a place of support to instill responsibility and values in the next generation. When a family member is abused, it can have long-term damaging effects on the victim that leave a mark on family, friends, and the community at large. Our society must continue to work to prevent domestic violence and help create a loving and stable environment for our children and grandchildren.

National Domestic Violence Awareness Month is an opportunity to renew our commitment to preventing domestic violence and to assisting those who suffer from its devastating effects. My Administration is dedicated to helping victims of domestic violence. The Family Justice Center Initiative, announced in 2003, continues to work towards eradicating domestic violence in our Nation. This program provides assistance and services for victims of domestic violence by bringing professionals, advocates, law enforcement, and organizations together at centers nationwide. In 2006, I signed legislation that reauthorized the Violence Against Women Act to fight domestic violence, dating violence, sexual assault, and stalking. We also are working with faith-based and community organizations to assist victims in need. In addition, the Department of Justice's Domestic Violence Transitional Housing Assistance Program provides access to transitional housing services while working to move victims of violence into permanent housing.

As we observe National Domestic Violence Awareness Month, we underscore our commitment to building an America where all citizens can live with dignity, work productively, and achieve their dreams. We encourage victims and their families and friends to seek assistance through Family Justice Centers and to contact the National Domestic Violence Hotline at 1–800–799–SAFE. Together, we can help prevent, recognize, and stop domestic violence in America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2007 as National Domestic Violence Awareness Month. I urge all Americans to reach out to those who have been abused and help educate people about the vital importance of ending domestic violence.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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.

[FR Doc. 07–4962
Filed 10–3–07; 9:09 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8184 of October 1, 2007

Child Health Day, 2007

By the President of the United States of America

A Proclamation

Our Nation is committed to the health and well-being of our youth. On Child Health Day, we reaffirm our commitment to helping children develop good nutrition habits and active lifestyles, so that they can grow into healthy and productive adults.

Children today face many risks, such as alcohol and drug use, obesity, smoking, and other dangers. As parents and role models to America's youth, we have a responsibility to teach them about the importance of healthy behavior, daily exercise, and good nutrition.

My Administration supports programs that give parents, mentors, and teachers the resources they need to help and encourage children to maintain an active and healthy way of life. The National Youth Anti-Drug Media Campaign is working with the Partnership for a Drug-Free America to educate our young people about resisting the pressure to use drugs. Additionally, the Helping America's Youth initiative, led by First Lady Laura Bush, encourages our Nation's children to make healthy choices that lead to a better future. The HealthierUS initiative offers ways to improve lives, prevent and reduce the costs of disease, and promote community health and wellness. These nationwide initiatives provide the tools and resources to help children learn the importance of healthy living.

With hard work and dedication, parents can encourage good nutrition and healthy lifestyles so children can make the right choices, avoid risky behavior, and realize their full potential.

On this day it is also appropriate to recognize the important role the State Children's Health Insurance Program (SCHIP) has played in helping poor children stay healthy. To preserve that role and ensure that poor children can get the coverage they need, SCHIP should be reauthorized.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 1, 2007, as Child Health Day. I call upon families, schools, child health professionals, faith-based and community organizations, and State and local governments to reach out to our Nation's young people, encourage them to avoid dangerous behavior, and help them make the right choices and achieve their dreams.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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.

[FR Doc. 07–4963
Filed 10–3–07; 9:09 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3668/P.L. 110–90

TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Sept. 29, 2007; 121 Stat. 984)

H.J. Res. 43/P.L. 110–91

Increasing the statutory limit on the public debt. (Sept. 29, 2007; 121 Stat. 988)

H.J. Res. 52/P.L. 110–92

Making continuing appropriations for the fiscal year 2008, and for other purposes. (Sept. 29, 2007; 121 Stat. 989)

H.R. 3625/P.L. 110–93

To make permanent the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2007; 121 Stat. 999)

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