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WHEN: Tuesday, December 11, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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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.

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052-AC38

Title IV Conservators, Receivers, and Voluntary Liquidations; Priority of Claims—Subordinated Debt; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a direct final rule with opportunity for comment under part 627 on September 26, 2007 (72 FR 54525) amending the priority of claims regulations to provide that, when assets of a Farm Credit System institution in liquidation are distributed, the claims of holders of subordinated debt will be paid after all general creditor claims. The opportunity for comment expired on October 26, 2007. The FCA received no comments and therefore, the direct final rule becomes effective without change. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is November 16, 2007.

DATES: *Effective Date:* The regulation amending 12 CFR part 627 published on September 26, 2007 (72 FR 54525) is effective November 16, 2007.

FOR FURTHER INFORMATION CONTACT:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498, TTY (703) 883-4434, or
Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean,

Virginia 22102-5090, (703) 883-4020, TTY (703) 883-4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: November 16, 2007.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. E7-22805 Filed 11-21-07; 8:45 am]

BILLING CODE 6705-01-P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052-AC16

Title IV Conservators, Receivers, and Voluntary Liquidations; Priority of Claims—Joint and Several Liability; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 627 on September 26, 2007 (72 FR 54527). This final rule amends our priority of claims regulations to provide priority of claims rights to Farm Credit System (System) banks if they make payments under a reallocation agreement to holders of consolidated and System-wide obligations on behalf of a defaulting System bank. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is November 16, 2007.

DATES: *Effective Date:* The regulation amending 12 CFR part 627 published on September 26, 2007 (72 FR 54527) is effective November 16, 2007.

FOR FURTHER INFORMATION CONTACT:

Christopher D. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4434; or
Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: November 16, 2007.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. E7-22806 Filed 11-21-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0194; Directorate Identifier 2007-NM-306-AD; Amendment 39-15266; AD 2007-23-18]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100B SUD, 747-200B, 747-300, 747-400, and 747-400D Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Boeing Model 747-100B SUD, 747-300, 747-400, and 747-400D series airplanes; and Model 747-200B series airplanes having a stretched upper deck. The existing AD currently requires repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and performing related investigative and corrective actions if necessary. This new AD reduces the repetitive interval for certain inspections. This AD results from new reports of multiple severed adjacent tension ties, in addition to the previous reports of cracked and severed tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression and reduced structural integrity of the airplane.

DATES: This AD becomes effective November 28, 2007.

On April 26, 2006 (71 FR 14367, March 22, 2006), the Director of the **Federal Register** approved the

incorporation by reference of Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005.

We must receive any comments on this AD by January 22, 2008.

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 W12140, 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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On March 9, 2006, we issued AD 2006–06–11, amendment 39–14520 (71 FR 14367, March 22, 2006). That AD applies to all Boeing Model 747–100B SUD, 747–300, 747–400, and 747–400D series airplanes; and Model 747–200B series airplanes having a stretched upper deck. That AD requires repetitively inspecting for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and performing related investigative and corrective actions if necessary. That AD resulted from reports of severed tension ties, as well as numerous reports of

cracked tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. The actions specified in that AD are intended to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression of the airplane.

Actions Since AD Was Issued

Since we issued that AD, two operators reported that, during a recent inspection of the tension ties, multiple adjacent tension ties were found severed. One operator reported three adjacent tension ties severed on a Model 747–300 series airplane with about 18,400 total flight cycles. The other operator reported two adjacent tension ties severed on another Model 747–300 series airplane with about 14,000 total flight cycles. Because of the high number of severed adjacent tension ties on these two airplanes, we have concluded that the repetitive interval for the Stage 1 inspection (repetitive detailed inspections for cracking of the tension ties and adjacent structure at body station (BS) 1120 through BS 1220), as required by AD 2006–06–11, does not adequately ensure the safety of the fleet. Therefore, we find it necessary to reduce the repetitive interval of the Stage 1 inspection. The Stage 2 inspection threshold and intervals are unchanged.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2006–06–11. This new AD retains the requirements of the existing AD, but reduces the repetitive interval for the Stage 1 inspection. This new AD also requires sending the inspection results to Boeing.

Difference Between the AD and the Service Bulletin

To address the recent new inspection findings, this AD reduces the repetitive interval provided in Boeing Alert Service Bulletin 747–53A2507, dated April 21, 2005 (cited in the existing AD and this superseding AD as the appropriate source of service information for the inspections), for the Stage 1 inspection. Boeing concurs with this change.

Interim Action

Because the extent of cracking in the fleet is not known, the required inspection reports will help determine the damage condition of the fleet. Based

on the results of these reports, we may determine that further corrective action is warranted.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2007–0194; Directorate Identifier 2007–NM–306–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14520 (71 FR 14367, March 22, 2006) and adding the following new airworthiness directive (AD):

2007-23-18 Boeing: Docket No. FAA-2007-0194; Directorate Identifier 2007-NM-306-AD; Amendment 39-15266.

Effective Date

(a) This AD becomes effective November 28, 2007.

Affected ADs

- (b) This AD affects the following ADs:
- (1) This AD supersedes AD 2006-06-11.
 - (2) As of the effective date of this AD, for the areas inspected in accordance with this AD, accomplishment of the requirements of paragraph (f) or (i) of this AD terminates the corresponding inspection requirements for

the upper deck tension ties as required by paragraphs (c) and (d) of AD 2004-07-22, amendment 39-13566, as those paragraphs apply to inspections of structural significant item (SSI) F-19A, as identified in Boeing Document No. D6-35022, "Supplemental Structural Inspection Document," Revision G, dated December 2000. All other requirements of AD 2004-07-22 continue to apply.

Applicability

(c) This AD applies to all Boeing Model 747-100B SUD, 747-300, 747-400, and 747-400D series airplanes; and Model 747-200B series airplanes having a stretched upper deck; certificated in any category.

Unsafe Condition

(d) This AD results from new reports of multiple severed adjacent tension ties, in addition to the previous reports of cracked and severed tension ties, broken fasteners, and cracks in the frame, shear web, and shear ties adjacent to tension ties for the upper deck. We are issuing this AD to detect and correct cracking of the tension ties, shear webs, and frames of the upper deck, which could result in rapid decompression and reduced structural integrity of the airplane.

Compliance

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

Repetitive Stage 1 Inspections

(f) Do detailed inspections for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions specified in and in accordance with "Stage 1 Inspection" of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, except as provided by paragraph (j) of this AD. Do the Stage 1 inspections at the applicable times specified in paragraphs (g) and (h) of this AD, except as provided by paragraphs (f)(1) and (f)(2) of this AD. Any applicable related investigative and corrective actions must be done before further flight.

(1) Where paragraph 1.E., "Compliance," of the service bulletin specifies a compliance time relative to the original issue date of the service bulletin, this AD requires compliance before the specified compliance time after April 26, 2006 (the effective date of AD 2006-06-11).

(2) For any airplane that reaches the applicable compliance time for the initial Stage 2 inspection (as specified in Table 1, Compliance Recommendations, under paragraph 1.E. of the service bulletin) before reaching the applicable compliance time for the initial Stage 1 inspection: Accomplishment of the initial Stage 2 inspection eliminates the need to do the Stage 1 inspections.

Compliance Time for Initial Stage 1 Inspection

(g) Do the initial Stage 1 inspection at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) At the earlier of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005.

(ii) Before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles.

(ii) Within 50 flight cycles or 20 days, whichever occurs first, after the effective date of this AD.

Compliance Times for Repetitive Stage 1 Inspections

(h) Repeat the Stage 1 inspection specified in paragraph (f) of this AD at the time specified in paragraph (h)(1) or (h)(2), as applicable. Repeat the inspection thereafter at intervals not to exceed 250 flight cycles, until the initial Stage 2 inspection required by paragraph (i) of this AD has been done.

(1) For airplanes on which the initial Stage 1 inspection had not been accomplished as of the effective date of this AD: Do the next inspection before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after the initial Stage 1 inspection done in accordance with paragraph (f) of this AD, whichever occurs later.

(2) For airplanes on which the initial Stage 1 inspection had been accomplished as of the effective date of this AD: Do the next inspection at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) For airplanes that had accumulated fewer than 12,000 total flight cycles as of the effective date of this AD: Do the next inspection before the accumulation of 10,000 total flight cycles, or within 250 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes that had accumulated 12,000 total flight cycles or more as of the effective date of this AD: Do the next inspection at the later of the times specified in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this AD.

(A) Within 250 flight cycles after accomplishment of the initial Stage 1 inspection.

(B) Within 50 flight cycles or 20 days, whichever occurs first, after the effective date of this AD.

Repetitive Stage 2 Inspections

(i) Do detailed and high frequency eddy current inspections for cracking or discrepancies of the fasteners in the tension ties, shear webs, and frames at body stations 1120 through 1220, and related investigative and corrective actions as applicable, by doing all actions specified in and in accordance with "Stage 2 Inspection" of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2507, dated April

21, 2005, except as provided by paragraph (j) of this AD. Do the initial and repetitive Stage 2 inspections at the applicable times specified in paragraph 1.E., "Compliance," of the service bulletin. Any applicable related investigative and corrective actions must be done before further flight. Accomplishment of the initial Stage 2 inspection ends the repetitive Stage 1 inspections.

Exception to Corrective Action Instructions

(j) If any discrepancy; including but not limited to cracking, or broken, loose, or missing fasteners; is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

Reporting Requirement

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, submit a report of the findings (both positive and negative) of each Stage 1 inspection required by this AD to Boeing Commercial Airplanes; Attention: Manager, Airline Support; P.O. Box 3707 MC 04-ER; Seattle, Washington 98124-2207; fax (425) 266-5562. The report must include the inspection results, a description of any discrepancies found, the inspections performed, the airplane serial number, and the number of total accumulated flight cycles on the airplane. 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 contained in this AD and has assigned OMB Control Number 2120-0056.

(1) For any inspection done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for repairs for compliance with AD 2006-06-11 are approved as AMOCs for the corresponding provisions of this AD provided that the repaired areas are inspected at the times specified in this AD, and the inspections are done in accordance with this AD.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 747-53A2507, dated April 21, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document on April 26, 2006 (71 FR 14367, March 22, 2006). Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 07-5794 Filed 11-21-07; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038-AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission ("Commission")

ACTION: Final rule; notice of stay.

SUMMARY: On January 31, 2007, the Commission adopted Acceptable Practices for Section 5(d)(15) ("Core Principle 15") of the Commodity Exchange Act. The new Acceptable Practices were published in the **Federal Register** on February 14, 2007, and became effective on March 16, 2007. On March 26, 2007, the Commission published certain proposed amendments to the Acceptable Practices in an effort to clarify the definition of "public director" contained therein.¹ The Commission has yet to act upon the

¹ Under the Acceptable Practices, the definition of "public director" is also relevant to members of DCM regulatory oversight committees (all of whom must be public directors) and to members of DCM disciplinary panels (panelists need not be directors, but must include at least one member who meets certain elements of the definition of public director).

proposed amendments, which are central to every element of the Acceptable Practices. Accordingly, the Commission hereby notifies all designated contract markets ("DCMs") that, until further notice, the Acceptable Practices contained in paragraph (b) of Core Principle 15 in Appendix B to 17 CFR part 38 are stayed indefinitely.

DATES: Effective November 23, 2007, paragraph (b) of Core Principle 15 in Appendix B to 17 CFR part 38 is stayed indefinitely. The Commission will publish a new **Federal Register** document lifting the stay on a future date.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Acting Deputy Director for Market Compliance, 202-418-5429, or Sebastian Pujol Schott, Special Counsel, 202-418-5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On January 31, 2007 the Commission adopted its first Acceptable Practices for Core Principle 15. The Acceptable Practices are structured in four parts, including three operational provisions. The operational provisions include: (1) DCM boards of directors composed of at least 35% public directors; (2) board-level regulatory oversight committees ("ROC") consisting exclusively of public directors; and (3) disciplinary panels including at least one public person. The Acceptable Practices also include an important fourth provision which defines "public director" and also impacts ROC members and disciplinary panel members. All three operational provisions of the Acceptable Practices are dependent upon the definition of public director.

The Acceptable Practices were published in the **Federal Register** on February 14, 2007, with an effective date of March 16, 2007. The Commission stated at that time that it would survey all DCMs within six months to evaluate their plans for compliance with Core Principle 15. The Commission further stated that all DCMs would be granted the lesser of two years or two regularly scheduled board elections to fully implement the new Acceptable Practices or otherwise demonstrate full compliance with Core Principle 15.

On March 26, 2007, the Commission published proposed amendments to the definition of DCM "public director," which, as noted above, also impacts ROC and disciplinary panel members. The comment period for the proposed amendments ended on April 25, 2007.

Six comment letters were received, including letters from the National Futures Association; the Futures Industry Association; the CBOE Futures Exchange; the Chicago Board of Trade; the Chicago Mercantile Exchange and Kansas City Board of Trade writing jointly; and Mr. Dennis Gartman. The comments received were studied carefully and are under advisement by the Commission. However, the Commission has yet to take final action on the proposed amendments.

Until such time as the definition of “public director” is finalized, the operational provisions of the Acceptable Practices, which are dependent on the definition, cannot be properly applied by DCMs or enforced by the Commission. Recognizing this fact, and in order to carefully consider its next steps, the Commission has determined to stay the Acceptable Practices for Core Principle 15 adopted on January 31, 2007. Accordingly, the two-year compliance period is also stayed.

Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions in advance of issuing any new regulation or order.² More specifically, Section 15(a) states that the costs and benefits of a proposed rule or order shall be evaluated with regard to five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may give greater weight to any one of the five enumerated areas of market and public concern and determine, notwithstanding potential costs, that the implementation of a particular rule or order is necessary or appropriate to protect the public's interest or to effectuate or accomplish any of the provisions or purposes of the Act.³

On February 14, 2007, the Commission published its first Acceptable Practices for Core Principle 15. The four-part Acceptable Practices, described above, were designed to facilitate the reduction of conflicts of interest in DCMs' decision making

processes.⁴ Although the Acceptable Practices became effective on March 16, 2007, the Commission established a phase-in period for DCMs to implement the Acceptable Practices or to otherwise come into full compliance with Core Principle 15. The phase-in period extended well beyond the date of effectiveness and consisted of the lesser of two years or two regularly scheduled board elections.

On March 26, 2007, the Commission published proposed amendments to one element of the new Acceptable Practices—the definition of “public director.” To date, the Commission has yet to act upon the proposed amendments. The Commission recognizes that the operational provisions of Acceptable Practices cannot be properly applied by DCMs until the definition of “public director” is resolved. Accordingly, the Commission has determined, for the purpose of regulatory clarity, to stay the Acceptable Practices for Core Principle 15 and thereby lift any potential compliance costs associated with those Acceptable Practices.

B. Paperwork Reduction Act of 1995

The stay of the effective date of the Acceptable Practices for Core Principle 15 reduces the information collection burden to levels previously approved by the Office of Management and Budget (OMB). The OMB control number for this collection is 3038–0052. The Commission has submitted the required Paperwork Reduction Act Change Worksheet (OMB–83C) to OMB to reflect the change.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The stay of the effective date for the Acceptable Practices for Core Principle 15 affects DCMs. The Commission has previously determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.⁵ Accordingly, the acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the stay of the Acceptable Practices will not have a significant economic impact on a substantial number of small entities.

Therefore, paragraph (b) of Core Principle 15 in Appendix B to 17 CFR part 38 is stayed indefinitely.

Issued in Washington, DC, on November 16, 2007, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E7–22878 Filed 11–21–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 385

[Docket No. RM07–16–000; Order No. 703]

Filing Via the Internet

Issued November 15, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to provide that all documents will be eligible for filing by means of the Commission's eFiling system, with exceptions to be posted by the Secretary of the Commission on the Commissions Web site.

DATES: *Effective Date:* This rule will become effective December 24, 2007. Changes made by this rule to the Commission's eFiling system will be implemented at a later date, to be announced by the Secretary of the Commission.

FOR FURTHER INFORMATION CONTACT:

Wilbur Miller, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8953. wilbur.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

I. Background

1. On July 23, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) seeking comments on proposed revisions to its regulations that will enable the implementation of the next version of its system for filing documents via the Internet, eFiling 7.0. *Filing Via the Internet*, 72 FR 42330 (July 23, 2007), FERC Stats. & Regs. ¶ 32,621 (2007). The NOPR proposed to allow the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions. The NOPR also sought comments on the possibility of shifting its deadline for filings through the eFiling system from close of business to midnight, and of utilizing online forms to allow “documentless” interventions in all filings and quick comments in P

² 7 U.S.C. 19(a).

³ *Fishermen's Dock Co-op., Inc. v. Brown*, 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking costs-benefits analyses).

⁴ 72 FR 6936 (February 14, 2007).

⁵ See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

(Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings. Finally, the NOPR asked for input on a number of technical issues that will be covered in the instructions for eFiling that will be issued by the Secretary of the Commission. These issues also were the subject of a technical conference that took place on August 22, 2007.

2. This Final Rule adopts the NOPR's proposal to amend the Commission's regulations¹ to provide that all documents filed with the Commission may be submitted through the eFiling interface except for documents specified by the Secretary. This reverses the existing presumption, as the current regulations allow eFiling only of documents specified by the Secretary. The changes we are implementing in this Final Rule mean that categories such as oversized documents and most confidential documents will be accepted via eFiling. At this time, the principal exceptions, as noted in the NOPR, will be tariffs, tariff revisions and rate change applications; some forms;² and documents that are subject to protective orders. As stated in the NOPR, for the time being, the Secretary's instructions will specify that submitters file paper copies of oversized and some other documents³ in addition to the electronic documents.

3. This rulemaking will become effective 30 days after publication in the **Federal Register**, but implementation of eFiling 7.0 will occur at a later date. The Secretary will announce the implementation of the upgrade in advance and will also at that time post filing instructions, as discussed below.

4. This Final Rule implements the proposals, discussed in the NOPR, to institute online forms that would permit optional "documentless" intervention in all proceedings and "quick comments" in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings. It should be noted that the quick comment and documentless intervention features will

not require revisions to the Commission's regulations. We are not at this time implementing the proposal to move the filing deadline to midnight.

5. Prior to the release of eFiling 7.0, the Secretary will issue instructions specifying formats and other technical parameters, as well as instances in which paper copies will be required. As noted in the NOPR, the Commission has already issued instructions specifying acceptable file formats for filings submitted on CD-ROM, DVD and other electronic media. These can be found at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. In addition, in some cases Commission staff has issued instructions applying to specific types of filings. Where there are no specifications for a particular type of filing, users must follow the Secretary's instructions. The Commission received useful input on formatting issues both in the comments on the NOPR and in the technical conference. Users of eFiling should bear in mind that changes will inevitably take place as staff implements improvements and technology changes. Staff also receives feedback from users on an informal basis, which it uses to continue improving the system.

6. At this time, the eFiling system will accept documents in their native formats. This will include both text or word processing documents, and other more specialized documents such as spreadsheets and maps. It will also accept text documents in searchable formats, including scanned documents that have been saved in searchable form. As noted above, the Secretary has issued a list of acceptable formats for CD-ROM, DVD and other electronic media, available at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. This same list will serve as the list of acceptable formats for eFiling 7.0. Submitters will be able to choose a suitable format from that list unless they are instructed otherwise in specific instances by regulation or by direction from Commission staff. Audio and video files will be accepted only in waveform audio format (.wav) for audio content and either audio-video interleave (.avi) or quicktime (.mov) files for video content, except where submitters are specifically instructed otherwise.

7. The NOPR requested comments on the possibility of discontinuing the practice of posting PDF versions of filings in eLibrary that are created by Commission staff. For the time being, we will continue this practice. As discussed in the NOPR, however, users should note that PDF conversions are not always accurate or complete and should not be considered authoritative.

Some documents are not susceptible to conversion at all. The PDF versions will be provided on a "best efforts" basis, so in some cases no PDF version may appear in eLibrary, or there may only be a placeholder file indicating that a PDF version could not be generated.

8. Finally, the NOPR requested comments on whether the Secretary should require documents created electronically by the filer using word processing software be filed in native applications or print-to-PDF format rather than an unsearchable, scanned format. The Secretary's instructions will adopt this proposal. Scanned, non-searchable formats may be used only for documents that cannot, as a practical matter, be put into searchable formats.

II. Discussion

A. Expansion of eFiling

9. As stated above, upon implementation of eFiling 7.0 the Commission will accept the electronic filing of all documents through the eFiling interface except for tariff filings, some forms⁴ and documents submitted under protective orders. The comments received by the Commission on the expansion of eFiling were uniformly favorable. Some commenters urged us to continue to expand the range of submissions acceptable through eFiling. In some cases, commenters⁵ urged us to accept tariff filings through the eFiling gateway, either on a permanent basis or on a temporary basis pending the institution of eTariff, which is the subject of a separate proceeding.⁶

10. We intend, as far as practicable, to continue decreasing our reliance on paper documents and to continue to upgrade eFiling capabilities in furtherance of the Commission's responsibilities under the Government Paperwork Elimination Act.⁷ At this time, however, the Commission will not accept tariff filings through the eFiling system. The eTariff rulemaking will remain the forum for addressing the electronic submission of tariff filings with tariff material. However, eFiling may be used to file material in tariff proceedings provided the filing does not contain tariff material. Examples include testimony filed as part of the hearing, Schedules G-1 through G-6,⁸ and updated statements such as

⁴ See Note 2 *infra*.

⁵ Edison Electric Institute (EELI), pp. 4-6; Arizona Public Service Company (APSC), p. 3; Nevada Power Company & Sierra Pacific Power Company (Nevada/Sierra), p. 3.

⁶ *Electronic Tariff Filings*, Docket No. RM01-5-000, FERC Stats. and Regs. ¶ 35,551 (2005).

⁷ Pub. L. No. 105-277, § 1704, 112 Stat. 2681, 2681-750 (1998).

⁸ 18 CFR 154.313(j)(2) (2007).

¹ Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

² The following will continue to be submitted through eForms: FERC Form No. 1, FERC Form No. 2, FERC Form No. 2-A, FERC Form No. 3-Q, FERC Form No. 6, FERC Form No. 6-Q, Form 60, Form 714, and Electric Quarterly Reports. FERC Form 1-F is currently not included in eForms, so it may be efiled. Open Access Transmission Tariff (OATT) filings may also be efiled.

³ A list of examples of documents for which the Commission will require paper copies is contained in the Appendix to the NOPR.

required by section 154.311 of the Commission's regulations.⁹ Also, Natural Gas Act Section 7 certificate filings with *pro forma* tariff sheets may be filed under this version of eFiling 7.0.¹⁰

11. Some commenters¹¹ expressed caution about the submission of confidential documents, including a desire for more detail about that function. There was some concern about the ability to alter a document's security designation after it is filed.¹² Some commenters also requested clarification on the procedures for filing protected documents,¹³ including the procedures for documents submitted together with requests for protective orders.¹⁴

12. The anticipated procedure for the submission of confidential documents is as follows: When a user accesses the File Upload screen, the user will see tabs for three submission categories: Public, CEII and Privileged. The files uploaded to each of these tabs will automatically receive an accession number and be marked as Public, CEII or Privileged. The entire eFiling session will be secured so the documents during transmission will be encrypted. The following system checks will be performed during the eFiling process:

- The file size will be checked to ensure the size is not greater than 50MB.
- The file format will be checked to ensure it is a format that FERC can support. The acceptable file format list can be found at the following location: <http://www.ferc.gov/help/submission-guide/electronic-media.asp>.
- Files will be checked for viruses.
- The file name will be checked to ensure it is less than 60 characters including the period, spaces, and file extension (.doc, .xls, .pps, etc.).

If for any reason, the files that have been uploaded fail to pass any one of the checks above, a message will be displayed identifying the issue and the

user will not be permitted to proceed with the filing process.

13. It will not be possible for a user, through eFiling, to change the designation of a file as public, privileged, or CEII after submission of the document. This will only be possible *before* submission, in case the user changes her mind or finds a mistake. Any subsequent redesignation request will have to be made by calling FERC Online Support or the eFiling Help Line. Users should continue to follow the Commission's regulations governing submission of confidential documents.¹⁵ If a user needs to submit both a redacted and a privileged form of a document, the latter should be submitted as privileged and the former as public.

14. In some instances, a document may contain portions that are privileged and other portions that constitute CEII. In such an instance, the CEII portions would be filed as CEII and the privileged portions would be filed separately and designated as privileged. If a portion of a document was both privileged and CEII, it would be filed as privileged because that is the higher security classification.

15. Some parties request the ability to file privileged or CEII material in paper-only format. The Commission notes that this Final Rule only provides filers the option to use eFiling to make filings with the Commission. Filers who do not wish to use eFiling need not do so. To the extent that these commenters are requesting that the Commission permit filers to split their filings into an electronic component and a paper component, the Commission rejects this request. The Commission does not want to assume the responsibility of finding the paper and electronic components of a single filing and reassembling those components for uploading into eLibrary or internal distribution and analysis. Dual format filings create significant potential for errors and delays.¹⁶

16. To clarify, materials subject to protective orders should not be eFiled because the Secretary's office does not put protected material into eLibrary, as opposed to material filed pursuant to Section 388.112 of the Commission's regulations. The same restriction applies to confidential materials filed with a request for a protective order.

B. Paper Copies

17. The NOPR proposed to continue to require paper copies of filings

submitted electronically through eFiling 7.0, for instance, oversized documents such as maps, diagrams and drawings. The NOPR explained that due to the size of standard monitors and other hardware and software limitations, it was impractical at this time for the Commission to review certain documents in electronic form. The NOPR also raised the possibility of requiring paper copies for documents over a certain length, such as 500 pages. Some commenters requested that "oversized documents" or "large documents" be defined as those documents larger than 8.5" x 11",¹⁷ 8.5" x 14",¹⁸ or 8.5" x 17".¹⁹ Others asked for further clarifications, such as whether the paper requirement applies only to the oversized portions of documents that also have standard dimensions.²⁰ Commenters were not in favor of requiring paper copies of long documents.²¹

18. The Secretary's instructions will require paper copies in a specified number of documents larger than 11" x 17". This is a standard dimension for "oversized" documents. If a document contains both oversized and standard dimensions, only the former need be filed on paper. Paper copies of long documents, *i.e.*, documents longer than a specified number of pages, will not be required. Further specifics will be contained in the instructions to be issued by the Secretary. Over time, as we upgrade our capabilities, we expect to be able to reduce the necessity of filing paper copies.²²

19. In response to the comments about the timing of submission of paper copies, we wish to state clearly the roles played by the paper and electronic copies. The revisions made in this Final Rule, in 18 CFR 385.2003(c)(1), will provide that "filing via the Internet is in lieu of other methods of filing." Thus, the electronic copy will be the "filed" copy. This will be the copy to which the Commission looks for matters such as determining timeliness. Paper copies will be required in some instances because they are currently necessary for FERC staff to carry out its functions. The Secretary's instructions will specify the

¹⁷ Williston Basin, p. 7.

¹⁸ Pacific Gas & Electric Company (PG&E), p. 4.

¹⁹ INGAA, p. 5.

²⁰ MISO, p. 3. PG&E, p. 3, asked for clarification of the timeframe and dimensions, while INGAA, pp. 4–5, asked that the paper copies be due after an accession number is assigned. SoCal, pp. 3–4, urged that eFiling not be required where paper copies are submitted. This will necessarily be the case, because the Commission is not at this time making eFiling mandatory.

²¹ INGAA, pp. 5–6; SoCal, p. 3; Nevada/Sierra, p. 5; PG&E, pp. 4–5; Williston Basin, pp. 7–8.

²² See comments of Nevada/Sierra, p. 4.

⁹ 18 CFR 154.311 (2007).

¹⁰ Interstate Natural Gas Association of America (INGAA), Appendix A, pp. 2 and 3, requests clarification of which part of certificate and tariff filings would be filed utilizing eFiling 7.0, and which part would be filed under the eTariff procedures. The eTariff requirements are not complete, thus it is premature to speculate as to what the electronic filing process for filings with tariffs will be. At this time, however, tariff filings cannot be split between electronic and paper filings. No part of a tariff filing will be accepted through eFiling 7.0.

¹¹ EEI, pp. 6–7; Enbridge Energy Partners, L.P. and Enbridge, Inc. (Enbridge), pp. 3–5; Midwest Independent Transmission System Operator, Inc. (MISO), pp. 2–3; Southern California Edison Company (SoCal), pp. 2–3; Williston Basin Interstate Pipeline Company (Williston Basin), p. 6.

¹² American Rivers, pp. 1–2.

¹³ INGAA, p. 3; MISO, pp. 2–3; Williston Basin, pp. 6–7.

¹⁴ EEI, pp. 6–7.

¹⁵ 18 CFR 388.112.

¹⁶ The Commission notes that filers can make separate, free-standing, paper-only and electronic only filings in the same proceeding.

time by which the paper copies must be submitted.

C. File Formats

20. The NOPR raised the possibility of discontinuing our practice of creating PDF versions of documents in eLibrary.²³ In conjunction with this possibility, the NOPR requested comments on several alternative requirements for file formats of documents submitted through eFiling. The three alternatives noted were: Requiring that all word processing filings be made in open file formats, such as text, html, rtf, or possibly PDF; permitting filings in open file formats as well as in certain Microsoft Office formats; and requiring that documents created with proprietary software be filed in the proprietary software along with an open source format. The NOPR also discussed the possibility of prohibiting the practice of filing non-searchable, scanned versions of documents created in native formats.

21. Generally speaking, commenters opposed any requirement that documents be filed in more than one format.²⁴ Some commenters favored retention of FERC-created PDFs²⁵ or otherwise expressed a preference for some sort of open file format to maximize accessibility of documents to the public.²⁶ Preferences between native and converted formats varied. Some commenters favored prohibiting the practice of scanning documents and filing them in non-searchable formats.²⁷ Some noted that data-oriented documents such as spreadsheets lose much of their utility if not filed in their native formats.²⁸ Others expressed a preference for filing scanned, non-searchable documents, in PDF format, in some cases out of concern that the documents could be manipulated.²⁹

22. Based on the comments received, we will continue to create PDF versions of submitted documents in eLibrary on

a “best efforts” basis. This practice assures that users who may lack specific proprietary software will be able to access documents most of the time. As noted above, however, some documents cannot be converted to PDF successfully and thus some conversions will not be entirely accurate or complete. The FERC-created PDFs should not be considered authoritative. Persons submitting documents through eFiling will have the option of filing in any format listed as acceptable by the Secretary.

23. The Secretary’s instructions will require PDF files that are submitted to be produced in a manner that retains the ability to search the document (“print-to-PDF”), except in cases where it is impracticable for the filer to do otherwise. This is often the case with exhibits, for example. The search feature provides the Commission and the public access to tools that permit faster searches, increased accuracy, and enhanced analytical and processing capabilities that modern software technology provides.³⁰

24. Submission of text documents will be permissible in native or in searchable format. We will not require submission of text documents in both native and open formats. In most cases, submission of text documents in their native formats is the simplest option. Not all users possess the same degree of technical knowledge. Requiring conversion of documents to open formats might serve as a barrier to the use of the eFiling system for some users, a possibility that runs counter to the underlying purpose of the system.

25. Submission of spreadsheets in native format will be required. Some commenters expressed concern that spreadsheets in native format may contain formulas and other data that are confidential.³¹ One commenter argues further that formula and data may contain proprietary information, and that a native format requirement may contravene the Interstate Commerce Act prohibition against disclosing individual shipper information. That commenter believes the requirement to provide formulas may lead to less publicly available data.³²

26. The Commission addressed these issues before. In Order No. 582, the Commission required pipelines filing rate cases pursuant to Part 154 of the Commission’s regulations to file data

and allocation and rate design formulas in electronic formats. The Commission found that formulas facilitate an understanding of the applicant’s positions and reduce the requirement for subsequent data requests. The Commission went on to note that the requirement was not to submit the whole rate case in spreadsheet format.³³ The same will be true here. The Commission is simply providing a different means by which data requirements may be submitted, not changing the requirements themselves. A filer still may request confidential treatment. In such cases, the data sets and spreadsheets should be submitted in both privileged, unredacted form and in public, redacted form, pursuant to 18 CFR 388.112.³⁴ Depending on the application and the information being redacted, a redaction might be accomplished by filing a print to PDF or a scanned, searchable document, by converting a spreadsheet to values-only form, or by some other means. It would be up to the filer to choose an appropriate means of protecting its information in requesting confidential treatment under the Commission’s regulations.

27. We do not agree with the concerns that documents may be altered. There is no reason to believe that users will be able to compromise the Commission’s system and alter files in eLibrary. Furthermore, if a user downloads a document from eLibrary and alters it for the user’s own purposes, the authoritative document will remain in eLibrary to refute the alteration. We also do not believe that the desire to include a scanned signature is sufficient to outweigh the greater usefulness of searchable documents. As stated in the NOPR, the Commission’s regulations provide for electronic signatures, so an image of a signature is not necessary for purposes of verification. For submitters who still see a need for an image of a handwritten signature, we note that it is possible to insert an image into a Word document. Moreover, filers that previously scanned documents into PDF format can produce a print-to-PDF searchable document and attach a single scanned signature page.

D. Quick Comment and Documentless Intervention

28. The NOPR’s proposal to implement online forms that would allow users to intervene in Commission proceedings without filing separate

²³ Some commenters referred to FERC-created Text documents as well as PDF documents. Users should note that FERC creates Text versions only of Commission issuances. It does not create such versions of documents submitted through eFiling.

²⁴ American Gas Association (AGA), p. 1 (word processing documents); EEL, pp. 7–8; FirstEnergy Companies (FirstEnergy), pp. 6–7; Nevada/Sierra, pp. 6–7; SoCal, p. 4; Williston Basin, pp. 8–9; INGAA, p. 8; Enbridge, pp. 7–8.

²⁵ AGA, pp. 5–6; EEL, pp. 7–9; Bonneville Power Administration (Bonneville), p. 2; PG&E, pp. 5–6; American Rivers, pp. 2–3; U.S. Department of the Interior (Interior), p. 1; INGAA, p. 7; Nevada/Sierra, p. 6.

²⁶ American Rivers, pp. 3–4.

²⁷ AGA, p. 5; American Rivers, p. 4; Nevada/Sierra, p. 7; MISO, p. 4; SoCal, p. 4; EEL, p. 8.

²⁸ American Rivers, pp. 3–4.

²⁹ PJM Interconnection, L.L.C. (PJM), p. 2; MISO, p. 4; Interior, p. 1.

³⁰ The Commission notes that PG&E’s PDF posting is an excellent example of such a document: http://elibrary.ferc.gov/idmws/doc_info.asp?document_id=13543136.

³¹ MISO, p. 4; PJM Interconnection, p. 3; Enbridge, p. 8.

³² 32 Enbridge, p. 8.

³³ *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, Order No. 582, FERC Stats. and Regs., ¶ 31,025, p. 31,435 (1995).

³⁴ See Order No. 582 at pp. 31,412–413, 31,435.

documents and to submit comments easily in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings drew support from some commenters³⁵ and opposition from a smaller number. Some commenters objected to these features as unnecessary.³⁶ Some commenters expressed concern that there should be some provision for prompt service of interventions and comments submitted through the proposed online forms.³⁷ One commenter requested that users submitting quick comments be required to provide mailing addresses and other information.³⁸ Another suggested that the quick comment feature be extended to include electric matters and rulemakings.³⁹

29. Both features are sufficiently useful to justify their implementation. Documentless intervention, which will be available for all proceedings, will provide a simple method of intervening. The filer and text for all documentless interventions will be placed on eLibrary to permit challenges to intervention. We believe that the quick comment feature will make it easier for individuals who are not intimately familiar with Commission procedures to submit comments. This added convenience should primarily impact proceedings in which landowners may wish to comment, which is the reason we will restrict this feature to the proceedings listed in the preceding paragraph. We will consider expanding the availability of the feature in the future. We will not require quick comment submitters to include mailing addresses, a potential invasion of privacy that is not warranted. With respect to service of interventions and comments, these features will not involve changes to the Commission's regulations. Any regulations governing service will continue to apply. Furthermore, the use of eSubscription should suffice to ensure that interested persons receive prompt notice of these submissions.

E. Midnight Filing

30. Comments were mixed on whether to regard documents submitted through eFiling as having been filed on a specific day as long as the document is received on or before midnight

Eastern Standard Time of that day. While some commenters favored the change,⁴⁰ a larger number either favored it only under specified conditions or opposed it altogether.⁴¹ The objections included the personal hardship of late-hour filing, unfairness to paper filers, and the possibility that some filers would use the opportunity to file improper reply comments in response to comments filed earlier in the day. Some commenters suggested that if we moved the deadline, we should ensure that comments would not be visible to the public in eLibrary until the next day. Others were concerned that the eFiling system could be unavailable to a user facing a deadline after it was too late to make a paper filing. We also received suggestions that move the deadline to an intermediate hour,⁴² such as 8 p.m. Eastern Time, as an accommodation to users in Western time zones.

31. Based on the concerns raised in the comments, we will not at this time alter the filing deadline. It will remain at close of business, i.e., 5 p.m. Eastern Time.

F. Miscellaneous Comments

32. On August 22, 2007, the Commission hosted a technical conference that discussed the proposed changes to electronic filing and electronic file and document format instructions that are associated with this proceeding. The conference was conducted in two sessions. Session 1 presented an overview of the electronic filing submission instructions that will apply universally. Session 2 was divided into sections that discussed information that is specific to each industry.

33. We received some comments on various technical aspects of documents submitted through eFiling, many of which were discussed during the technical conference.⁴³ These comments will be taken into account by Commission staff⁴⁴ in developing and revising the filing instructions that the Secretary will issue. The instructions for eFiling are an ongoing process, as staff often receives feedback on the system from users, including comments

received informally during outreach efforts that give users an introduction to various aspects of FERC Online.⁴⁵ The delegated authority the Commission is giving the Secretary to make changes to the various requirements to make an electronic filing through the notice process will permit these instructions to be updated in a timely manner in response to user needs and changes in FERC's technological capabilities.⁴⁶

34. INGAA proposes that the pipeline's Index of Customers report, already an electronic-only filing, be made through eFiling 7.0.⁴⁷ The Commission agrees.

35. INGAA and PG&E⁴⁸ request that the Commission hold additional technical conferences to review both the proposed instructions applicable to electronic documents in general and existing electronic document instructions, and software techniques that may assist filers in creating documents that satisfy the filers' objectives. Further conferences should not be necessary. The Secretary engages in outreach with the public to review new or existing electronic document or submission instructions. This outreach often generates feedback that Commission staff takes into account in managing the system.

36. Some commenters made suggestions for improvements in the Commission's online systems. These included requests that we take steps to ensure that each entity in the eRegistration system has only one registration⁴⁹ and that we institute an automated service feature for service among participants.⁵⁰ The problem of multiple registrations, specifically with entities being registered more than once under slightly different names, is an issue that we hope to address in the future. Similarly, an automated service feature would add value for users and we hope to be able to institute such a feature as we upgrade the system.

III. Information Collection Statement

37. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁵¹ This Final Rule does not contain any

⁴⁰ APSC, p. 3; Bonneville, p. 2; Spectra, p. 4.

⁴¹ AGA, pp. 6–8; INGAA, pp. 11–12; FirstEnergy, pp. 2–3; Mill, Balis & O'Neil, P.C., pp. 1–4; Phillip Marston, p. 1; PJM Interconnection, p. 3–4; PJM Transmission Owners, pp. 2–6; Nevada/Sierra, p. 8; MISO, p. 5; Williston Basin, pp. 9–12; Enbridge, pp. 11–13; EEL, pp. 16–17.

⁴² PJM Transmission Owners, p. 6; SoCal, pp. 5–6.

⁴³ PG&E, pp. 6–7; PJM, p. 3; EEL, pp. 11–14.

⁴⁴ The Appendix contains the comments on the draft document manual that was discussed at the technical conference, as well as the Commission's responses.

⁴⁵ One commenter, Enbridge, pp. 10–11, expressed concern about file naming conventions. Users should be aware that naming conventions will change with eFiling 7.0, a change that will be spelled out in the Secretary's instructions.

⁴⁶ Williston, p. 5.

⁴⁷ INGAA, App. A, p. 5.

⁴⁸ INGAA, pp. 2–3, App. A, pp. 4–8; PG&E, pp. 6–7.

⁴⁹ Enbridge, pp. 6–7.

⁵⁰ EEL, pp. 10–11.

⁵¹ 5 CFR 1320.12.

³⁵ AGA, p. 4; American Rivers, pp. 4–5; Enbridge, p. 11; PG&E, pp. 7–8; Spectra Energy Transmission, LLC (Spectra) (quick comment only), p. 3; INGAA, pp. 9–10.

³⁶ FirstEnergy (quick comment only), pp. 3–5; Nevada/Sierra, pp. 7–8; EEL, pp. 14–16.

³⁷ EEL, p. 15; Enbridge, p. 11; SoCal, p. 5.

³⁸ INGAA, p. 10.

³⁹ PG&E, p. 7.

information collection requirements and compliance with the OMB regulations is thus not required.

IV. Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁵² Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.⁵³ This rulemaking is exempt under that provision.

V. Regulatory Flexibility Act

39. The Regulatory Flexibility Act of 1980 (RFA)⁵⁴ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns procedural matters and is expected to increase the ease and convenience of filing. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

VI. Document Availability

40. 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.

41. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

42. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

43. These revisions are effective December 24, 2007. Changes made by this Final Rule to the Commission's eFiling system will be implemented at a later date to be announced by the Secretary.

44. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends Parts 375 and 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352, 16451–16463.

■ 2. Section 375.302 is amended by revising paragraph (z) to read as follows:

§ 375.302 Delegations to the Secretary.

* * * * *

(z) Issue instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are

required, and procedural guidelines for submissions via the Internet, on electronic media or via other electronic means.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 4. Section 385.2001 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 385.2001 Filings (Rule 2001).

(a) *Filings with the Commission.*

(1) * * *

(iii) By filing via the Internet pursuant to Rule 2003 through the links provided at <http://www.ferc.gov>.

* * * * *

■ 5. Section 385.2003 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 385.2003 Specifications (Rule 2003).

* * * * *

(c) *Filing via the Internet.* (1) All documents filed under this Chapter may be filed via the Internet except those listed by the Secretary. Except as otherwise specifically provided in this Chapter, filing via the Internet is in lieu of other methods of filing. Internet filings must be made in accordance with instructions issued by the Secretary and made available online at <http://www.ferc.gov>. Provisions of this chapter or directions from the Commission containing requirements as to the content and format of specific types of filings remain applicable.

(2) The Secretary will make available on the Commission's Web site a list of document types that may not be filed via the Internet, as well as instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are required, and procedural guidelines.

* * * * *

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

⁵² Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897

(Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

⁵³ 18 CFR 380.4(1) and (5).

⁵⁴ 5 U.S.C. 601–612.

COMMENTS ON DOCUMENT MANUAL

No.	Commenter	Manual ¶	Comment	Response
1	EEl, p. 12 INGAA, App. A, p. 5.	4.B and 4.E.c ...	Consistent with Staff's comments at the technical conference, the instructions should be read as not requiring, but only encouraging, the use of automatic table of contents and booking marking functions, and that not using these features will not result in rejection of the filing.	The Commission agrees with regard to the general instructions. However, to the extent that there are regulations that require table of contents in a document, then these software features should be used.
2	EEl, p. 12	4.C	EEl requests clarification that spreadsheets do not need to be submitted in native file format if no formulas are included.	The Commission clarifies that the instruction is written broadly. EEl's proposal could be implemented in a manner that could inhibit the ability to view and analyze the data. The Commission will permit such submissions, but will monitor the manner in which filers use this flexibility.
3	EEl, p. 12	4.D	This instruction should be corrected to include both spreadsheets and text files in the list of exceptions, as they are covered by other instructions.	EEl is correct.
4	INGAA, App. A, p. 6	4.E	Clarify that it is acceptable to use the "Insert" feature of PDF applications during the creation of an electronic file.	The Adobe "Document/Insert" function is acceptable.
5	EEl, p. 13	5	There is no need to include a transmittal letter and, indeed, it should be discouraged, when a single document filing is made. Further, the Commission should encourage the use of a single electronic document file and require the use of the label "Transmittal Letter" only when multiple and separate electronic documents are filed.	The Commission clarifies that the term "Transmittal Letter" as used in the instructions is solely for the purpose of the eFiling software to identify the requisite lead public document for filings consisting of several documents. It does not have the same definition as used in several sections of the Commission regulations. The contents of the "Transmittal Letter" electronic file can go beyond the content requirements of a transmittal letter as provided for in the regulations.
6	Enbridge, pp. 10–11	5–10	The Commission should clarify the effect that the file naming conventions will have on existing file naming conventions.	The example provided by Enbridge is related to the Index of Customers. Consistent with finding that the Index of Customers may be eFiled, the Secretary will modify the acceptable electronic file list.
7	EEl, p. 13	6	The word "tariff" should be removed from the instruction.	It will be corrected.
8	Enbridge, p. 10; INGAA, App. A, p. 6.	6	The proposed 60 character limit needs to be reflected in other eFiling documents, and the Commission should clarify whether characters other than alpha-numeric are permitted in file names.	The Secretary will update other eFiling documentation to reflect this and other changes.
9	EEl, p. 13	6 and 8	The DOS file name character limit should be followed only by persons using DOS. Otherwise, more user-friendly names should be used.	No change is necessary.
10	EEl, p. 13	11 and 14	The instructions should be modified to reflect the format requirements of §385.2003. If the intent is to relax these regulations, then the regulations should be rewritten. If there are any documents to which §385.2003 does not apply, the instructions should note them.	There are hundreds of different types of documents filed with the Commission. The instructions are meant to be flexible and not prescriptive for all possible documents. The Commission will monitor how filers' documents appear and their utility. If changes to either the instructions or regulations are necessary, either the Secretary or the Commission will propose the necessary modifications.
11	EEl, p. 14	12	Instruction should note that it does not apply to text filings, nor testimony or exhibits where the ALJ typically dictates header format.	The Commission clarifies that the required information should be shown at least once at the beginning of every document. Readers should not have to rely on the Commission's eLibrary to determine the source of the document. ALJs may impose additional requirements.
12	EEl, p. 14	12	The use of "et al." should be permitted with the company name.	The Commission so clarifies.

COMMENTS ON DOCUMENT MANUAL—Continued

No.	Commenter	Manual ¶	Comment	Response
13	Enbridge, p. 10	12	With regard to the location of data in the headers and footers, clarify that if there is no specific instruction for the data's location, it may be placed in any location in the header.	See item 11 above.
14	Enbridge, p. 10; INGAA, App. A, pp. 7–8.	13	Clarify the meaning of “hard-keyed” headers or footers in tab-delimited or native format data files, and whether this requirement is applicable to headers and footers created by text programs such as Word.	Most native format data files and some spreadsheet files should not have hard-keyed headers or footers, as they disrupt the analysis and manipulation of the contents. The instruction is not relevant for text files, where the word processor normally manages headers and footers separate from the text content.
15	EEL, p. 14 PJM, p. 3	17	EEL notes that the last sentence is in error and should be deleted; whereas PJM is concerned about the implications this instruction may have with regard to access to its internal data.	EEL is correct, the last sentence should be struck. This moots PJM's concern.
16	EEL, p. 14 INGAA, App. A, p. 5–6.	28.d	Clarify the use and appearance of hyperlinks in an electronic document, and whether their use will result in a rejection of the filing.	The Commission clarifies that parties may not use hyperlinks as a means to include items as part of the record they intend to rely upon. Hyperlinks may be used as part of citations, and word processor conversions into hyperlinks were not the focus of this instruction.
17	INGAA, App. A, p. 3	passim	INGAA notes that the Commission's Part 154 electronic document instructions date from 1977[sic]. INGAA requests that those instructions be updated to reflect some of the flexibility offered by the new general instructions for electronic documents.	While beyond the scope of this proceeding, INGAA should contact the Secretary with a list of suggested changes and procedures.

[FR Doc. E7–22799 Filed 11–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 558****New Animal Drugs For Use in Animal Feeds; Ractopamine****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for an increased level of monensin in two-way combination Type B and Type C medicated feeds containing ractopamine hydrochloride and monensin for cattle fed in confinement for slaughter.

DATES: This rule is effective November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary

Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: daniel.benz@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141 225 that provides for use of OPTAFLEXX (ractopamine hydrochloride) and RUMENSIN (monensin USP) Type A medicated articles to make dry and liquid two-way combination medicated feeds for cattle fed in confinement for slaughter. The supplemental NADA provides for an increased level of monensin in combination Type B and Type C medicated feeds. The supplemental NADA is approved as of October 30, 2007, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9

a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) 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 environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.500, in the table in paragraph (e)(2), revise paragraphs (e)(2)(ii) and (e)(2)(vii) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(2) * * *

Ractopamine grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) 8.2 to 24.6	Monensin 10 to 40 to provide 0.14 to 0.42 mg monensin/lb of body weight, depending on severity of coccidiosis challenge, up to 480 mg/head/day	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(i) of this section; for prevention and control of coccidiosis due to <i>Eimeria bovis</i> and <i>E. zuernii</i> .	As in paragraph (e)(2)(i) of this section; see paragraph §§ 558.355(d) of this chapter.	000986
*	*	*	*	*
(vii) 9.8 to 24.6	Monensin 10 to 40 to provide 0.14 to 0.42 mg monensin/lb of body weight, depending on severity of coccidiosis challenge, up to 480 mg/head/day	Cattle fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to <i>Eimeria bovis</i> and <i>E. zuernii</i> .	As in paragraph (e)(2)(vi) of this section; see paragraph §§ 558.355(d) of this chapter.	000986
*	*	*	*	*

Dated: November 8, 2007.

Bernadette Dunham,
Deputy Director, Center for Veterinary Medicine.
[FR Doc. E7-22882 Filed 11-21-07; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9366]

RIN 1545-BG38

Notification Requirement for Tax-Exempt Entities Not Currently Required to File; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations (TD 9366) that was published in the **Federal Register** on Thursday, November 15, 2007 (72 FR 64147) describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notice including certain information required by section 6033(i)(1)(A) through (F).

DATES: The correction is effective November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum at (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 6033 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 9366) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9366), which was the subject of FR Doc. E7-22299, is corrected as follows:

On page 64149, column 1, second paragraph of the column, in the preamble, under the paragraph heading “*Organizations Required To File Returns or Submit Electronic Notice*”, line 5, the language “an organization exemption from” is corrected to read “an organization exempt from”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief Counsel (Procedure and Administration).
[FR Doc. E7-22892 Filed 11-21-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Department of the Navy, Chesapeake Bay, in Vicinity of Bloodsworth Island, MD

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations to modify an existing danger zone, in waters of the United States in the vicinity of Bloodsworth Island, Maryland. The amendment reflects the current operational and safety procedures at the Bloodsworth Island Range and highlights a change in the enforcement authority from the Commander, Naval Base Norfolk, Virginia to the Commander, Naval Air Station Patuxent River, Maryland. The regulations are necessary to safeguard United States Navy vessels and United States Government facilities/installations from sabotage and other subversive acts, accidents, or incidents of a similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result from use of the areas by the United States Navy.

DATES: Effective Date: December 24, 2007.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922, or Mr. Steve Elinsky, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, at 410-962-4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR 334.190 to reflect current operational and safety procedures at the Bloodsworth Island Range and highlight a change in the enforcement authority from the Commander, Naval Base Norfolk, Virginia to the Commander, Naval Air Station Patuxent River, Maryland. The amendment provides more detailed times, dates, and extents of restrictions.

The proposed rule was published in the **Federal Register** on February 26, 2007 (72 FR 8325). No comments were received in response to the proposed rule.

Procedural Requirements

a. *Review under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that the modification of this danger zone would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps determined that this rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment with a Finding of No Significant Impact has been prepared for this action in accordance with applicable regulations. It may be reviewed at the District office

listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. *Submission to Congress and the General Accountability Office.* Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Corps has submitted a report containing this rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accountability Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.190 is revised to read as follows:

§ 334.190 Chesapeake Bay, in vicinity of Bloodsworth Island, MD, U.S. Navy.

(a) *The areas—*(1) *Prohibited area.* All waters within a circle 0.5 miles in radius with its center at latitude 38°10'00", longitude 76°06'00"; Bloodsworth Island, Pone Island, Northeast Island, and Adams Island.

(2) *The danger zone.* All waters of Chesapeake Bay and Tangier Sound within an area bounded as follows: Beginning at latitude 38°08'15", longitude 76°10'00"; thence to latitude 38°12'00", longitude 76°10'00"; thence to latitude 38°12'00", longitude 76°07'00"; thence to latitude 38°13'00", longitude 76°06'00"; thence to latitude 38°13'00", longitude 76°04'00"; thence to latitude 38°12'00", longitude 76°02'00"; thence to latitude 38°12'00", longitude 76°00'00"; thence to latitude 38°08'15", longitude 76°00'00"; thence to the point of beginning, excluding the

prohibited area described in paragraph (a)(1) of this section.

(b) *The regulations.* (1) No person, vessel or other craft shall approach closer than 75 yards to the beaches, shoreline, or piers of Bloodsworth Island, Pone Island, Northeast Island, Adams Island, or any Patuxent River Naval Air Station property at any time unless authorized to do so by the enforcing agency. No person, vessel or other craft shall approach rafts, barges, or platforms closer than 100 yards.

(2) No person, vessel, or other craft shall enter or remain in the danger zone when notified by the enforcing authority to keep clear. Any watercraft under way or at anchor, upon being so warned, shall immediately vacate the area and shall remain outside the area until conclusion of potentially hazardous test or training events.

(3) The area will be in use intermittently throughout the year.

(4) Prior to the commencement of any potentially hazardous test or training event that requires clearing of non-participant boats from the danger zone, surface or air search of the entire area will be made for the purpose of locating and warning all craft and persons not connected with the test or training event, and a patrol will be maintained throughout the duration of the event.

(5) All persons, vessels, or other craft shall clear the area when warned by patrol vessels.

(6) Patrol vessels will provide warning that a potentially hazardous test or training event is in progress or is about to commence; when so warned, fishing or oystering vessels or other craft not directly connected with the event shall not navigate within the danger zone. Deep-draft vessels proceeding in established navigation channels normally will be permitted to traverse the area upon coordination with range patrol vessels. The patrol vessels will ensure safe separation between all non-participant vessels and potentially hazardous operations.

(7) When potentially hazardous testing or training is not in progress or is not about to commence, oystering and fishing boats and other craft may operate within the danger zone.

(8) All potentially hazardous test or training events will be performed in such a way as to contain the hazard footprint to the established danger zone described in paragraph (a) of this section. Naval authorities will not be responsible for damage to nets, traps, buoys, pots, fish pounds, stakes, or other equipment that may be located within the danger zone.

(9) Nothing in this regulation shall be intended to prevent the lawful use of

approved waterfowl hunting blinds along the shorelines of Bloodsworth Island range complex, provided that all necessary licenses and permits have been obtained from the Maryland Department of Natural Resources and the completed copy of the permit has been submitted to the Conservation Division Director at NAS Patuxent River. Waterfowl hunters must observe all warnings and range clearances, as noted herein.

(10) The regulations in this section shall be enforced by the Commander, Naval Air Station Patuxent River, Maryland, and such agencies as he/she may designate.

Dated: November 16, 2007.

Lawrence A. Lang,

Deputy, Operations, Directorate of Civil Works.

[FR Doc. E7-22845 Filed 11-21-07; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Army Restricted Area, Kuluk Bay, Adak, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is issuing a final rule establishing a restricted area within Kuluk Bay, Adak, Alaska. The purpose of this restricted area is to ensure the security and safety of the Sea Based Radar, its crew, and other vessels transiting the area. The restricted area is within an established moorage restriction area for the U.S. Navy. The restricted area will be marked on navigation charts to ensure security and safety for the public.

DATES: *Effective Date:* December 24, 2007.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at (202) 761-4922, or Mr. Leroy Phillips, Corps of Engineers, Alaska District, Regulatory Branch, at (907) 753-2828.

SUPPLEMENTARY INFORMATION: In the July 30, 2007, issue of the **Federal Register** (72 FR 41470), the Corps published a proposed rule to establish a restricted

area in Kuluk Bay, Adak, Alaska. No comments were received in response to the proposed rule.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C.1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C.3), the Corps is amending the restricted area regulations in 33 CFR 334 by adding § 334.1325 as a restricted area within Kuluk Bay, Adak, Alaska as described below. The restricted area is completely within an existing restricted area for the United States Navy in Kuluk Bay, Adak, Alaska, which was established at 33 CFR 334.1320 and designated on NOAA chart 16475.

Procedural Requirements

a. *Review under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the establishment of this restricted area would have practically no economic impact on the public and no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, the Corps certifies that this regulation will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared. It may be reviewed at the district office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments

will not be significantly and uniquely affected by this rulemaking.

e. *Submission to Congress and the General Accountability Office.* Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Corps has submitted a report containing this rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accountability Office. This rule is not a major rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1325 to read as follows:

§ 334.1325 United States Army Restricted Area, Kuluk Bay, Adak, Alaska.

(a) *The area.* The area within a radius 1,000 yards around the Sea Base Radar mooring site in all directions from latitude 51°53'05.4" N, longitude 176°33'47.4" W (NAD 83).

(b) *The regulation.* (1) No vessel, person, or other craft shall enter or remain in the restricted area except as may be authorized by the enforcing agency.

(2) A ring of eight lighted and marked navigation buoys marking the perimeter of the mooring anchor system will provide a visible distance reference at a radius of approximately 800 yards from latitude 51°53'05.4" N, longitude 176°33'47.4" W (NAD 83). Each buoy has a white light, flashing at 3 second intervals with a 2 nautical mile range. Vessels, persons or other craft must stay at least 200 yards outside the buoys.

(3) The regulation in this section shall be enforced by personnel attached to the Missile Defense Agency and/or by such other agencies as the Director, MDA—AK, Fort Richardson, Alaska, may designate.

Dated: November 16, 2007.

Lawrence A. Lang,

Deputy, Operations, Directorate of Civil Works.

[FR Doc. E7-22876 Filed 11-21-07; 8:45 am]

BILLING CODE 3710-92-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05-311; FCC 07-190]

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules and provides guidance to implement section 621(a)(1) of the Communications Act. The Commission solicited and reviewed comments on this section and found that to promote the federal goals of enhanced cable competition and accelerated broadband development, the Commission's rules regarding the local franchising process should be extended to incumbent cable operators. The Commission adopts measures to address a variety of means by which local franchising authorities are unreasonably refusing to award competitive franchises. The rules and guidance will facilitate enhanced cable competition and accelerated broadband development.

DATES: The rules contained in this Second Report and Order (*Second Report and Order*) will become effective December 24, 2007.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, Holly.Saurer@fcc.gov or Brendan Murray, Brendan.Murray@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, FCC 07-190, adopted on October 31, 2007, and released on November 6, 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. These documents 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).

Summary of the Report and Order

I. Introduction

1. In this *Second Report and Order*, we provide further guidance on the operation of the local franchising process. To promote the federal goals of enhanced cable competition and accelerated broadband development, we extend a number of the rules promulgated in this docket's preceding First Report and Order (*First Report and Order*), 72 FR 13189, March 21, 2007, to incumbents as well as new entrants. We also decline to preempt state or local customer service laws that exceed the Commission's standards.

II. Background

2. New competitors are entering markets for the delivery of services historically offered by monopolists: traditional phone companies are entering the multichannel video market, while traditional cable companies are competing in the telephone market. Ultimately, both types of companies are projected to offer customers a "triple play" of voice, high-speed Internet access, and video services over their respective networks. These entities also face competition from other new providers of bundled services, including overbuilders and utility companies. We believe this competition for the delivery of bundled services will benefit consumers by reducing prices and improving the quality of service offerings. In the *First Report and Order*, we stated our concerns that competitive applicants seeking to enter the video market faced unreasonable regulatory obstacles, to the detriment of competition generally and cable subscribers in particular.

3. Specifically, in the *First Report and Order*, we adopted rules and provided guidance to implement section 621(a)(1) of the Communications Act of 1934, as amended (the Act), which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision

of cable services. The record in the *First Report and Order* showed that new entrants eager to provide video service are often delayed, and in some cases derailed, by the unreasonable demands made by local franchising authorities (LFAs) during the franchising process. The *First Report and Order* found that these delays contravened the dual congressional goals of enhancing cable competition and accelerating broadband deployment. As such, the Commission found that the operation of the local franchising process in many jurisdictions constituted an unreasonable barrier to entry.

4. To eliminate unreasonable barriers to entry into the cable market, and to encourage investment in broadband facilities, we found in the *First Report and Order* that: (1) An LFA's failure to issue a decision on a competitive application within the timeframes specified in the order constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (2) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to unreasonable build-out mandates constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (3) an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness to agree to a variety of franchise fee requirements that are impermissible under section 622 of the Act constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1); (4) it would be an unreasonable refusal to award a competitive franchise if the LFA denied an application based upon a new entrant's refusal to undertake certain obligations relating to public, educational, and government channels (PEG) and institutional networks (I-Nets); and (5) it is unreasonable under section 621(a)(1) for an LFA to refuse to grant a franchise based on issues related to non-cable services or facilities.

5. Some of the Commission's findings in the *First Report and Order* relied, in part, on statutory provisions that do not distinguish between incumbent providers and new entrants; however, in light of the fact that the NPRM in this proceeding focused on competitive entrants, the findings were made applicable only to new entrants. At the same time that we adopted the *First Report and Order*, we therefore issued a *Further Notice of Proposed Rulemaking* (FNPRM), 72 FR 13230, March 21, 2007, to provide interested parties with the opportunity to provide comment on

which of those findings should be made applicable to incumbent providers and how that should be done.

6. This *FNPRM* tentatively concluded that the findings in the *First Report and Order* should apply to incumbent cable operators as they negotiate renewal of their existing agreements with LFAs. We noted that two of the statutory provisions that we discussed in the *First Report and Order*, sections 611(a) and 622(a), do not distinguish between incumbents and new entrants or franchises issued to incumbents versus franchises issued to new entrants. We sought comment on that tentative conclusion, and also on the Commission's authority to implement this finding. We also sought comment on what effect, if any, the findings in the *First Report and Order* have on most favored nation (MFN) clauses that may be included in existing franchises. Finally, we asked about the Commission's authority to preempt state or local customer service laws that exceed the Commission's standards. We examined the statutory language of section 632(d)(2) and tentatively concluded that we can neither preempt state or local customer service laws that exceed the Commission's standards, nor prevent LFAs and cable operators from agreeing to more stringent standards.

III. Discussion

A. Incumbent Treatment

7. Based on the comments filed in response to this *Second Report and Order*, we agree, as detailed below, that many of the findings in the sections of the *First Report and Order* addressing franchise fees, PEG and I-Net obligations, and non-cable related services and facilities should be applicable to incumbent operators. We also conclude, however, that the findings in the *First Report and Order* involving timing and build-out should not be applicable to incumbent operators. Accordingly, we extend the applicable findings from the *First Report and Order* to incumbents as discussed below.

8. *Time Limits.* The "Time Limit for Franchise Negotiations" section of the *First Report and Order* is not applicable to incumbents. Many commenters argue that this section of the *First Report and Order* should not be applicable to incumbents. They point out that section 626 of the Act, which concerns renewals, clearly delineates the process and timeline for renewal negotiations. We agree. The time limits established in the *First Report and Order* for negotiating initial agreements cannot apply to incumbent renewals because

those limits are not consistent with the 36-month renewal procedure set forth in section 626 of the Act. Moreover, the underlying rationale for the time limits—that is, preventing unreasonable entry delays—is inapplicable to incumbents. Although new entrants are barred from providing service until they obtain a franchise, incumbents are able to continue providing service during renewal negotiations. Accordingly, the rationale for the time limits set forth in the *First Report and Order* does not apply to the renewal context.

9. *Build-Out.* The "Build-Out" section of the *First Report and Order* is also not applicable to incumbents. Again, many commenters argue that the findings in this section of the *First Report and Order* should not be applicable to incumbents. In particular, they contend that eliminating build-out requirements has no relevance for incumbents (and might prompt efforts to shrink existing service areas). We agree that the findings in the *First Report and Order* concerning build-out should not apply to incumbents. Our findings regarding build-out requirements were squarely based on section 621(a)(1) of the Act, a provision that plainly does not apply to incumbent providers. While we did indicate in the *First Report and Order* that section 621(a)(4)(A) of the Act did not limit our authority to restrict unreasonable build-out demands made on competitive applicants pursuant to section 621(a)(1), our findings clearly were not based on that provision. As we stated at the time, "[s]ection 621(a)(4)(A) does not address the central question here." We also find there is no basis for applying the build-out rationale in the *First Report and Order* to incumbents, because the underlying rationale—that build-out requirements can serve as a barrier to new entrants—is inapplicable to incumbents. Incumbents by definition are not barred from entry, and allowing incumbents to retract the boundaries of their own franchise areas may create disruptions that would hinder the statutory goal of broadband deployment. Moreover, the *First Report and Order* discussed the differential impact of build-out requirements on incumbents and new entrants.

10. *Franchise Fees.* The "Franchise Fees" section of the *First Report and Order* applies equally to incumbents and new entrants. Most commenters agree that our findings regarding franchise fees from the *First Report and Order* should apply to incumbents. In that section of the *First Report and Order*, we determined that an LFA's refusal to grant a competitive franchise because of an applicant's unwillingness

to agree to a variety of franchise fee requirements that are impermissible under section 622 of the Act constitutes an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1). Commenters argue that section 622 of the Act does not differentiate between new entrants and incumbents, and that when Congress intended to treat various providers differently, it was explicit when doing so. NCTA argues that absent a Congressional mandate otherwise, the Commission has defined its role as establishing a uniform franchising regime, and uniformity requires equal treatment. Some LFAs argue that the Commission was incorrect in its interpretation of section 622, and it should not extend its interpretation. NATOA states that incumbents have been renewing franchises for years with full knowledge of the Cable Act, and the FNRPM's proposal to extend the franchise fee aspects of the *First Report and Order* to incumbents is a solution in search of a problem.

11. We agree that our findings interpreting section 622 should apply equally to incumbent operators and new entrants. Section 622 does not distinguish between incumbent providers and new entrants. As a result, to the extent that a franchise-fee requirement is found to be impermissible under section 622, that statutory interpretation applies to both incumbent operators and new entrants. The relevant findings from the *First Report and Order* that apply to incumbent providers include the following: (1) Our clarification that a cable operator is not required to pay cable franchise fees on revenues from non-cable services; (2) our finding that the term "incidental" in section 622(g)(2)(D) should be limited to the list of incidentals in the statutory provision, as well as other minor expenses, and that certain fees are not to be regarded as "incidental" and therefore must count toward the 5 percent franchise fee cap; (3) our clarification that any municipal projects requested by LFAs unrelated to the provision of cable services that do not fall within the exempted categories in section 622(g)(2) are subject to the statutory 5 percent franchise fee cap; and (4) our finding that payments made to support the operation of PEG access facilities are considered franchise fees and are subject to the 5 percent cap, unless they are capital costs, which are excluded from franchise fees under section 622(g)(2)(C).

12. *PEG/I-Nets.* Much of the "PEG/I-Nets" section of the *First Report and Order* applies equally to incumbents

and new entrants. Many commenters argue that our findings regarding PEG and I-Net issues from the *First Report and Order* should apply equally to incumbents because the statutory provisions discussed do not distinguish among differing providers. LFAs, on the other hand, argue that the findings regarding PEG and I-Nets should not be extended to incumbents. They contend that doing so would freeze PEG support at current contribution levels without the possibility for future modification, which would result in either substantially reduced PEG access facility support or decreased general fund monies. They also contend that they would lose the ability to benefit from an affordable I-Net, which cable operators can offer for no net costs. LFAs also assert that I-Nets provide numerous benefits to the community and are vital to government functions, and the Commission may not take any action that would inhibit an LFA's ability to require a cable operator to build an I-Net. LFAs further argue that some PEG and I-Net obligations are undertaken as part of a settlement agreement against an operator, and these contracts cannot be invalidated.

13. We determine that some of the findings related to PEG and I-Nets should apply to incumbent providers while others should not. Specifically, the finding, discussed above, that the non-capital costs of PEG requirements must be offset from the cable operator's franchise fee payments is applicable to incumbents because it was based upon our statutory interpretation of section 622 of the Act. Again, nothing in the language or structure of that provision distinguishes between different classes of providers, and thus our interpretation applies to all providers. Similarly, both our refusal to adopt standard terms for PEG channels for new entrants as well as our refusal to hold that it is per se unreasonable for LFAs to require the payment of ongoing costs to support PEG by new entrants (so long as such support costs as applicable are subject to the franchise fee cap) apply to incumbents as well.

14. We conclude, however, that other findings pertaining to PEG and I-Nets should not apply to incumbents. In particular, our findings that it would be unreasonable for an LFA to impose on a new entrant more burdensome PEG carriage obligations than it has imposed upon the incumbent cable operator and that it would be unreasonable for an LFA to require a new entrant to provide PEG support that is in excess of the incumbent cable operator's obligations, by their terms, do not provide relief for incumbents. Neither do we believe that

we can similarly conclude that it would be per se unreasonable for an LFA to impose less burdensome PEG carriage obligations on a new entrant than it has imposed on an incumbent cable operator or per se unreasonable for an LFA to require a new entrant to provide less PEG support than the incumbent cable provider. Requiring an established incumbent operator to have a greater PEG carriage obligation or provide greater PEG support than a fledgling new entrant may very well be reasonable under the circumstances, and we see no statutory provision that categorically precludes such an approach. We note that in the *First Report and Order* we found that a pro rata cost sharing approach between incumbents and new entrants is per se reasonable. In doing so, we also cited § 76.1505 of the Commission's rules, which requires an open video system operator to match an incumbent cable operator's PEG obligations. Under a matching approach, the open video system operator and incumbent cable operator make equal contributions. In a pro rata cost sharing approach, the new entrant would make PEG contributions based on the ratio of its subscribership as compared to the incumbent operator's subscribership. While we did not find a matching arrangement per se reasonable, we did not find it per se unreasonable either. Section 653(c)(2)(A) of the Act requires that open video system PEG obligations be "no greater or lesser" than obligations imposed on incumbent operators, but the Act makes no such requirement with respect to new cable operator entrants. Finally, in the *First Report and Order*, we found that "completely duplicative PEG and I-Net requirements imposed by LFAs would be unreasonable," and that it was unreasonable for an LFA to refuse to award a competitive franchise unless the applicant agrees to pay the face value of an I-Net that will not be constructed. The problems that these two determinations were designed to address—the required construction of duplicative networks and required payments in lieu of the construction of a duplicative network—are issues that face competitive entrants, and it is not clear to us how these findings would be of practical relevance to incumbents. We therefore do not apply them to incumbents at this time. However, incumbent providers are free in the future to present the Commission with evidence that these findings are of practical relevance to incumbents and therefore should be applied to them in an appropriate form. When doing so, incumbent providers should identify the

particular problems that applying some variation of these findings to them would address.

15. We disagree with comments arguing that any changes to the PEG structure means that PEG support would be frozen at current contribution levels without the possibility for future modification to reflect the community's needs at that time. Sections 611 and 626 provide a process for requiring PEG carriage and determining a community's future cable-related needs and interests. Section 626 requires that an LFA identify "future cable-related community needs and interests" prior to the consideration of a franchise renewal proposal. Therefore, LFAs are to evaluate their current and future PEG needs at the time of an incumbent provider's renewal, and are allowed to request such PEG support from their providers, within the limits of the Act and the Commission's statutory interpretation. Our findings here and in the *First Report and Order* have no bearing on these renewal requirements.

16. *Mixed-Use Networks.* The "Mixed-Use Networks" section of the *First Report and Order* also applies equally to incumbents and new entrants. Consistent with their position on other provisions, a number of commenters argue that the Commission's mixed-use network findings in the *First Report and Order* are based upon a statutory interpretation of section 602(7)(C), and the statute's failure to distinguish among differing providers requires that it applies uniformly to all. LFAs argue that the mixed-use findings presume the competitor is a telecommunications provider, and that the findings do not speak to an incumbent cable provider that already is using its network to provide cable services.

17. Because our findings on mixed-use networks in the *First Report and Order* depended upon our statutory interpretation of section 602, which does not distinguish between incumbent providers and new entrants, we agree that the findings in this section should be applicable to incumbent providers. Specifically, we clarify that LFAs' jurisdiction under Title VI over incumbents applies only to the provision of cable services over cable systems and that an LFA may not use its franchising authority to attempt to regulate non-cable services offered by incumbent video providers. For example, the provision of video services pursuant to a cable franchise agreement does not provide a basis for customer service regulation by local law or franchise agreement of a cable operator's entire network, or any services beyond cable services.

18. *Timing.* The Commission tentatively concluded that the findings in the *First Report and Order* should apply to cable operators at the time of renewal:

[t]he findings in [the *First Report and Order*] should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. We note that section 611(a) states "A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use" and section 622(a) provides "any cable operator may be required under the terms of any franchise to pay a franchise fee." These statutory provisions do not distinguish between incumbents and new entrants or franchises issued to incumbents versus franchises issued to new entrants.

Many commenters agreed with our tentative conclusion. However, some incumbent providers argue that regulatory parity requires that the Commission extend the *First Report and Order* immediately to incumbent providers, and not wait until renewal. Specifically, incumbent providers argue that some of the findings in the *First Report and Order*, including franchise fees, PEG/I-Nets, and mixed use networks, were not made solely pursuant to section 621, but also other sections of the Act that are applicable to all operators, not just new entrants, and that those provisions should be immediately applicable to all providers. Further, a small number of incumbent competitive providers argue that to avoid penalizing them for being the first to risk competitive entry, the *Second Report and Order* should be applicable to such "legacy" competitive providers immediately or upon entrance of a new competitive provider. They argue that if the Commission adopts the tentative conclusion to apply the decisions in the *First Report and Order* at renewal, it is conceivable, where an incumbent's franchise is up for renewal before a competitive entrant's franchise, that a new competitive entrant and an incumbent would receive the regulatory relief of the *First Report and Order* before the incumbent competitive provider. LFAs, by contrast, argue that if findings from the *First Report and Order* are found to be applicable to incumbents, they should be effective only at the time of renewal. These commenters argue that the Commission does not have the authority to void existing agreements, and that to do so would violate LFAs' contractual rights.

19. We believe that neither of the principal views expressed by commenters is entirely correct. The statutory interpretations set forth above

represent the Commission's view as to the meaning of various statutory provisions, such as section 622, and these interpretations are valid immediately. We do not see, for example, how section 622 could mean different things in different sections of the country depending on when various incumbents' franchise agreements come up for renewal. We recognize, however, that franchise agreements involve contractual obligations and also note that some terms may have been implemented as part of a settlement agreement regarding rate disputes or past performance by the franchisee. As a result, we believe that the facts and circumstances of each situation must be assessed on a case-by-case basis under applicable law to determine whether our statutory interpretation should alter the incumbent's existing franchise agreement. This *Second Report and Order* should in no way be interpreted as giving incumbents a unilateral right to breach their existing contractual obligations. Instead, if an incumbent asserts that the terms of its franchise should be amended as a result of this *Second Report and Order*, we encourage LFAs and incumbents to work cooperatively to address those issues. Should such efforts fail, we recognize that particular disputes eventually may make their way to court but note that there are other means of addressing existing contract provisions. As further described below, incumbent providers may pursue avenues for pre-renewal modifications, including contractual most favored nation clauses, which may allow franchisees to take advantage of the franchise provisions of new competitive entrants. Parties may also make adjustments to franchise terms pursuant to compliance with law provisions within the franchise or contract. Statutory relief is also available in the form of the franchise modification provision in section 625 of the Act.

20. *Most Favored Nations (MFN) Clauses.* The *First Report and Order* does not have any effect on existing MFN clauses. In the *FNPRM*, we sought comment on "what effect, if any, the findings in this *Second Report and Order* have on MFN clauses that may be included in existing franchises." While provisions differ, MFN clauses generally allow franchisees to adjust their obligations if and when an LFA grants a competing provider any franchise provisions that are more favorable than the provisions in the incumbent's franchise agreement. Some providers state that an incumbent with existing MFN provisions should be able to

amend its franchise to reflect the requirements applicable to the new entrant, in order to encourage regulatory parity. Others state that the proceeding should have no effect on MFN clauses, as they do not impose any barriers to entry. They also argue that MFN clauses are negotiated in order to adjust obligations when a new competitor enters the market, and the Commission has no basis to interfere with these contractual provisions. To the extent that the *First Report and Order* allows competitive providers to enter markets with franchise provisions more favorable than those of the incumbent provider, we expect that MFN clauses, pursuant to the operation of their own design, will provide some franchisees the option and ability to change provisions of their existing agreements. Otherwise, we do not believe that our *First Report and Order* has any effect on MFN clauses.

B. Other Issues

21. *Franchise Modification.* We agree with commenters that the modification provision of the Cable Act will provide some franchisees the option and ability to change their existing agreements. Section 625 of the Act provides that a cable operator may obtain a franchise modification from an LFA: (1) In the case of any requirements for facilities or equipment (including PEG access) where the provider can show that it is "commercially impracticable" to comply with a requirement; or (2) in the case of any requirements for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after any proposed modification.

22. Commenters argue that incumbents without an MFN provision should be allowed to seek modification through section 625 when a competitor enters the franchise area. They assert that the Commission should find an incumbent's compliance with more burdensome franchise provisions than a new competitor "commercially impracticable" because of the possibility of higher costs. Some LFAs and Verizon agree that section 625 may be applicable in some circumstances, provided that the incumbent can meet the commercially impracticable test, but contend that there should not be an assumption that all providers can meet this test. NATOA argues that the Commission does not have jurisdiction to construe or enforce this provision under section 625(b)(1), which provides for review of modification decisions in state or federal district court under section 635, and that the Commission

cannot issue any blanket statements about modifications, as any determinations are fact specific, and cannot be shown merely by the presence of a new competitor. We agree that the *First Report and Order* and this *Second Report and Order*, to the extent applicable, can be taken into consideration if an incumbent seeks modification of a franchise when a competitor enters the franchise area, within the processes set forth under section 625. However, it is up to the incumbent to make to the relevant franchising authority the requisite showing of "commercial impracticability."

23. *Generally Accepted Accounting Principles.* We decline to adopt a requirement that an operator's gross income be determined under Generally Accepted Accounting Principles (GAAP). Time Warner asks the Commission to mandate that the calculation of an operator's gross income under section 622 be determined in accordance with GAAP. Time Warner argues that the Commission has authority from Congress to mandate that uniform federal standards be used to govern franchise fee calculations. Some franchising authorities reject this assertion and argue that GAAP will not produce the clarity and uniformity Time Warner is seeking, because GAAP does not create rules but rather functions as a set of guidelines interpreted by professionals. They also state that GAAP was established by the financial community to govern disclosures to investors and stockholders, not to determine franchise fee payments, and these differing purposes may result in characterization of revenues that are not applicable to cable operations. Finally, they argue this has nothing to do with competitive entry, and a separate NPRM must be issued to consider it. Given the paucity of comments on the matter, and conflicting information of the applicability of GAAP to the franchising process, we do not believe that there is a sufficient record supporting the requested regulation. We therefore decline to adopt such a requirement here.

24. *Fresh Look.* We reject RCN's request that we invoke the fresh look doctrine. The fresh look doctrine is used to re-open contracts. The Commission utilizes it sparingly, when it is "necessary to promote consumer choice and eliminate barriers to competition." RCN urges the Commission to invoke its "fresh look" doctrine to require that LFAs reconsider existing franchises when a new entrant enters the franchise area and, in markets where there is more

than one franchised operator, when the first existing franchise comes up for renewal. RCN suggests that when a new provider files an application to provide service, the LFA should provide notice to existing franchisees and allow them to terminate their franchise and negotiate a new one reflecting the rules in the *First Report and Order*. Similarly, the Broadband Service Providers Association asks that if one cable operator in a competitive market is able to eliminate franchise requirements deemed unlawful by the *First Report and Order*, other operators in that LFA should be able to submit a renewal proposal at any time that would allow that operator to conform its franchise to the rules in the *First Report and Order*. RCN argues that this proceeding is consistent with other contexts where the Commission adopted the fresh look doctrine, because the entity holding the long-term contracts has market power, that entity has exercised that power to create long-term contracts to "lock up" the market in a way that creates unreasonable barriers to competition, and the contractual obligations can be nullified without harm to the public interest.

25. We do not believe that it is necessary to invoke the fresh look doctrine here. As indicated above, we believe that any contractual issues arising from today's *Second Report and Order* should be decided on a case-by-case basis. The fresh look doctrine was developed to allow customers to take advantage of competition, not to protect incumbent service providers when competitors enter the market. The case precedent is thus distinguishable from the circumstances addressed here.

C. Customer Service

26. We find that the explicit statutory language of section 632 of the Act prohibits the Commission's preemption of state or local cable customer service laws that exceed the Commission's standards. The Commission previously sought comment on whether customer service requirements should be allowed to vary greatly between jurisdictions. Commenters urged the Commission to adopt a number of rules limiting LFA authority to adopt local customer service regulations. After reviewing those comments, we sought additional comment on our tentative conclusion that section 632(d)(2) of the Act prevents us from preempting state or local customer service laws exceeding Commission standards, and allows LFAs and cable operators to agree to more extensive customer service requirements.

27. Section 632 of the Communications Act sets out the regulatory framework for cable customer service. It authorizes LFAs to establish and enforce customer service requirements and directs the Commission to establish standards by which cable operators may fulfill these requirements. Specifically, section 632(d)(1) provides that "[n]othing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title." Further, section 632(d)(2) states that:

[n]othing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under the section, or addresses matters not addressed by the standards set by the Commission under this section.

The statute's explicit language makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements.

28. In response to the *FNPRM*, some commenters ask that we clarify certain issues surrounding customer service. Verizon recognizes that while LFAs have some discretion in the crafting of customer service regulations, they argue that this discretion is limited by the language of section 632(d)(2) to cable customer service issues. They urge the Commission to plainly state that LFAs only have authority to regulate cable customer service standards and that the Commission has the authority to preempt regulations that do not concern customer service for cable service. They argue that onerous regulations, as well as those unrelated to the provision of cable services couched as customer service rules, should be preempted because they amount to an unreasonable burden under section 621(a)(1). They suggest that customer service requirements be limited to those general types of issues recognized in section 632(b). That provision authorizes the Commission to "establish standards by which cable operators can fulfill their customer service requirements" including "(1) cable system office hours and telephone availability; (2) installations, outages, and service calls; and (3) communications between the cable operator and subscriber." They assert that requirements beyond these limited categories impose unreasonable burdens on new entrants.

29. Supporters of the Commission's tentative conclusion regarding section

632(d)(2) argue that the statute expressly authorizes the establishment and enforcement of local customer service standards that go beyond those delineated by the Commission. They assert that the unreasonable refusal language of section 621(a)(1) has no application to customer service standards under section 632. In fact, they argue that the only way to read these sections together is to conclude that Congress intended that local customer service standards exceeding Commission standards do not amount to an unreasonable refusal.

30. New entrants also take issue with the local character of customer service requirements. AT&T cites difficulties created by disparate local standards and local data reporting requirements and suggested the Commission adopt uniform customer service standards because of the inefficiency inherent in varying standards. They argue that requiring new entrants to comply with these differing standards can be a potential barrier to entry. They further argue that the imposition of local data collection requirements also poses a barrier to entry. AT&T states that under their regional systems it is not currently possible to compile their data on a franchise area basis. At minimum, they ask the Commission to allow regional providers to demonstrate compliance with local standards through aggregate regional data.

31. Given the explicit language of section 632, we conclude that the Commission cannot preempt local or state cable customer service requirements, nor can it prevent LFAs and cable operators from agreeing to more stringent standards. However, an LFA's authority to implement customer service rules under section 632 is limited to the adoption of regulations that, in fact, involve customer service matters and impose customer service requirements on the provision of cable services. For instance, LFAs cannot implement a "customer service" rule requiring a six percent franchise fee payment. Furthermore, it would constitute an unreasonable refusal under section 621(a)(1) for an LFA to make the grant of a competitive franchise contingent upon a cable customer service requirement that does not, in fact, involve cable customer service. While localities may have independent authority to impose customer service requirements on a cable operator's non-cable activities, franchising authorities may not condition the exercise of their video franchising authority on an operator's agreement to such non-cable requirements because we interpret

section 632 to apply only to customer service requirements related to cable service.

32. Local franchise authorities maintain that Congress made a policy judgment when it permitted individual franchising authorities to adopt local customer service standards, despite the inconvenience it may pose to new entrant compliance. They note that incumbents operating regional networks have complied with local data reporting requirements and other differing local standards. They state that local data collection requirements also are consistent with section 626 of the Act, which allows LFAs to take the quality of an operator's service into account during the franchise renewal process. They argue that limiting local data collection, as AT&T suggests, would make it impossible for LFAs to assess an operator's performance within their respective communities.

33. The language of section 632(d)(2) provides that, while the Commission may adopt standards applicable to all cable operators, it may not prohibit LFAs from imposing requirements that exceed those standards. We conclude, therefore, that we do not have authority to grant AT&T's request for uniform local customer service standards or data collection requirements. In sum, we find that the explicit statutory language of section 632 prohibits the Commission's preemption of state or local cable customer service laws that exceed the Commission's standards.

IV. Procedural Matters

34. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, we note that there is no new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see U.S.C. 3506(c)(4).

35. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* to this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The Commission received one comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Second Report and Order

36. This *Second Report and Order* adopts rules and provides guidance to implement the findings in the *First Report and Order* dealing with section 611 and section 622 of the Communications Act of 1934, as amended (the Communications Act). The *First Report and Order* adopted rules in accordance with section 621(a) of the Communications Act to prevent Local Franchising Authorities (LFAs) from creating unreasonable barriers to competitive entry. It also provided clarifications of section 611, restricting LFAs' authority to establish capacity and support requirements for PEG channels, and section 622, setting limits on the franchise fees LFAs may charge cable operators. Neither of these sections distinguishes between the treatment of new entrants and incumbent cable operators. The Commission extends these findings to incumbent cable operators to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The Commission also finds that it cannot preempt state or local customer service rules exceeding Commission standards.

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

37. Only one commenter, the Local Government Lawyer's Roundtable, submitted a comment that specifically responded to the IRFA. The Local Government Lawyer's Roundtable contends that the Commission should issue a revised IRFA because of the erroneous determination that the proposed rules would have a de minimis effect on small governments. They argue that the Commission has not given weight to the economic impact the rules will have on small governments, including training and hiring concerns.

38. We disagree with the Local Government Lawyer's Roundtable's assertion that our rules will have any more than a de minimis effect on small governments. LFAs today must review and decide upon competitive and renewal cable franchise applications, and will continue to perform that role. While the Local Government Lawyer's Roundtable expresses concern about additional training that may be necessary to understand these actions, and potential hiring of additional personnel to accommodate the *Second Report and Order's* requirements, we disagree that those steps will be necessary. This *Second Report and Order* simply extends existing

requirements to apply to incumbent cable providers. LFAs should be familiar with those existing requirements, and therefore should not need additional training or personnel to implement the *Second Report and Order's* requirements. Moreover, modifications made to the franchising process that result from this proceeding further streamline the franchising process, lessening the economic burdens placed upon LFAs.

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

39. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government 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).

40. The rules adopted by this *Second Report and Order* will streamline the local franchising process by adopting rules that provide guidance as to the applicability of prior findings in this proceeding to incumbents and the limitations on the Commission's authority regarding customer service regulations. The Commission has determined that the group of small entities directly affected by the rules adopted herein consists of small governmental entities (which, in some cases, may be represented in the local franchising process by not-for-profit enterprises). Therefore, in this FRFA, we consider the impact of the rules on small governmental entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

41. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that

most governmental jurisdictions are small.

42. *Cable and Other Program Distribution.* The Census Bureau 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." 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.

43. *Cable Companies and Systems.* 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. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size 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, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

44. *Cable System Operators.* 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." The Commission has determined that an operator serving fewer than 677,000 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. Industry data indicate that, of 1,076

cable operators nationwide, all but ten are small under this size standard. 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, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

45. *Open Video Systems (OVS).* In 1996, Congress established the open video system framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). 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 small business size standard of Cable and Other Program Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. 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.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

46. The rule and guidance adopted in the *Second Report and Order* will require a de minimus additional reporting, record keeping, and other compliance requirements. LFAs will continue to perform its role of reviewing and deciding upon competitive cable franchise applications; the rules adopted in this *Second Report and Order* will decrease the procedural burdens faced by LFAs. Since the adopted rules do not apply until franchise renewal, there is no additional burden beyond what has been required during past renewals. Therefore, the

rules adopted will not require any additional special skills beyond any already needed in the cable franchising context.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternative Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, why 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.

48. In the *FNPRM*, the Commission sought comment on the extension of its findings that do not distinguish between new entrants and incumbents in the *First Report and Order* to incumbents and its authority to do so. The Commission also invited comment on the effect, if any, the findings in the *First Report and Order* had on most favored nation clauses in existing franchises. Additionally, the Commission also sought comment on its tentative conclusion that it cannot preempt state or local customer service laws exceeding Commission standards, nor can it prevent LFAs and cable operators from agreeing to more stringent standards. The Commission tentatively concluded that any rules likely would have at most a de minimis impact on small governmental jurisdictions, and that the interrelated,

high-priority federal communications policy goals of enhanced cable competition and accelerated broadband deployment necessitated the extension of its rules to incumbent cable providers. We agree with those tentative conclusions, and we believe that the rules adopted in the *Second Report and Order* will not impose a significant impact on any small entity.

49. In the *Second Report and Order*, we provide that the *First Report and Order's* findings resting upon statutory provisions that do not distinguish between new entrants and incumbents should be extended to incumbent cable operators at the time of franchise renewal. This will result in decreasing the regulatory burdens on incumbent cable operators. We declined to impose the findings of the *First Report and Order* immediately so that we do not unduly disrupt existing contracts. As an alternative, we considered not extending the *First Report and Order's* rules to incumbent cable operators at all. We conclude that the guidance we provide minimizes any adverse impact on small entities because it clarifies the terms within which parties must negotiate, and should prevent small entities from facing costly litigation over those terms.

50. *Report to Congress:* The Commission will send a copy of the *Second 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 *Second Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

51. *Congressional Review Act.* The Commission will send a copy of this *Second 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).

52. *Additional Information.* For additional information on this proceeding, please contact Holly Saurer, Policy Division, Media Bureau at (202) 418-2120, or Brendan Murray, Policy Division, Media Bureau at (202) 418-2120.

V. Ordering Clauses

53. *It is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 303, 303r, 403, 405, 602, 611, 621, 622, 625, 626, and 632 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 303(r), 403, 405, 522, 531, 541, 542, 545, 546, and 552, this *Second Report and Order* is adopted.

54. *It is further ordered* that the *Second Report and Order* shall be effective December 24, 2007.

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

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07-5802 Filed 11-21-07; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 72, No. 225

Friday, November 23, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0223; Directorate Identifier 2007-NM-156-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 727 series airplanes. The existing AD currently requires repetitive inspections to detect cracks and loose brackets of the elevator rear spar, and corrective actions if necessary. The existing AD also provides for an optional terminating action for the repetitive inspections. This proposed AD would reduce the repetitive intervals of the inspections, mandate the previously optional terminating action for the repetitive inspections, and no longer allow stop-drilling. This proposed AD results from new reports of cracks, elongated fastener holes, and loose fittings of the elevator rear spar. We are proposing this AD to prevent cracking of the elevator rear spar at the tab hinge locations, which could cause excessive freeplay of the elevator control tab and possible tab flutter, and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by January 7, 2008.

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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

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: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6577; fax (425) 917-6590.

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-2007-0223; Directorate Identifier 2007-NM-156-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

On March 12, 1996, we issued AD 96-06-05, amendment 39-9542 (61 FR 11529, March 21, 1996), for certain Boeing Model 727 series airplanes. That AD requires repetitive inspections to detect cracks and loose brackets of the elevator rear spar and repair if necessary, and provides an optional terminating modification for the inspections. That AD was prompted by reports of cracking in the spar radii at the tab hinge location of the elevator rear spar. We issued that AD to prevent cracking in elements of the elevator rear spar assembly, which could result in excessive freeplay of the elevator control tab and possible tab flutter.

Actions Since Existing AD Was Issued

Since we issued AD 96-06-05, we have received reports of additional cracks, elongated fastener holes, and loose fittings on airplanes on which the repetitive detailed inspections required by that AD have been initiated. We have determined that the existing long-term repetitive detailed inspections do not provide an acceptable level of safety. This determination, along with a better understanding of the human factors associated with numerous continual inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. Therefore, we have determined that it is necessary to reduce the repetitive intervals of certain inspections and to require replacement of the elevator rear spar with a new elevator rear spar and new support fittings to adequately address the identified unsafe condition of this proposed AD.

In addition, we have determined that the stop-drilling required by AD 96-06-05 does not provide an adequate level of safety. Therefore, in this proposed AD, stop-drilling of cracks of the elevator rear spar assembly is no longer considered to be an acceptable method of repair.

Relevant Service Information

We have reviewed Boeing Service Bulletin 727-55-0089, Revision 1, dated March 2, 2000. (We referred to the original release of the service bulletin in AD 96-06-05 as the appropriate source of service information for the required actions.) The repetitive detailed inspections, stop-drill if necessary, and

optional terminating action (i.e., replacement of the elevator rear spar with a new elevator rear spar and support fittings) are identical to those actions specified in the original service bulletin. Revision 1 changes the part accountability paragraph and the list of airplane operators. No more work is necessary on airplanes changed per the original release of the service information, if the optional terminating action was done. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 96-06-05 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in service information described previously, except as discussed under "Differences Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

Paragraph 1.A, "Effectivity," of Boeing Service Bulletin 727-55-0089, Revision 1, contains an error in that it identifies only Model 727-100 and -200 series airplanes as the affected airplanes. Although Model 727, 727C, 727-100C, and 727-200F series airplanes were inadvertently omitted from that paragraph, those airplanes were identified by variable numbers in

the effectivity listing. Therefore, the applicability of this proposed AD would affect Model 727, 727C, 727-100, 727-100C, 727-200, and 727-200F series airplanes.

As discussed previously, this proposed AD would require replacement of the elevator rear spar with a new elevator rear spar and support fittings, which would terminate the repetitive inspection requirements. The service information provides the terminating action as an option.

Where the service information describes stop-drilling as an interim method of repair, this proposed AD would not permit stop-drilling as an interim method of repair. As discussed previously, we have determined that, for the purposes of this proposed AD, stop-drilling does not provide an adequate level of safety.

Additionally, the service information recommends that certain repetitive inspection intervals be done within 1,600 flight hours or within 18 months, whichever occurs first. This proposed AD would require a repetitive interval not to exceed 1,600 flight hours for those inspections. Calendar time (i.e., "18 months") is not appropriate for addressing problems associated with fatigue such as the cracking addressed by this proposed AD. The determination that calendar time is not appropriate for addressing problems associated with fatigue also was addressed in the preamble of AD 96-06-05.

We have coordinated these differences with Boeing.

Change to Existing AD

This proposed AD would retain all requirements of AD 96-06-05. Since AD 96-06-05 was issued, the AD format has

been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 96-06-05	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).
paragraph (e)	paragraph (j).
paragraph (f)	paragraph (k).
paragraph (g)	paragraph (l).

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models. In addition, we have revised the applicability of the existing AD to refer to the latest service bulletin (i.e., Boeing Service Bulletin 727-55-0089, Revision 1), and refer to affected models not identified in the referenced service bulletin, as discussed previously.

We have changed all references to a "visual inspection" in AD 96-06-05 to "detailed inspection" in this proposed AD. We also added a new note defining that inspection and renumbered subsequent notes.

Costs of Compliance

There are about 815 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed Inspection (required by AD 96-06-05).	17	\$80	None	\$1,360, per inspection cycle.	448	\$609,280, per inspection cycle.
Terminating action (new proposed action).	416	80	\$14,975	\$48,255	448	\$21,618,240.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-9542 (61 FR 11529, March 21, 1996) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2007-0223; Directorate Identifier 2007-NM-156-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 7, 2008.

Affected ADs

(b) This AD supersedes AD 96-06-05.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727-100, 727-100C, 727-200, and 727-200F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 727-55-0089, Revision 1, dated March 2, 2000.

Unsafe Condition

(d) This AD results from new reports of cracks, elongated fastener holes, and loose

fittings of the elevator rear spar. We are issuing this AD to prevent cracking of the elevator rear spar at the tab hinge locations, which could cause excessive freeplay of the elevator control tab and possible tab flutter, and consequent loss of control of the airplane.

Compliance

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

Requirements of AD 96-06-05

Repetitive Inspections and Follow-On Actions

(f) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-0085, dated August 31, 1984 (specified as terminating action in AD 84-22-02, amendment 39-4951), has not been accomplished and the repetitive inspections required by AD 84-22-02 have not been initiated: Prior to the accumulation of 8,000 total flight hours since date of manufacture, or within 300 flight hours after April 22, 1996 (the effective date of AD 96-06-05), whichever occurs later, perform a detailed inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Then accomplish the follow-on actions (i.e., repetitive inspections, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Note 2: AD 84-22-02 pertains to the one-piece elevator rear spar.

(1) Repeat the detailed inspection thereafter at intervals not to exceed 1,600 flight hours.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

Repetitive Inspections and Follow-On Actions

(g) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-0085, dated August 31, 1984 (specified as terminating action in AD 84-22-02), has not been accomplished and the repetitive inspections required by AD 84-22-02 have been initiated: Accomplish either paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If no crack has been detected as a result of inspections required by AD 84-22-02: Within 1,600 flight hours after the last

inspection required by that AD, perform a detailed inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with the Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, except as provided by paragraph (o) of this AD, at the times specified as follows:

(i) Repeat the detailed inspection thereafter at intervals not to exceed 1,600 flight hours.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(2) If any crack has been stop-drilled in accordance with AD 84-22-02, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(h) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-0085, dated August 31, 1984 (specified as terminating action in AD 84-22-02, amendment 39-4951), has been accomplished: Within 4,000 flight hours after April 22, 1996, perform a detailed inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspections, stop-drilling, modification) in accordance with that service bulletin, except as provided by paragraph (o) of this AD, at the times specified as follows:

(1) Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight hours, except as provided by paragraph (n) of this AD.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(i) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-0087, dated June 20, 1986 (specified as terminating action in AD 87-24-03, amendment 39-5769), has not been accomplished and the repetitive inspections required by AD 87-24-03 have not been initiated: Accomplish the requirements of paragraph (i)(1) of this AD at the earliest of the times specified in paragraph (i)(2) of this AD.

Note 3: AD 87-24-03 pertains to the two-piece elevator rear spar.

(1) Perform a detailed inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, at the earliest of the times specified in paragraph (i)(2) of this AD, and in accordance with Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, at the times specified as follows:

(i) Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight hours, except as provided by paragraph (n) of this AD.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(2) Accomplish the initial detailed inspection required by paragraph (i)(1) of this AD at the earliest of the following times:

(i) Prior to the accumulation of 27,000 total flight hours since date of manufacture, or within 4,000 flight hours after December 24, 1987 (the effective date of AD 87-24-03), whichever occurs later; or

(ii) Prior to the accumulation of 12,000 total flight hours since date of manufacture, or within 4,000 flight hours after April 22, 1996, whichever occurs later; or

(iii) Prior to the accumulation of 27,300 total flight hours since date of manufacture, or within 300 flight hours after April 22, 1996, whichever occurs later.

(j) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-087, dated June 20, 1986 (specified as terminating action in AD 87-24-03), has not been accomplished and the repetitive inspections required by AD 87-24-03 have been initiated: Accomplish either paragraph (j)(1) or (j)(2) of this AD, as applicable.

(1) If no crack has been detected as a result of inspections required by AD 87-24-03: Within 4,000 flight hours after the last inspection required by that AD, perform a detailed inspection to detect cracks and loose brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with Boeing Service Bulletin 727-55-0089, dated June 29, 1995, except as provided by paragraph (m) of this AD. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with that service bulletin, except as provided by paragraph (o) of this AD, at the times specified as follows:

(i) Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight hours, except as provided by paragraph (n) of this AD.

(ii) If any crack is detected and stop-drilled as a result of any inspection required by paragraph (j)(1) of this AD, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(2) If any crack has been detected and stop-drilled in accordance with AD 87-24-03, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in paragraph (l) of this AD.

(k) For airplanes on which the modification or repair described in Boeing Service Bulletin 727-55-087, dated June 20, 1986 (specified as terminating action in AD 87-24-03), has been accomplished: Within 4,000 flight hours after April 22, 1996, perform a detailed inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, in accordance with

Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplish follow-on actions (i.e., repetitive inspection, stop-drilling, modification) in accordance with the service bulletin, except as provided by paragraph (o) of this AD, at the times specified as follows:

(1) Repeat the detailed inspection thereafter at intervals not to exceed 4,000 flight hours, except as provided by paragraph (n) of this AD.

(2) If any crack is detected and stop-drilled as a result of any inspection required by this paragraph, accomplish the requirements of paragraph (l) of this AD, except as provided by paragraph (o) of this AD, at the times specified in that paragraph.

(l) If any crack is detected and stop-drilled in accordance with paragraph (f)(2), (g)(1)(ii), (g)(2), (h)(2), (i)(1)(ii), (j)(1)(ii), (j)(2), or (k)(2) of this AD, accomplish the following, except as provided by paragraphs (o) and (p) of this AD:

(1) Within 1,600 flight hours after stop-drilling, perform a detailed inspection to detect cracks and loose hinge brackets of the elevator rear spar in the area along the upper and lower edges at the shear plate, and accomplish follow-on actions (i.e., stop-drilling, modification) in accordance with the service bulletin. If any crack growth is detected after stop-drilling, prior to further flight, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Within 3,200 flight hours after stop-drilling, modify the elevator rear spar in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727-55-0089, dated June 29, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

New Actions Required by This AD

New Service Information

(m) As of the effective date of this AD, use only the Accomplishment Instructions of Boeing Service Bulletin 727-55-0089, Revision 1, dated March 2, 2000, to do the repetitive detailed inspections required by this AD.

Certain Repetitive Inspections at Reduced Intervals

(n) For airplanes being inspected at intervals not to exceed 4,000 flight hours in accordance with paragraphs (h)(1), (i)(1)(i), (j)(1)(i), and (k)(1) of this AD: As of the effective date of this AD, do those inspections within 1,600 flight hours since the last detailed inspection or 6 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,600 flight hours.

Stop-Drilling Prohibited

(o) As of the effective date of this AD, stop-drilling required by paragraphs (f) through (l) inclusive of this AD is prohibited.

Replacement of Cracked Rear Spars/Loose Brackets

(p) As of the effective date of this AD, if any cracked rear spar or loose bracket is detected during any inspection required by this AD, before further flight, do the replacement specified in paragraph (q) of this AD.

Terminating Replacement

(q) Within 18 months after the effective date of this AD, replace the elevator rear spar with a new elevator rear spar and support fittings, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727-55-0089, Revision 1, dated March 2, 2000. Accomplishing the replacement constitutes terminating action for the requirements of this AD.

(r) Accomplishing the replacement before the effective date of this AD in accordance with Boeing Service Bulletin 727-55-0089, dated June 29, 1995, is considered acceptable for compliance with the corresponding action specified in paragraph (q) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 96-06-05 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on November 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-22814 Filed 11-21-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 300**

[REG-134923-07]

RIN 1545-BG88

User Fees Relating to Enrollment To Perform Actuarial Services; 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 relating to user fees for the initial and renewed enrollment to become an enrolled actuary.**DATES:** The public hearing, originally scheduled for November 26, 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@irs.counsel.treas.gov*.**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the **Federal Register** on Wednesday, October 31, 2007 (72 FR 61583), announced that a public hearing was scheduled for November 26, 2007, at 10 a.m., in room 3716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 7 and 8 of the Internal Revenue Code.

The public comment period for these regulations expires on November 30, 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 Tuesday, November 20, 2007, no one has requested to speak. Therefore, the public hearing scheduled for November 26, 2007, is cancelled.

LaNita Van Dyke,

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

[FR Doc. E7-22893 Filed 11-21-07; 8:45 am]

BILLING CODE 4830-01-P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[EPA-R09-2007-OAR-1109; FRL-8498-7]

Determination of Nonattainment and Reclassification of the Imperial County Nonattainment Area: 8-Hour Ozone**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to find that the Imperial County marginal 8-hour ozone nonattainment area has failed to attain the 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. If EPA finalizes this finding, the Imperial County area will be reclassified, by operation of law, as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the Imperial County area would then be as expeditiously as practicable but no later than June 15, 2010. Once reclassified, California must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas as required by the CAA. In this action, EPA is also proposing the schedule for the State's submittal of the SIP revisions required for moderate areas once the area is reclassified.

DATES: Comments must be received on or before December 24, 2007.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-2007-OAR-1109 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: *priselac.adrienne@epa.gov*.
3. *Fax*: 415-947-3579.
4. *Mail or deliver*: Adrienne Priselac (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *www.regulations.gov* or e-mail.

www.regulations.gov is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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. Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Adrienne Priselac, EPA Region IX, (415) 972-3285, *priselac.adrienne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. What is the background for this proposed action?

A. What are the National Ambient Air Quality Standards?

The CAA requires EPA to establish a NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare" and to develop a primary and secondary

I. What is the background for this proposed action?

A. What are the National Ambient Air Quality Standards?

The CAA requires EPA to establish a NAAQS for pollutants that "may reasonably be anticipated to endanger public health and welfare" and to develop a primary and secondary

standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

B. What is the standard for 8-hour ozone?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states:

"The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone

concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm."

The value of 0.085 ppm can also be expressed as 85 parts per billion (ppb).

C. What is a SIP and how does it relate to the NAAQS for 8-hour ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

D. What is the Imperial County nonattainment area, and what is its current 8-hour ozone nonattainment classification?

The Imperial County 8-hour ozone nonattainment area is located in the southeastern corner of California. It has borders with Mexico to the south, Arizona to the east, San Diego County to the west, and the Coachella Valley to the north. The local jurisdiction that is responsible for air pollution control is the Imperial County Air Pollution Control District (ICAPCD).

For areas subject to Subpart 2 of the CAA, such as the Imperial County nonattainment area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS (69 FR 23858, April 30, 2004) and will be the same periods as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years, Severe—15 or 17 years; and Extreme—20 years (40 CFR 51.903(a)). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004 (69 FR 23951, April 30, 2004).

The Imperial County area was designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified "marginal" based on a 2001–2003 design value of 91 (ppb) with a maximum attainment date of June 15, 2007 (69 FR 23858). The design value of an area, which characterizes the severity of the air quality concern, is represented by the annual fourth-highest daily

maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period.

E. What are the CAA provisions regarding determinations of nonattainment and reclassifications?

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that we determine, based on the area's design value (as of the attainment date), whether the area attained the ozone standard by that date. For marginal, moderate, and serious areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area is reclassified by operation of law to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification.

II. What is EPA's evaluation of the Imperial County area's 8-hour ozone data?

We make attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Within the Imperial County area, ground-level ozone is measured at 6 monitors throughout the County. In recent years, the El Centro and Westmorland monitors have measured some of the highest 8-hour average ozone concentrations in the Imperial County area. For example, the fourth-highest daily maximum readings for 2004, 2005, and 2006 at the El Centro monitor were 79, 86, and 91 ppb, respectively. The fourth-highest daily maximum readings for 2004, 2005, and 2006 at the Westmorland monitor were 79, 90, and 86 ppb, respectively. For the Imperial County ozone nonattainment area, the attainment determination is based on 2004–2006 air quality data. The area has a 2004–2006 design value of 85 ppb. Therefore, pursuant to section 181(b)(2) of the CAA, we find that the Imperial County area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—IMPERIAL COUNTY AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPB)¹

Site	4th highest daily max			Design value 3 year average (2004–2006)
	2004	2005	2006	
Calexico-Grant (06–025–0004)	63	80	65	69
Calexico-Ethel (06–025–0005)	72	82	68	74
Calexico-East (06–025–0006)	74	77	78	76
El Centro (06–025–1003)	79	86	91	85
Westmorland (06–025–4003)	79	90	86	85
Niland (06–025–4004)	75	72	72	73

¹ Unlike the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to two one-year extensions of its attainment date based on the number of exceedances in the attainment year and if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan. For the 8-hour ozone standard, if an area's 4th highest daily 8-hour ozone average in the attainment year is 84 ppb or less (40 CFR 51.907), the area is eligible for the first of up to two one-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For Imperial County the attainment year is 2006. In 2006, the area's 4th highest daily 8-hour ozone average value was 91 ppb. Based on this information, the Imperial County area currently does not qualify for a one-year extension of the attainment date.

Section 181(b)(2)(A) of the Act provides that, when we find that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of (1) the next higher classification or (2) the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the Imperial County area's ozone design value at the time of today's notice is "marginal" since the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 85 ppb. By contrast, the next higher classification for the Imperial County area is "moderate." Because "moderate" is a higher nonattainment classification than "marginal" under the statutory scheme, upon the effective date of a final rulemaking, the Imperial County area

would be reclassified by operation of law as "moderate," for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

III. What action is EPA proposing?

A. Determination of Nonattainment, Reclassification of Imperial County Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2), EPA is proposing to find that the Imperial County area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. If EPA finalizes this finding and it takes effect, the Imperial County area will be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard "as expeditiously as practicable," but no later than 6 years after designation, or June 15, 2010. The "as expeditiously as practicable" attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which California will submit the SIP revisions necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

B. Proposed Date for Submitting a Revised SIP for the Imperial County Area

EPA must address the schedule by which California is required to submit a revised SIP. When an area is reclassified, we have the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification.

Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for implementation of all

control measures needed for attainment no later than the beginning of the "attainment year ozone season." The "attainment year ozone season" is defined as the ozone season immediately preceding a nonattainment area's attainment date (40 CFR 51.900(g)). The "ozone season" in a given year for an ozone nonattainment area is defined as the ozone monitoring season shown for the state in 40 CFR Part 58, Appendix D, section 4.1, Table D–3 (40 CFR 51.900(n) and 71 FR 61236, October 17, 2006). The ozone monitoring season for all of California, including Imperial County, is the full calendar year, from January through December.

A moderate 8-hour ozone nonattainment area must attain the ozone NAAQS as expeditiously as practicable, but no later than June 15, 2010 (40 CFR 51.903). As such, the attainment year ozone season for Imperial County is the ozone season in calendar year 2009, which begins on January 1. EPA therefore proposes to require a revised SIP submittal for the Imperial County moderate nonattainment area as expeditiously as practicable, but no later than December 31, 2008.

A revised SIP must include the following moderate area requirements: (1) An attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in emissions (40 CFR 51.910), (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)), and (5) NO_x and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a)). See also the requirements for moderate

ozone nonattainment areas set forth in CAA section 182(b).¹

IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the Imperial County marginal 8-hour ozone area has failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the area will by operation of law be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA EPA is also proposing the schedule for submittal of the SIP revision required for moderate areas once the area is reclassified. We propose to require that this SIP revision be submitted as expeditiously as practicable, but no later than December 31, 2008.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This proposed action to reclassify the Imperial County area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies 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 impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR part 121); (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. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of section 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of section 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

¹ A vehicle inspection and maintenance (I/M) program would normally be listed as a requirement for an ozone moderate or above nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 are not mandated to participate in the I/M program (60 FR 48027, September 18, 1995).

E. 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” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

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 action merely proposes to determine that the Imperial County area has not attained by its applicable attainment date, and to reclassify the Imperial County area as a moderate ozone nonattainment area and to adjust applicable deadlines. Thus, Executive Order 13132 does not apply to this rule.

F. 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 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This action does not have “Tribal implications” as specified in Executive Order 13175. This action merely proposes to determine that the Imperial County area has not attained by its applicable attainment date, and to reclassify the Imperial County area as a moderate ozone nonattainment area and to adjust applicable deadlines. The Clean Air Act and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, “Protection of Children From Environmental Health

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 disproportionate effects 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 action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely proposes to determine that the Imperial Valley area has not attained the standard by the applicable attainment date, and to reclassify the Imperial Valley area as a moderate ozone nonattainment area and to adjust applicable deadlines.

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

This action is not subject to Executive Order 13211, “Actions That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) 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 VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely proposes to determine that the Imperial County area has not attained by the applicable attainment date, and to reclassify the Imperial County area as a moderate ozone nonattainment area and to adjust applicable deadlines. Therefore, EPA

did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Imperial County area did not attain the 8-hour ozone NAAQS by the applicable attainment date, to reclassify the Imperial County area as a moderate ozone nonattainment area and to adjust applicable deadlines.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: November 14, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–22868 Filed 11–21–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 455**

[CMS–2271–P]

RIN 0938–AO97

Medicaid Integrity Program; Eligible Entity and Contracting Requirements for the Medicaid Integrity Audit Program

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

ACTION: Proposed rule.

SUMMARY: Section 1936 of the Social Security Act (the Act) (as added by section 6034 of the Deficit Reduction Act of 2005 (DRA)) established the Medicaid Integrity Program to promote the integrity of the Medicaid program by requiring CMS to enter into contracts with eligible entities to: Review the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under an approved State plan and/or any waiver of such plan approved under section 1115 of the Act; audit claims for payment of items or services furnished, or administrative services rendered, under a State plan; identify overpayments to individuals or entities receiving Federal funds; and educate providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

This proposed rule would provide requirements for an eligible entity to enter into a contract under the Medicaid integrity audit program. The proposed rule would also establish the contracting requirements for eligible entities. The requirements would include procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement; competitive procedures to be used; and procedures under which a contract may be renewed.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 24, 2007.

ADDRESSES: In commenting, please refer to file code CMS-2271-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2271-P, P.O. Box 8010, Baltimore, MD 21244-1850. Please allow sufficient time for

mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2271-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-8148 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Rufo, 410-786-5589 or Crystal High, 410-786-8366.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-2271-P.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments

received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

A. Current Law

States and the Federal government share in the responsibility for safeguarding Medicaid program integrity. States must comply with Federal requirements designed to ensure that Medicaid funds are properly spent (or recovered, when necessary). CMS is the primary Federal agency responsible for providing oversight of States' activities and facilitating their program integrity efforts.

B. Medicaid Integrity Program

Section 6034 of the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171, enacted on February 8, 2006) added a new section 1936 to the Act that established the Medicaid Integrity Program, referenced as the "Program" hereafter, to combat Medicaid fraud and abuse. The Program is intended to identify, recover, and prevent Medicaid overpayments. It is also intended to support the efforts of the State Medicaid agencies through a combination of oversight and technical assistance.

Although individual States work to ensure the integrity of their respective Medicaid programs, the Program represents CMS' first national strategy to detect and prevent Medicaid fraud and abuse. The Program would provide CMS with the ability to more directly ensure the accuracy of Medicaid payments and to deter those who would exploit the program.

Section 6034 of the DRA amends title XIX of the Act by redesignating the former section 1936 as section 1937; and inserting the new 1936 "Medicaid Integrity Program." The new section 1936 states the Secretary will promote the integrity of the Medicaid program by entering into contracts with eligible

entities to carry out the following activities:

Review of actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under the State plan approved under title XIX (or under any waiver of such plan approved under section 1115 of the Act) to determine whether fraud, waste, or abuse has occurred, or is likely to occur, or whether such actions have a potential for resulting in an expenditure of funds under title XIX in a manner which is not intended under the provisions of title XIX.

Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under title XIX, including cost reports, consulting contracts, and risk contracts under section 1903(m) of title XIX.

Identification of overpayments to individuals or entities receiving Federal funds under title XIX.

Education of providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

Section 1936 of the Act also mandates that the Secretary will by regulation establish procedures which will include the following:

- Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.
- Competitive procedures to be used when entering into new contracts under this section; when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and any other time considered appropriate by the Secretary.
- Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

CMS has determined not to address in this proposed rule the above bullet that references the Health Insurance Portability and Accountability Act of 1996 (HIPAA). We have determined that section 202(b) of HIPAA addressed certain Medicare contracting issues which, because of structural differences between the Medicare and Medicaid programs, such as the fact that the Federal government does not utilize carriers or fiscal intermediaries in the Federal administration of the Medicaid program, do not pertain to the Medicaid contracting environment. Moreover, we

have also determined that the provisions of the Social Security Act established by section 202(b) of HIPAA have since been repealed by section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. We invite public comment on this approach.

II. Provisions of the Proposed Regulations

In accordance with section 1936 of the Act, we would, through this proposed rule at new subpart D, § 455.200, define eligible entities that may enter into contracts under this Program to carry out activities as described above as well as establish contracting requirements for such entities. The approach taken in this proposed rule is consistent with a similar approach taken in the Medicare Integrity Program, which has very similar statutory requirements.

A. Basis and Scope

Following the mandate of section 1936 of the Act, this proposed rule, in subpart C, § 455.200(b), Basis and Scope, would add additional language stating that part of the Medicaid Integrity Program's scope is to carry out the Medicaid integrity audit functions. Subpart C would apply to entities that seek to compete for, or receive an award of, a contract under section 1936 of the Act.

B. Definition of Eligible Entity

In accordance with section 1936 of the Act, the proposed § 455.230 would describe that an eligible entity may enter into a Medicaid integrity audit program contract if it:

- Demonstrates the capability to carry out the contractor activities;
- In carrying out such activities, agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to title XIX and in other cases arising out of such activities;
- Maintains an appropriate written code of conduct and compliance policies that include, without limitation, an enforced policy on employee conflicts of interest;
- Complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement; and,
- Meets other requirements the Secretary may impose.

It would not be possible to identify in this rule every possible contractor requirement that may appear in a future

solicitation. In order to permit maximum flexibility to tailor our contractor eligibility requirements to specific solicitations while satisfying section 1936 of the Act, any additional requirements would be contained in the applicable solicitation.

In addition, we propose that a contractor under section 1936 of the Act may perform any or all of the contractor functions as are listed and described under "contractor functions."

C. Contractor Functions

In accordance with section 1936 of the Act, section 455.232 would identify the functions of the Medicaid integrity audit program contractor as follows:

- Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under title XIX (or under any waiver of such plan approved under section 1115 of the Act) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have the potential for resulting in an expenditure of funds under title XIX in a manner which is not intended under the provisions of title XIX.
- Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under title XIX, including (a) cost reports; (b) consulting contracts; and (c) risk contracts under section 1903(m) of the Act.
- Identification of overpayments to individuals or entities receiving Federal funds under title XIX.
- Educating providers of service, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

D. Competitive Procedures and Requirements

Section 455.234 would specify that a Medicaid integrity audit contract will be awarded in accordance with 48 CFR chapters 1 and 3 (the Federal Acquisition Regulation (FAR) and the Health and Human Services Acquisition Regulation, respectively), this subpart, and all other applicable laws and regulations. In accordance with section 1936 of the Act, we would specify that these competitive procedures and requirements will be used as follows:

- When entering into new contracts under this section.
- At any other time considered appropriate by the Secretary. In addition, we propose to specify in § 455.234 that an entity must meet the eligibility requirements established in proposed § 455.230 to become eligible to

be awarded a Medicaid integrity audit program contract.

E. Renewal of Contracts

Renewing a contract, when appropriate, results in continuity for both CMS and the contractor and can be in the best interest of the Program. If a contract is not renewed, we must ensure that sufficient time is provided to transfer and reassign the Medicaid integrity audit program functions as described in this subpart. Therefore, in § 455.236, we would specify that an initial contract term will be defined in the Medicaid integrity audit program contract and a renewal clause may be included in the contract. We also would specify that we may, but are not required to, renew the Medicaid integrity audit program contracts without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

In accordance with sections 1936(c)(2) and (3) of the Act, we would specify in § 455.236(b) that we may renew a Medicaid integrity audit program contract without competition if the contractor continues to meet all requirements of the proposed subpart C, the contractor meets or exceeds the performance requirements established in its current contract, and it is in the best interest of the government.

At § 455.236(a) we propose that if CMS does not renew a contract, the contract will end in accordance with its terms. The contractor will not have a right to a hearing or judicial review regarding our renewal decision.

F. Conflict of Interest

This proposed rule would establish at § 455.238 the process for identifying, evaluating, and resolving conflicts of interest as mandated by sections 1936(c)(2) and (3) of the Act. Establishing such a process would ensure that business arrangements of potential contractors do not inhibit competition between providers, suppliers, or other types of business related to the Medicaid program, or have the potential of harming the government's interests.

We would adhere to the requirements of the FAR's organizational conflict of interest requirements found at 48 CFR subpart 9.5 when soliciting contracts for the Medicaid integrity audit program. Due to the sensitive nature of the work to be performed under the contract, the need to preserve public trust, and the history of fraud and abuse in the Medicaid program, we would maintain the presumption that each prospective

contract involves a significant potential organizational conflict of interest.

Prior to awarding a Medicaid integrity audit program contract, the contracting officer will draft an organizational conflict of interest clause specific to the contractor for inclusion in the contract. In general we would not enter into a Medicaid integrity audit program contract with an offeror or an existing Medicaid integrity audit program contractor that has been determined to have, or that has the potential for, an unresolved organizational conflict of interest.

At § 455.238(a), we would specify that an offeror for a Medicaid integrity audit program contract is, and the Medicaid integrity audit program contractors are, subject to the conflict of interest standards and requirements of the FAR organizational conflict of interest guidance found at 48 CFR subpart 9.5, and the requirements and standards that are contained in each individual contract awarded to perform the functions described under section 1936 of the Act.

In § 455.238(b), we would include post award discussions. We would specify that we consider that a post award conflict of interest has developed if, during the term of the contract, the contractor or any of its employees, agents, or subcontractors received, solicited, or arranged to receive any fee, compensation, gift, payment of expenses, offer of employment, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under a Medicaid integrity audit program contract. We incorporate the definition of "gift" from the Standards of Ethical Conduct for Employees of the Executive Branch [5 CFR 2635.203(b)].

In addition, in § 455.238(c) we propose that if CMS has determined that a contractor's activities are creating a conflict, then a conflict of interest has occurred during the term of the contract. If such an event has occurred, among other actions, we may, as we deem appropriate:

- Not renew the contract for an additional term;
- Modify the contract; or
- Terminate the contract.

The proposed provisions do not describe all of the information that may be required, or the level of detail that would be required. We wish to have the flexibility to tailor the requirements to each individual procurement. Because potential offerors may have questions about whether information submitted in response to a solicitation, including information regarding potential conflicts

of interest, may be redisclosed under the Freedom of Information Act (FOIA), we provide the following information.

To the extent that a proposal containing information is submitted to us as a requirement of a competitive solicitation under 41 U.S.C. Chapter 4, Subchapter IV, we would withhold the proposal when requested under the FOIA. This withholding is based upon 41 U.S.C. 253b(m). However, there is one exception to this policy. It involves any proposal that is set forth or incorporated by reference in the contract awarded to the proposing offeror. Such a proposal may not receive categorical protection. Rather, we would withhold, under 5 U.S.C. 552(b)(4), information within the proposal that is required to be submitted that constitutes trade secrets or commercial or financial information that is privileged or confidential, provided the criteria established by *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), as applicable, are met. For any such proposal, we would follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d).

Any proposal containing the information submitted to us under an authority other than 41 U.S.C. Chapter 4, Subchapter IV, and any information submitted independent of a proposal would be evaluated solely on the criteria established by *National Parks & Conservation Association v. Morton* and other appropriate authorities to determine if the proposal in whole or in part contains trade secrets or commercial or financial information that is privileged or confidential and protected from disclosure under 5 U.S.C. 552(b)(4). Again, for any such proposal, we would follow pre-disclosure notification procedures set forth at 45 CFR 5.65(d) and will also invoke 5 U.S.C. 552(b)(6) to protect information that is of a highly sensitive personal nature. It should be noted that the protection of proposals under FOIA does not preclude us from releasing contractor proposals when necessitated by law, such as in the case of a lawful subpoena.

G. Conflict of Interest Resolution

We propose to describe at § 455.240(a) how a conflict of interest may be resolved. We would state that a Conflicts of Interest Review Board may be established and convened at any time during the term of the contract, as well as during the procurement process, to evaluate and assist the contracting officer in resolving conflicts of interest. We would determine when or if the Board will be convened. We would, at § 455.240(b), specify that a resolution of

an organizational conflict of interest is a determination by the contracting officer that:

- The conflict is mitigated;
- The conflict precludes award of a contract to the offeror;
- The conflict requires that we modify an existing contract;
- The conflict requires that we terminate an existing contract; or
- It is in the best interest of the government to contract with the offeror or contractor even though the conflict of interest exists.

An offeror's or contractor's method of mitigating conflicts of interest will be evaluated on a case by case basis. We have provided examples of methods an offeror or contractor may use to mitigate organizational conflicts of interest. The examples are not an all-inclusive list of possible methods of mitigation nor are we obligated to approve a mitigation method that uses one of the provided examples. Possible methods of mitigation include:

- Divestiture, or reduction in the amount, of the financial relationship the organization has in another organization to a level acceptable to us and appropriate for the situation.
- If shared responsibilities create the conflict, a plan, subject to our approval, to separate lines of business and management or critical staff from work on the Medicaid integrity audit program contract.
- If the conflict exists because of the amount of financial dependence upon the Federal Government, negotiating a phasing out of other contracts or grants that continue in effect at the start of the Medicaid integrity audit program contract.
- If the conflict exists because of the financial relationships of individuals within the organization, divestiture of the relationships by the individual involved.
- If the conflict exists because of an individual's indirect interest, divestiture of the interest to levels acceptable to us or removal of the individual from the work under the Medicaid integrity audit program contract.

By providing a process for the identification, evaluation, and resolution of conflicts of interest, we not only protect the government's interests but help to ensure that the contractors do not hinder competition in their service areas by misusing their position as a Medicaid integrity audit program contractor.

III. Collection of Information Requirements

This document does not impose any information collection and

recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

[If you wish to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule would not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6.5 million to \$31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this rule would not have a significant economic impact on a substantial number of 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 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This proposed rule would not exceed this established threshold level. This rule would have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

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

List of Subjects in Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 455—PROGRAM INTEGRITY; MEDICAID

1. The authority citation for part 455 continues to read as follows:

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

2. A new § 455.200 is added to read as follows:

§ 455.200 Basis and scope.

(a) *Statutory basis.* This subpart implements section 1936 of the Act that establishes the Medicaid Integrity Program, under which the Secretary will promote the integrity of the program by entering into contracts with eligible entities to carry out the activities under this subpart C.

(b) *Scope.* This subpart provides for the limitation on a contractor's liability to carry out a contract under the Medicaid Integrity Program and to carry out the Medicaid integrity audit program functions.

3. A new § 455.230 is added to read as follows:

§ 455.230 Eligibility requirements.

CMS may enter into a contract with an entity to perform the activities described at § 455.232, if it meets the following conditions:

(a) The entity has demonstrated capability to carry out the activities described below.

(b) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to Title XIX of the Social Security Act and in other cases arising out of such activities.

(c) Maintains an appropriate written code of conduct and compliance policies that include, without limitation, an enforced policy on employee conflicts of interest.

(d) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(e) The entity meets such other requirements the Secretary may impose.

4. A new § 455.232 is added to read as follows:

§ 455.232 Medicaid integrity audit program contractor functions.

The contract between CMS and a Medicaid integrity audit program contractor specifies the functions the contractor will perform. The contract may include any or all of the following functions:

(a) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, other basis) for which payment may be made under a State Plan approved under title XIX of the Act (or under any waiver of such plan approved under section 1115 of the Act) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have the potential

for resulting in an expenditure of funds under title XIX in a manner which is not intended under the provisions of title XIX.

(b) Auditing of claims for payment for items or services furnished, or administrative services rendered, under a State Plan under title XIX to ensure proper payments were made. This includes: Cost reports, consulting contracts, and risk contracts under section 1903(m) of the Act.

(c) Identifying if overpayments have been made to individuals or entities receiving Federal funds under title XIX.

(d) Educating providers of service, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

5. A new § 455.234 is added to read as follows:

§ 455.234 Awarding of a contract.

(a) CMS awards and administers Medicaid integrity audit program contracts in accordance with acquisition regulations set forth at 48 CFR chapters 1 and 3, this subpart, and all other applicable laws and regulations. These competitive procedures and requirements for awarding Medicaid integrity audit program contracts are to be used as follows:

(1) When entering into new contracts under this section.

(2) At any other time considered appropriate by the Secretary.

(b) An entity is eligible to be awarded a Medicaid integrity audit program contract only if it meets the eligibility requirements established in § 455.202, 48 CFR chapter 3, and all other applicable laws and requirements.

6. A new § 455.236 is added to read as follows:

§ 455.236 Renewal of a contract.

(a) CMS specifies the initial contract term in the Medicaid integrity audit program contract. CMS may, but is not required to, renew a Medicaid integrity audit program contract without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

(b) CMS may renew a Medicaid integrity audit program contract without competition if all of the following conditions are met:

(1) The Medicaid integrity audit program contractor continues to meet the requirements established in this subpart.

(2) The Medicaid integrity audit program contractor meets or exceeds the performance requirements established in its current contract.

(3) It is in the best interest of the government.

(c) If CMS does not renew a contract, the contract will end in accordance with its terms. The contractor will not have a right to a hearing or judicial review regarding CMS' renewal or non-renewal decision.

7. A new § 455.238 is added to read as follows:

§ 455.238 Conflict of interest.

(a) Offerors for Medicaid integrity audit program contracts, and Medicaid integrity audit program contractors, are subject to the following requirements:

(1) The conflict of interest standards and requirements of the Federal Acquisition Regulation organizational conflict of interest guidance, found under 48 CFR subpart 9.5.

(2) The standards and requirements that are contained in each individual contract awarded to perform activities described under section 1936 of the Act.

(b) Post-award conflicts of interest: CMS considers that a post-award conflict of interest has developed if, during the term of the contract, one of the following occurs:

(1) The contractor or any of its employees, agents, or subcontractors received, solicited, or arranged to receive any fee, compensation, gift (defined at 5 CFR 2635.203(b)), payment of expenses, offer of employment, or any other thing of value from any entity that is reviewed, audited, investigated, or contacted during the normal course of performing activities under the Medicaid integrity audit program contract.

(2) CMS determines that the contractor's activities are creating a conflict of interest.

(c) If CMS determines that a conflict of interest exists during the term of the contract, among other actions, CMS may:

(1) Not renew the contract for an additional term.

(2) Modify the contract.

(3) Terminate the contract.

8. A new § 455.238 is added to read as follows:

§ 435.240 Conflict of interest resolution.

(a) Review Board: CMS may establish a Conflicts of Interest Review Board to assist in resolving organizational conflicts of interest.

(b) Resolution: Resolution of an organizational conflict of interest is a determination by the contracting officer that:

(1) The conflict is mitigated.

(2) The conflict precludes award of a contract to the offeror.

(3) The conflict requires that CMS modify an existing contract.

(4) The conflict requires that CMS terminate an existing contract.

(5) It is in the best interest of the government to contract with the offeror or contractor even though the conflict of interest exists and a request for waiver is approved in accordance with 48 CFR 9.503.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 15, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 20, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7-22773 Filed 11-21-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS-2266-P]

RIN 0938-AO82

Medicare and Medicaid Programs; Waiver of Disapproval of Nurse Aide Training Program in Certain Cases and Nurse Aide Petition for Removal of Information for Single Finding of Neglect

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit a waiver of nurse aide training disapproval as it applies to skilled nursing facilities, in the Medicare program, and nursing facilities, in the Medicaid program, that are assessed a civil money penalty of at least \$5,000 for noncompliance that is not related to quality of care. This is a statutory provision enacted by section 932 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173, enacted December 8, 2003.)

In addition, this proposed rule would codify an additional statutory provision enacted by section 4755 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33, enacted on August 5, 1997) that requires the State to establish a procedure to permit a nurse aide to petition the State to have a single finding of neglect removed from the nurse aide registry if the State determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior

or neglect and the neglect involved in the original finding was a single occurrence.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 24, 2007.

ADDRESSES: In commenting, please refer to file code CMS-2266-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2266-P, P.O. Box 8017, Baltimore, MD 21244-8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2266-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and

retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Pat Miller, (410) 786-6780.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-2266-P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

A. Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

To participate in the Medicare and Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation

requirements for these facilities are specified in regulations at 42 CFR part 483, subpart B.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by the Centers for Medicare & Medicaid Services and the State Medicaid agency, respectively, as the basis for a decision to enter into or deny a provider agreement, recertify facility participation in one or both programs, or impose remedies on a noncompliant facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to evaluate whether the care furnished meets the assessed needs of individual residents.

Sections 1819(b)(5) and 1919(b)(5) of the Act and implementing regulations at § 483.75(e) require that all individuals employed by a facility as nurse aides must have successfully completed a nurse aide training program.

Sections 1819(f)(2) and 1919(f)(2) of the Act provide that facility-based nurse aide training could be offered either by the facility or in the facility by another entity approved by the State. In other words, a facility in good standing (that is, one that is not subject to an event that results in disapproval of a nurse aide training program) may offer a facility-based program in one of two ways: It can either conduct its own facility-based State-approved nurse aide training and have the State or a State-approved entity administer the nurse aide competency evaluation program, or it can offer the entire nurse aide training and competency evaluation program through an outside entity which has been approved by the State to conduct both components.

Further, these sections prohibit States from approving a nurse aide training and competency evaluation program or a nurse aide competency evaluation program offered by or in a SNF or NF when any of the following specified events have occurred in that facility—

- The facility has operated under a nurse staffing waiver;

- The facility has been subject to an extended or partial extended survey unless the survey shows the facility is in compliance with the participation requirements; or

- The facility has been assessed a civil money penalty of not less than \$5,000, or has been subject to a denial of payment, the appointment of a temporary manager, termination, or in the case of an emergency, been closed and had its residents transferred.

Program disapproval is a required, rather than a discretionary, response whenever any of these events occur. Since facilities are required to employ nurse aides who have successfully completed a training program, when a facility loses its ability to conduct facility-based training, it must, for the duration of the 2 year program disapproval, provide the required training through either the State or another State-approved outside organization as provided by § 483.151(a). However, sections 1819(f)(2)(D) and 1919(f)(2)(D) of the Act permit a waiver for program disapproval of programs offered in (but not by) a facility if the State—

- Determines that there is no other such program offered within a reasonable distance of the facility;
 - Assures that an adequate environment exists for operating the program in the facility; and
 - Notifies the State Long Term Care Ombudsman of this determination and these assurances.
- Section 932(c)(2)(B) of the MMA added sections 1819(f)(2)(D) and 1919(f)(2)(D) of the Act which allows the Secretary to waive a facility's disapproval of its nurse aide training program upon application of a facility if the disapproval resulted from the imposition of a civil money penalty of at least \$5000 and that is not related to quality of care provided to residents in the facility.

The statutory provision being implemented in this proposed rule pertains specifically and only to the civil money penalty disapproval trigger under sections 1819(f)(2)(B)(iii)(I)(c) and 1919(f)(2)(B)(iii)(I)(c) of the Act and establishes authority for CMS to approve a facility's request to waive disapproval of its nurse aide training program when that facility has been assessed a civil money penalty of at least \$5,000 for deficiencies that are not related to quality of care.

B. Nurse Aide Petition for Removal of Information for Single Finding of Neglect

The nurse aide registry is one of the tools to ensure that nursing homes are

employing qualified nurse aides who are properly trained, appropriately tested, and have no adverse findings against them of abuse, neglect, or misappropriation of property. Sections 1819(e)(2) and 1919(e)(2) of the Act and the implementing regulations at § 483.156 require each State to establish and maintain a registry of nurse aides who have successfully completed a nurse aide training and competency evaluation program and have been found by the State to be competent. The nurse aide registry also includes information for any nurse aides who have had an adverse finding of abuse, neglect, or misappropriation of resident property substantiated by the State survey agency. This information must be included in the registry within 10 working days of the finding and remain in the registry permanently unless the finding was made in error, the individual was found not guilty by a court of law, or the State is notified of the individual's death. Nursing homes are required to verify with State nurse aide registries (in the State where the facility is located and in other States that may have information on the individual) that prospective nurse aide employees have not abused, neglected, or mistreated residents nor misappropriated their property. A nursing home must not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law or who have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. Section 483.13 of the regulations provides that if there has been a finding of abuse, neglect, mistreatment of residents or misappropriation of their property entered into the nurse aide registry against a nurse aide, the nurse aide is permanently prohibited from working in a nursing home. The additional purpose of this proposed rule is to implement a legislative provision enacted as part of the BBA and included in the statutory language at sections 1819(g)(1)(D) and 1919(g)(1)(D) of the Act which reads in part, "Removal of name from nurse aide registry." However, since the nurse aide registry must also include information about nurse aides who have successfully completed a nurse aide training and competency evaluation program and have been found by the State to be competent, the name of the nurse aide would not be removed completely from the registry. Rather, it is technically the removal of the single adverse finding itself against a nurse aide from the nurse

aide registry in limited circumstances under specific conditions that is contemplated.

II. Discussion of the Issues

A. Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

Some participation requirements for nursing homes, if unmet and which result in the assessment of a civil money penalty of at least \$5,000, results in the loss of the facility's nurse aide training program for 2 years. For example, § 483.13, Resident behavior and facility practices, requires in paragraph (a) that the resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. Another example, § 483.25, Quality of care, requires in paragraph (c) that the facility must ensure that residents who enter the facility without pressure sores do not develop them unless they are unavoidable and that residents having pressure sores receive necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing. These are facility failures of direct care-giving requirements that could compromise the facility's ability to provide quality health care services directly to residents and could lead us to conclude that the facility is not providing positive role models for the training of its nurse aides.

On the other hand, there are other participation requirements that are not directly related to the provision of hands-on health care services or to the training of nurse aides. Thus, even if unmet, these facility failures would have no direct negative impact on care furnished to residents or the facility's ability to provide a positive role model for the training of its aides regarding appropriate care for residents. For example, § 483.10, Resident rights, requires in paragraph (b)(2) that a resident or his or her legal representative, has the right, after inspecting all of his or her records, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request, with 2 working days advance notice to the facility. Another example, § 483.12, Admission, transfer and discharge rights, requires in paragraph (a)(5) that a facility must provide notice of transfer or discharge to a resident at least 30 days before the transfer or discharge occurs. While failure to meet these requirements may subject the facility to a civil money penalty of \$5,000 or more, these facility failures

concern administrative and procedural requirements which are not directly related to the provision of hands-on health care services to residents, and, therefore, would not be indicative of a poor facility model for its nurse aide training program.

There is currently no regulatory distinction between care-giving and non care-giving participation requirements for purposes of the nurse aide training program disapproval. Rather, the disapproval automatically results when there is any noncompliance for which a civil money penalty of \$5,000 or more is assessed.

Currently, facilities assessed a civil money penalty of at least \$5,000 for noncompliance with any Federal participation requirement are prohibited from offering such a training program for a period of 2 years. The purpose of this proposed rule is to implement the legislative waiver provision enacted on December 8, 2003 as part of the MMA and which amended the Act. This revision would improve the applicability of the training disapproval requirement as it applies to assessed civil money penalty sanctions of at least \$5,000, by distinguishing between facility noncompliance that warrants the training program disapproval and noncompliance that does not.

As a result of these issues, the Congress concluded that the compliance assessment and response system for nursing homes needed to be improved to distinguish between what does and does not relate to the quality of care furnished to residents for purposes of determining whether disapproval of a facility's nurse aide training program should result when assessment of a civil money penalty of at least \$5,000 is the only basis for disapproving the program.

This proposed rule would implement section 932 of the MMA such that the additional consequence of program disapproval need not necessarily result if we determine that the noncompliance is not related to direct hands-on resident care, and as such, would not likely compromise the facility's ability to provide successful role modeling for its training program. However, we wish to emphasize that our authority to approve a facility's request for such a waiver does not assure that a waiver would be granted. These waiver determinations would be made by CMS upon application of a nursing facility on a case-by-case basis after considering the recommendation and facts of that case as provided by the State. We do not foresee this process of noncompliance—fact gathering, analysis, and subsequent recommendation for action to CMS for purposes of determining program

disapproval waivers—as an additional workload burden for States. States currently perform these functions under their agreements with CMS when they perform survey functions. They currently evaluate facility noncompliance scope, severity, nature, and impact on residents whenever they make a determination about the seriousness of a facility's noncompliance as well as when they make enforcement remedy recommendations to CMS. This proposed rule simply acknowledges that these State activities currently occur and that they would now also be used by CMS in making nurse aide training program disapproval waiver determinations.

The plain language of the statute permits waiver of training program disapproval based on the imposition of at least a \$5,000 CMP that was not related to the quality of care furnished to residents. However, it does not provide guidance for what this means. On page 776 of the Conference Report to the MMA (H.R. Rep. No. 108–391 (2003), *reprinted in* 2004 U.S.C.A.N. 1808, 2130), it states that, “* * * Quality of care in such instances refers to direct, hands on care furnished to residents of a facility.” We believe that this proposed rule proposes an appropriate and rational way to implement the legislative intent of evaluating noncompliance with “quality of care furnished to residents” in order to determine what impact it may have on the facility's ability to provide a positive training model to its nurse aides. In order to assess the “quality of care being furnished to residents,” we needed to find a way to differentiate between care-giving and non-care-giving requirements. So, for purposes of implementing this new legislative provision, we are proposing to define “quality of care furnished to residents” as direct care and treatment that a health care professional or direct care staff provides to a resident.

We also emphasize that a finding of noncompliance with a direct care giving requirement is not necessary in order to assess a civil money penalty of at least \$5,000 or to disapprove a facility's nurse aide training program. Regardless of whether or not the noncompliance is with a direct care giving requirement, the existence of the noncompliance, itself, may result in the imposition of a civil money penalty or another remedy from the menu of available sanctions. Once a remedy or remedies are imposed, a facility's ability to provide nurse aide training is prohibited for 2 years unless a waiver is approved.

In response to a facility's request for a waiver of its nurse aide training program disapproval when a civil money penalty of at least \$5,000 has been assessed, the nature of the facility's deficiencies would be evaluated to determine if they are central to furnishing direct hands-on care to residents.

"Assessed" is defined in our *State Operations Manual*, (Pub. 100-07), section 7536 A as, " * * * the final amount determined to be owed after a hearing, waiver of right to hearing, or settlement."

Civil money penalties can be assessed for specific instances of noncompliance (per instance) as well as for aggregate facility noncompliance (per day), we needed a method of determining how discrete and aggregate noncompliance should be evaluated for purposes of applying this waiver provision.

When a per instance civil money penalty of at least \$5,000 is assessed for noncompliance with a specific participation requirement, the evaluation of that specific deficiency's direct impact on residents is clear-cut. However, when the civil money penalty of at least \$5,000 is per day, the evaluation becomes more difficult. In the latter case, all of the facility's deficiencies would need to be reviewed to determine if individually or, in total, they are indicative of an overall facility failure or inability to directly provide quality care to its residents. The resulting determination would allow us to conclude whether the facility is still likely to provide a positive nurse aide training model.

Although a single care-giving deficiency, among other non care-giving deficiencies, may result in a conclusion that the facility, overall, is providing quality care to its residents, it is also possible that the seriousness of that single facility failure could cause us to conclude otherwise. While we do not intend to provide specific detail in this rule about how to operationalize this decision making process, we will provide guidance and examples in the *CMS State Operations Manual*.

We wish to reiterate that this proposal would not automatically mandate a waiver of a nurse aide training program disapproval in cases when a civil money penalty of \$5,000 or more is assessed for non care-giving noncompliance. Rather, it implements the legislative flexibility to evaluate the noncompliance in context with other factors in order for CMS to make better decisions, on a case-by-case basis, about whether or not to waive the training program disapproval.

While we do not intend to include instructions in this rule about which

participation requirements would be considered to be related to the direct care and hands-on treatment that a health care professional or direct care staff provides to the resident, we have included examples of our intent earlier in this preamble and will provide operational guidance in our *State Operations Manual*. The examples we have furnished simply illustrate the distinctions we believe exist between noncompliance that realistically constitutes direct hands-on care and noncompliance that does not. We encourage public comment regarding examples or issues that should be addressed in CMS operational guidance.

In consideration of the issues described, we believe that the regulation change we propose below to implement the new legislative provision strikes a fair balance between characteristics of care that a reasonable person would expect to be indicative of quality health care services. This determination would then lead us to conclude whether the facility, despite its deficiencies, is still likely to provide a positive role model for its nurse aides.

B. Nurse Aide Petition for Removal of Information for Single Finding of Neglect

A nurse aide is defined in § 483.75 of the regulations as any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietician, or someone who volunteers to provide these services without pay. Although the efforts of all nursing home staff are required to provide care to residents, the role of the nurse aide is vital. Nurse aides provide much of the direct hands-on care that residents receive and are actively involved in their daily lives. Competent and caring nurse aides are essential to providing quality care to nursing home residents. Federal regulations at 42 CFR part 483, subpart D establish standards for training nurse aides and for evaluating their competency to assure that they have the education, practical knowledge, and skills needed to care for nursing home residents. Section 483.13 of the regulations prohibits nursing homes from employing individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law or have had a finding entered into the State nurse aide registry concerning resident abuse, neglect, or misappropriation of resident property. This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently unless the finding was made in error, the individual was

found not guilty by a court of law, or the State is notified of the individual's death. Nursing homes are required to verify with State nurse aide registries (in the State where the facility is located and in other States that may have information on the individual) that nurse aides they are considering for employment have not abused, neglected, or mistreated residents nor misappropriated their property.

Initially, a specific incident in one State raised a concern regarding the severe effects of an adverse finding on the nurse aide registry. This led to an examination of the current regulations and subsequently to an addition to the Act addressing one specific aspect of the existing regulations. This incident involved a nurse aide with a long and exemplary work record. While assisting a resident, the nurse aide was distracted by another work demand, and the resident fell and suffered an injury. This nurse aide was found guilty of neglect and, per the current regulations, would be barred for life from ever working in a nursing home for this isolated incident. We believe permanently barring a nurse aide from working in a nursing home in this type of circumstance is inappropriate, limited, and not the kind of abuse that the original legislation was intended to prevent. This proposed regulation incorporates statutory language at sections 1819(g)(1)(D) and 1919(g)(1)(D) (Removal of name from nurse aide registry) of the Act and requires every State to establish a procedure to permit a nurse aide to petition for removal of a finding of neglect from the registry if the State determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a single occurrence.

The determination on a petition for removal of the finding of neglect can not be made before the expiration of the 1-year period beginning on the date on which the name of the nurse aide who is petitioning for removal was added to the nurse aide registry as a result of an investigation. As long as the State's process addresses the elements specified in the regulation, States may use a variety of methods to assure compliance with this requirement. For example, some States may choose a formal process through their State legislature while other States may choose an informal process, such as sending a letter to notify the nurse aide of this opportunity to petition.

III. Provisions of the Proposed Regulation

A. Waiver of Disapproval of Nurse Aide Training Program in Certain Cases

For the reasons discussed above, we propose to redesignate the current § 483.151 (c), (d), and (e) as § 483.151 (d), (e), and (f), respectively.

We propose to add a new paragraph (c)(1) in § 483.151 where a facility may request that we waive the disapproval of its nurse aide training program when the facility has been assessed a civil money penalty of not less than \$5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility. We propose to add a new paragraph (c)(2) in § 483.151 to define the term quality of care furnished to residents, as the direct hands-on care and treatment that a health care professional or direct care staff provides to a resident. We propose to add a new paragraph (c)(3) in § 483.151 to specify that any waiver of disapproval of a nurse aide training program does not waive any civil money penalty imposition.

B. Nurse Aide Petition for Removal of Information for Single Finding of Neglect

We propose to redesignate the current § 483.156(d) as § 483.156(e). We propose to add a new paragraph (d)(1) in § 483.156 to require the States to establish a procedure for permitting a nurse aide to petition for removal of a finding of neglect from the nurse aide registry if the State determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a single finding. We propose to add a new paragraph (d)(2) in § 483.156 to require that the petition for removal can not be made before the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the nurse aide registry as a result of an investigation. An individual may petition a State for review of any finding made by a State under sections 1819(g)(1)(c) or 1919(g)(1)(C) of the Act after January 1, 1995.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information

collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our 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.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

Section 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.

Section 483.151(c)(1) states that a facility may request that CMS waive the disapproval of its nurse aid training program when the facility has been assessed a civil money penalty of not less than \$5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility.

The burden associated with this requirement is the time and effort put forth by the facility to request a waiver. While this requirement is subject to the PRA, we believe it meets the exemption requirements for the PRA found at 5 CFR 1320.4(a)(2).

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn.: Melissa Musotto, CMS-2266-P Room C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, (CMS-2266-P), carolyn_lovett@omb.eop.gov. Fax (202) 395-6974.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of

this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement

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

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). These two regulatory proposals would not reach the economic threshold and thus are not considered major rules.

The RFA requires agencies to analyze options for regulatory relief of small business. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6.5 million to \$31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA for either of these regulatory proposals because we have determined, and the Secretary certifies, that neither rule would have a significant economic impact on a substantial number of 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 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act for either of these regulatory proposals because we have determined, and the Secretary certifies, that neither rule would have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. These regulatory proposals would have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since these regulations would not impose costs on State or local governments, the requirements of E.O. 13132 are not applicable.

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

List of Subjects in Part 483

Grant programs—health, Health facilities, Health professions, Health Records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

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

§ 483.150 [Amended]

2. Section 483.150(a) is revised to read as follows:

§ 483.150 Statutory basis: deemed meeting or waiver of requirements.

(a) *Statutory basis.* This subpart is based on sections 1819(b)(5), 1819(f)(2), 1919(b)(5), and 1919(f)(2) of the Act, which establish standards for training nurse-aides and for evaluating their competency.

* * * * *

§ 483.151 [Amended]

3. Section 483.151 is amended by—
A. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

B. Adding new paragraph (c).

The addition reads as follows:

§ 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.

* * * * *

(c) *Waiver of disapproval of nurse aide training programs.*

(1) A facility may request that CMS waive the disapproval of its nurse aide training program when the facility has been assessed a civil money penalty of not less than \$5,000 if the civil money penalty was not related to the quality of care furnished to residents in the facility.

(2) For purposes of this provision, “quality of care furnished to residents” means the direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident.

(3) Any waiver of disapproval of a nurse aide training program does not

waive any requirement upon the facility to pay any civil money penalty.

* * * * *

§ 483.156 [Amended]

4. Section 483.156 is amended by—
A. Redesignating paragraph (d) as paragraph (e).

B. Adding new paragraph (d).

The addition reads as follows:

§ 483.156 Registry of nurse aides.

* * * * *

(d) *Nurse aide petition for removal of information for a single finding of neglect.* (1) The State must establish a procedure to permit a nurse aide to petition for removal of a finding of neglect from the nurse aide registry if the State determines that both of the following conditions exist:

(i) The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect.

(ii) The neglect involved in the original finding was a single occurrence.

(2) The determination on a petition for removal cannot be made before the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the nurse aide registry as a result of an investigation.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 16, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 31, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7-22629 Filed 11-21-07; 8:45 am]

BILLING CODE 4120-01-P

Notices

Federal Register

Vol. 72, No. 225

Friday, November 23, 2007

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Database

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request a revision of a currently approved collection. This collection is the voluntary submission of data including nutrient data from the food service industry to update and expand the Child Nutrition Database in support of the School Meals Initiative for Healthy Children.

DATES: Comments on this notice must be received by January 22, 2008 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval and will become a matter of public record. Comments may be sent

to: Timothy Vezquez, Acting Team Leader, Technical Assistance Section, Nutrition Promotion and Training Branch, Child Nutrition Division, Room 632, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instruction should be directed to Timothy Vezquez at (703) 305-2609.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Database.

OMB Number: 0584-0494.

Expiration Date: April 30, 2008.

Type of Request: Revision of currently approved collection.

Abstract: The development of the Child Nutrition (CN) Database is regulated by the United States Department of Agriculture (USDA), School Meals Initiative for Healthy Children. This database is designed to be incorporated in USDA-approved nutrient analysis software programs and provide an accurate source of nutrient data. The software allows schools participating in the National School Lunch (NSLP) and School Breakfast (SBP) Programs to analyze meals and measure the compliance of the menus to established nutrition goals and standards specified in 7 CFR 210.10 for the NSLP and 7 CFR 220.8 for the SBP. The information collection for the CN Database is conducted using an outside contractor. The CN Database needs to be updated with an extensive database of brand name or manufactured foods commonly used in school food service. The Food and Nutrition Service's contractor collects this data from the food industry to update and expand the CN Database. The submission of data from the food industry will be strictly voluntary, and based on analytical, calculated, or nutrition facts label sources. Collection of this information is accomplished by form FNS-710, *CN Database Qualification Report*. The revised FNS-710 will have a feature that does not allow a respondent to submit an incomplete form. Form FNS-709, *CN Database Report: Products Missing Nutrient Information* will be discontinued as a result of this new feature.

Affected Public: Manufacturers of food produced for school food service.

Estimate of Burden:

Form FNS-710.

Number of Respondents: 32.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Responses: 1120.

Estimated Time per Response: 2 Hours.

Total Annual Burden: 2240 Hours.

Total Annual Burden for Form FNS-710: 2240 Hours.

Dated: November 16, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7-22889 Filed 11-21-07; 8:45 am]

BILLING CODE 3410-30-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion From the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

DATES: *Effective Date:* December 23, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On September 14, September 21 and September 28, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 52542; 53989; 55173) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Base Supply Center, Fort Belvoir, Fort Belvoir, VA.

NPA: Virginia Industries for the Blind, Charlottesville, VA.

Contracting Activity: Department of the Army, Capital District Contracting Center (CDCC), Fort Belvoir, VA.

Service Type/Location: Call Center Operations, (Tele-Services-Tier 1 & Other Support Services, not to exceed 1% of the total requirement), Centers for Medicare and Medicaid Services, Beneficiary Contact Center Facility (BCC), 2400 Oakdale Boulevard, Coralville, IA.

NPA: Peckham Vocational Industries, Inc., Lansing, MI.

Contracting Activity: Department of Health and Human Services, Centers for Medicare and Medicaid Services, Baltimore, MD.

Service Type/Location: Custodial Services, U.S. Army Reserve Center, Camp Bullis, Building 6143, San Antonio, TX.

NPA: Professional Contract Services, Inc., Austin, TX.

Contracting Activity: Army Contracting Agency, Southern Region, Fort Sam Houston, TX.

Service Type/Location: Custodial Services, U.S. Coast Guard Office, 110 Mount Elliot Street, Detroit, MI.

NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.

Contracting Activity: U.S. Coast Guard, Cleveland, OH.

Service Type/Location: Document Destruction, Social Security Administration, 1301 Young Street, Dallas, TX.

NPA: Expanco, Inc., Fort Worth, TX.

Contracting Activity: Social Security Administration, Dallas, TX.

Service Type/Location: Grounds Maintenance, Naval Support Activity, 2300 General Meyers Avenue, Algiers, LA.

NPA: Goodworks, Inc., Metairie, LA.

Contracting Activity: Naval Facilities Engineering Command (NAVFAC)–SE, New Orleans, LA.

Deletion

On September 28, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 55174) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Social Security Building, 350 Donmoor, Baton Rouge, LA.

NPA: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA.

Contracting Activity: General Services Administration.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–22850 Filed 11–21–07; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of a Sub-Committee of the Florida Advisory to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Monday, December 11, 2007, at the University of Central Florida, Downtown Center, 36 West Pine Street, Room 105, Orlando, FL 32801. The purpose of the meeting is to discuss the restoration of voting rights for ex-felons in Florida.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by December 31, 2007. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia, 30303. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to pminarik@usccr.gov.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC, November 19, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs
Coordination Unit.

[FR Doc. E7-22859 Filed 11-21-07; 8:45 am]

BILLING CODE 6335-02-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting and briefing.

DATE AND TIME: Monday, December 3, 2007; 9 a.m. Meeting. 10 a.m. Briefing.

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 October 12, Meeting.

III. Program Planning.

- Racial Preferences and the California Department of Transportation.

IV. Adjourn Meeting.

Briefing Agenda

Topic: Minorities in Special Education.

I. Introductory Remarks by Chairman.

II. Speakers' Presentations.

III. Questions by Commissioners and Staff Director.

IV. Adjourn Briefing.

CONTACT PERSON FOR FURTHER

INFORMATION: Robert Lerner, Press and Communications, (202) 376-8582.

Dated: November 20, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07-5833 Filed 11-20-07; 3:14 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1531]

Expansion of Foreign-Trade Zone 214 Lenoir County, NC

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 North Carolina Global TransPark Authority, grantee of Foreign-Trade Zone 214, submitted an application to the Board for authority to expand the zone to include an additional site in Rocky Mount, North

Carolina, adjacent to the Durham Customs and Border Protection port of entry (FTZ Docket 16-2007; filed 4/19/07);

Whereas, notice inviting public comment was given in the **Federal Register** (72 FR 21219, 4/30/07) 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 214 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 2nd day of November 2007.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 07-5775 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-485-803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 7, 2007, the United States Court of International Trade (CIT) affirmed the final remand results made by the Department of Commerce (the Department) pursuant to the CIT's remand of the final results of antidumping duty administrative review of the antidumping order on certain cut-to-length carbon steel plate from Romania. *See Mittal Steel Galati S.A., Formerly Known as Ispat Sidex S.A. v. United States*, Slip Op. 07-110 (CIT) (July 18, 2007) (*Mittal Steel*). This case arises out of the Department's final results in the administrative review covering the period August 1, 2002, through July 31, 2003. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Final Results and Final*

Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum (*Final Results*). The judgment in this case was not in harmony with the Department's *Final Results*.

DATES: *Effective Date:* November 23, 2007.

FOR FURTHER INFORMATION CONTACT: John Drury or Dena Crossland, 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) 482-0195 or (202) 482-3362, respectively.

SUPPLEMENTARY INFORMATION: In *Mittal Steel*, the CIT remanded the underlying *Final Results* to the Department to re-examine its use of Filipino data to value limestone as well as the decision to value scrap as an input. The Department issued a draft redetermination on remand to interested parties for comment on September 21, 2007. No parties commented on the draft redetermination.

On October 1, 2007, the Department issued to the CIT its final remand results. In the final remand results, the Department provided an offset for scrap generated and re-used in the production process by Mittal Steel Galati S.A., formerly known as Ispat Sidex (Mittal), and reconsidered its valuation of the limestone input used to manufacture cut-to-length carbon steel plate for this proceeding. Thus, the Department recalculated the antidumping duty rate applicable to Mittal. On November 7, 2007, the CIT sustained the Department's final remand results. The recalculated margin for these final remand results is 7.29 percent.

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in this case on November 7, 2007, constitutes a decision of the court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if

appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to revise the cash deposit rate covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: November 16, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-22863 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Administrative Review in Part

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

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products from the Republic of Korea. This review covers three producers/exporters of the subject merchandise. The period of review (POR) is February 1, 2006, through January 31, 2007.

The Department has preliminarily determined that certain companies subject to this review made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the publication date of this notice.

DATES: *Effective Date:* November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230,

telephone: (202) 482-5287 and (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published in the **Federal Register** an antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from the Republic of Korea (Korea). See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000). On February 2, 2006, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 5007 (February 2, 2007). In accordance with 19 CFR 351.213(b)(2), on February 26, 2007, Dongkuk Steel Mill Co., Ltd. (DSM), a producer/exporter, requested that the Department conduct an administrative review of its sales and entries of subject merchandise into the United States during the POR. Additionally, in accordance with 19 CFR 351.213(b)(1), on February 28, 2007, a domestic producer and interested party, Nucor Corporation (Nucor), requested that the Department conduct a review of DSM, Tae Chang Steel Co., Ltd. (TC Steel), and DSEC Co., Ltd., a subsidiary of Daewoo Shipbuilding & Marine Engineering (DSEC). On March 28, 2007, the Department initiated an administrative review of DSM. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (March 28, 2007). Because the Department inadvertently omitted the names of TC Steel and DSEC from the initiation notice that was published on March 28, 2007, on April 27, 2007, the Department initiated an administrative review of TC Steel and DSEC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). On November 6, 2007, we extended the due date for the preliminary results of review by 15 days to November 15, 2007. See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 62625 (November 6, 2007).

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope

of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Intent To Rescind the Administrative Review in Part

We examined CBP data and did not find entries of subject merchandise from DSEC during the POR. See Letter to DSEC Co., Ltd., dated October 10, 2007, and accompanying enclosure. Further, DSEC stated that it did not have any sales to the United States which resulted in suspended entries of subject merchandise during the POR. See Letter from DSEC Co., Ltd., dated November 2, 2007.

Section 751(a) of the Act instructs the Department that, when conducting administrative reviews, it is to determine the dumping margin for entries during the relevant period. Further, according to 19 CFR 351.213(d)(3), the Department may rescind an administrative review in whole or only with respect to a particular exporter or producer if it concludes that, during the POR, there were no entries, exports, or sales of the subject merchandise, as the case may be. The Department has interpreted the statutory and regulatory language as requiring "that there be entries during the period of review upon which to assess antidumping duties." See *Granular Polytetrafluoroethylene Resin*

from Japan: Notice of Rescission of Antidumping Duty Administrative Review, 70 FR 44088 (August 1, 2005). In *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1372 (CAFC 2003), the Court of Appeals for the Federal Circuit upheld the Department's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR. See also *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067, 63068 (November 7, 2003) (stating that "the Department's interpretation of its statute and regulations, as affirmed by the Court of Appeals for the Federal Circuit, supports not conducting an administrative review when the evidence on the record indicates that respondents had no entries of subject merchandise during the POR"). Because there were no entries of subject merchandise during the POR from DSEC, we preliminarily find that there were no imports from DSEC during the POR and, as a result, we intend to rescind the administrative review with respect to DSEC. If we continue to find at the time of our final results of administrative review that there were no entries of subject merchandise from DSEC, we will rescind our review of DSEC.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results with respect to TC Steel.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall use facts otherwise available in reaching the applicable determination.

On April 20, 2007, the Department transmitted its questionnaire to TC Steel via Federal Express. We confirmed that TC Steel signed for and received the questionnaire on April 23, 2007. TC Steel did not respond to section A of our questionnaire by the due date, May 14, 2007. On May 18, 2007, we sent a letter via facsimile to Mr. Jae-sung Yoo, chairperson of TC Steel, asking the company to inform us as to whether it

had submitted or intended to submit a response to our questionnaire or whether TC Steel and its affiliates did not have any U.S. sales or shipments during the review period. TC Steel received the letter on the same day, but it did not respond to the letter by the specified due date, May 29, 2007. See Memorandum to The File from Yang Jin Chun concerning the non-response of Tae Chang Steel Co., Ltd., dated July 27, 2007. Because TC Steel did not provide a response to the Department's questionnaire, TC Steel failed to provide any information to the Department within the meaning of section 776(a)(2) of the Act. As a result, the Department is unable to calculate a margin for TC Steel and, therefore, must rely entirely on facts available.

B. Application of Adverse Inferences for Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico*, 69 FR 59892, 59896-97 (October 6, 2004); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand From Mexico*, 68 FR 42378, 42380-82 (July 17, 2003).

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994) (SAA). Furthermore, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties, Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Because TC Steel did not respond to our questionnaire despite multiple opportunities, we preliminarily find

that TC Steel failed to cooperate to the best of its ability and that the use of an adverse inference is appropriate. See section 776(b) of the Act and *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where the Department applied total adverse facts available because the respondents failed to respond to the antidumping questionnaire).

C. Selection of Information Used as Facts Available

Where the Department applies an adverse facts-available rate because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 870. In this case, we have assigned to TC Steel the highest product-specific margin, 32.70 percent, which we have calculated in this review based on the data reported by a respondent. We have selected this rate because we have never reviewed TC Steel in a prior segment of this proceeding and we do not have any additional information about this company. Moreover, this rate is sufficiently high as to reasonably assure that TC Steel does not obtain a more favorable result by failing to cooperate. Finally, given that this information was reported to the Department in the instant segment of the proceeding, there is no basis to doubt this information's reliability and relevance as applied in this segment to TC Steel. See generally the SAA at 870 (discussing the need to corroborate information used as facts available when that information was reported to the Department in a prior segment of an AD/CVD proceeding).

DSM

A. Affiliation

Consistent with the Department's determination in the 2004–2005 administrative review of the order, the Department continues to find that DSM and Dongkuk Industries Co., Ltd. (DKI) are affiliated.¹ The evidence on the

record indicates that the same familial relationships that formed the basis of the Department's determination in the 2004–2005 administrative review² continue today. Because of the business-proprietary nature of this discussion, the entire analysis for this current review may be found in the Department's Preliminary Analysis Memorandum for DSM dated November 15, 2007. Furthermore, although DSM identified DKI as an unaffiliated entity in its original questionnaire response, DSM stated later that there have not been any changes in the ownership or control of DSM and DKI during the POR that would affect the Department's 2004–2005 analysis of affiliation between the two companies. See DSM's July 5, 2007, Supplemental Questionnaire Response at 2. For all of these reasons, the Department preliminarily determines that DSM and DKI are under common control of a family grouping and, thus, are affiliated pursuant to section 771(33) of the Act.

B. Overrun Sales

DSM reported home-market sales of "overrun" merchandise (i.e., sales of a greater quantity of steel plate than the customer ordered due to overproduction). Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." In past cases, the Department has examined certain factors to determine whether "overrun" sales are in the ordinary course of trade. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38756, 38770 (July 19, 1999). These factors include the following: (1) Whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.

Id. Based on our analysis of these factors and the terms of sale, we preliminarily determine that DSM's overrun sales are outside the ordinary course of trade. Because our analysis makes use of business-proprietary information, we have included the analysis in a separate memorandum. See Memorandum to Laurie Parkhill from Lyn Johnson concerning DSM's Sales Outside the Ordinary Course of Trade dated November 15, 2007.

Fair-Value Comparison

To determine whether DSM's sales of the subject merchandise from Korea to the United States were at prices below normal value, we compared the constructed export price (CEP) to the normal value as described in the "Constructed Export Price" and "Normal Value" sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the CEP of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products covered by the "scope of the order" section above produced and sold by DSM in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, in making our comparisons, we used the following methodology. If an identical comparison-market model was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month. We calculated the weighted-average comparison-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: painted, quality, specification, heat treatments, thickness, width, patterns in relief, and descaling.

Constructed Export Price

The Department based the price of DSM's U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, because the merchandise was sold, before importation, by a U.S.-based

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 67428, 67429 (November 7, 2005), unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13080 (March 14, 2006) (*Steel Plate 2004–2005*).

² See Memorandum to Holly Kuga from Malcolm Burke concerning the affiliation analysis for Dongkuk Steel Mill Co., Ltd., dated October 31, 2005.

seller affiliated with the producer to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses. In accordance with section 772(d)(1) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Normal Value

A. Home-Market Viability

In accordance with section 773(a)(1)(c) of the Act, in order to determine whether there was a sufficient volume of sales of steel plate in the comparison market to serve as a viable basis for calculating the normal value, we compared the volume of the respondent's home-market sales of the foreign like product to its volume of the U.S. sales of the subject merchandise. DSM's quantity of sales in the home market was greater than five percent of its sales to the U.S. market.

Based on this comparison of the aggregate quantities sold in the comparison market (*i.e.*, Korea) and to the United States and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we preliminarily determine that the quantity of the foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determine that DSM's home market was viable during the POR. *Id.* Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales.

B. Cost-of-Production Analysis

In the most recently completed administrative review, the Department determined that DSM sold the foreign like product at prices below the cost of producing the merchandise and, as a result, excluded such sales from the calculation of normal value. See *Steel Plate 2004–2005*, 70 FR at 67431. Therefore, in this review, we have reasonable grounds to believe or suspect that DSM's sales of the foreign like product under consideration for the determination of normal value may have been made at prices below COP as provided by section 773(b)(2)(A)(ii) of the Act and, pursuant to section 773(b)(1) of the Act, we have conducted a COP investigation of DSM's sales in the comparison market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and labor employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information provided by DSM in its questionnaire response.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported comparison-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of DSM's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of DSM's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section

773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales.

C. Arm's-Length Test

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices. See 19 CFR 351.403(c). For affiliated-party sales, we excluded from our analysis sales to affiliated customers for consumption in the comparison market that we determined not to be at arm's-length prices. To test whether these sales were made at arm's-length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice). We included in our calculations of normal value those sales to affiliated parties that were made at arm's-length prices.

D. Price-to-Price Comparisons

We based normal value on comparison-market sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's-length test. DSM's comparison-market prices were based on the packed, ex-factory, or delivered prices. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from normal value.

Level of Trade

To the extent practicable, we determine normal value for sales at the

same level of trade as CEP sales. See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412. When there are no sales at the same level of trade, we compare CEP sales to comparison-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the comparison market.

To determine whether comparison-market sales are at a different level of trade than U.S. sales for DSM in this review we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Based on our analysis, we have preliminarily determined that there is one level of trade in the United States and one level of trade in the home market and that the U.S. level of trade is at a less advanced stage than the home-market level of trade. Therefore, we have compared U.S. sales to home-market sales at different levels of trade.

Because there is only one level of trade in the home market, we were unable to calculate a level-of-trade adjustment based on DSM's home-market sales of the foreign like product and we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For DSM's CEP sales, to the extent possible, we determined normal value at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP-offset adjustment to normal value is subject to the so-called offset cap, which is calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

For a detailed description of our level-of-trade analysis for DSM in these preliminary results, see the Preliminary Analysis Memorandum for DSM dated November 15, 2007.

Currency Conversion

Pursuant to 19 CFR 351.415, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchanged rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period February 1, 2006, through January 31, 2007:

Manufacturer/exporter	Margin (percent)
Dongkuk Steel Mill Co., Ltd.	2.25
TC Steel	32.70

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated an importer-specific assessment rate for these preliminary results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for the importer. We will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer during the POR. See 19 CFR 351.212(b). The Department will issue instructions to CBP 15 days after the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and*

Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by DSM for which DSM did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of DSM-produced merchandise at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

Because we are relying on total adverse facts available to establish TC Steel's dumping margin, we preliminarily determine to instruct CBP to apply a dumping margin of 32.70 percent to all entries of subject merchandise during the POR that were produced and/or exported by TC Steel.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of steel plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 0.98 percent, the "all others" rate established in the LTFV investigation,³ adjusted for the export-subsidy rate in the companion countervailing duty investigation.⁴ These deposit

³ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73214 (December 29, 1999).

⁴ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176, 73181-86 (December 29, 1999), as amended in *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea*, 65 FR 6587, 6588 (February 10, 2000).

requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 15, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-22869 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-916]

Postponement of Preliminary Determination of Antidumping Duty Investigation: Laminated Woven Sacks From the People's Republic of China

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

DATES: *Effective Date:* November 23, 2007.

FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand or Javier Barrientos, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-3207 or (202) 482-2243, respectively.

Postponement of Preliminary Determination

On July 18, 2007, the Department of Commerce ("Department") initiated the antidumping duty investigation of laminated woven sacks from the People's Republic of China. *See Laminated Woven Sacks from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 71 FR 40833 (July 25, 2007). The notice of initiation stated that the Department would make its preliminary determination for this antidumping duty investigation no later than 140 days

after the date of issuance of the initiation.

On November 9, 2007, the Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, "Petitioners") made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement of the preliminary determination, until January 24, 2008. Petitioners requested postponement of the preliminary determination to allow the Department additional time in which to review the complex questionnaire responses and issue requests for clarification and additional information.

For the reasons identified by the Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination under section 733(c)(1)(A) of the Tariff Act of 1930, as amended ("the Act"), by fifty days to January 24, 2008. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 14, 2007.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-22862 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412-822]

Stainless Steel Bar From the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part

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

DATES: *Effective Date:* November 23, 2007.

SUMMARY: On October 11, 2007, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review for a partial revocation of the antidumping duty order on stainless steel bar from the United Kingdom with respect to SAF 2507 grade stainless steel bar. *See Stainless Steel Bar from the United*

Kingdom: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part, 72 FR 57911 (October 11, 2007) (*Initiation and Preliminary Results*). We received no comments from interested parties objecting to the *Initiation and Preliminary Results*. Thus, we determine that changed circumstances exist to warrant revocation of the order, in part.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4929 or (202) 482-4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department published in the **Federal Register** an antidumping duty order on stainless steel bar from the United Kingdom. *See Antidumping Duty Order: Stainless Steel Bar from the United Kingdom*, 67 FR 10381 (March 7, 2002). On August 27, 2007, Swagelok Company (Swagelok), an interested party, requested that the Department initiate a changed circumstances review to exclude SAF 2507 grade stainless steel bar from the antidumping duty order on stainless steel bar from the United Kingdom. On September 18, 2007, the Domestic Industry¹ submitted a letter affirming that it does not object to the exclusion of the product identified in Swagelok's August 27, 2007, request for a changed circumstances review. On September 21, 2007, the Domestic Industry submitted a statement affirming that its members account for substantially all of the U.S. production of stainless steel bar, exceeding 85 percent of total domestic production. On September 25, 2007, Sandvik Bioline, a U.K. producer of stainless steel bar, provided a technical description of the stainless steel bar product Swagelok requested to be excluded from the scope of the antidumping duty order.²

On October 11, 2007, the Department published a notice of initiation and preliminary results of a changed circumstances review for a partial

¹ Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc.

² Sandvik Bioline is the producer of the product which is the subject of Swagelok's changed circumstances review request.

revocation of the antidumping duty order on stainless steel bar from the United Kingdom with respect to SAF 2507 grade bar. *See Initiation and Preliminary Results*. On October 25, 2007, the Domestic Industry submitted a letter reiterating that it does not object to the exclusion of SAF 2507 grade bar from the order.

Scope of the Order

For purposes of this order, the term "stainless steel bar" includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the scope does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

Also excluded from the scope of the order is grade SAF 2507 stainless steel bar. SAF 2507 is cold worked and finished Super Duplex stainless steel bar material having either a round or hexagonal cross section, conforming to UNS S32750, having a minimum elevated tensile strength in excess of 140 KSI, and a PRE (pitting resistant equivalent) value of 42.5 minimum, supplied in straight bar lengths. SAF 2507 grade stainless steel bar is currently classified under HTSUS subheadings 7222.20.00.45 and 7222.20.00.75.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and

7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review and Revocation of Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

In the instant review, based on the information provided by Swagelok and the lack of interest on the part of the Domestic Industry, the Department found preliminarily that the continued relief provided by the order with respect to the product in question from the United Kingdom is no longer of interest to the Domestic Industry. *See Initiation and Preliminary Results*. We did not receive any comments objecting to our preliminary results. Therefore, the Department is partially revoking the order on stainless steel bar from the United Kingdom with respect to grade SAF 2507 stainless steel bar, as described in the Scope of the Order section of this notice.

We will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties and to refund any estimated antidumping duties collected on entries of all shipments of the product in question that are not covered by the final results of an administrative review or automatic liquidation. The most recent period for which the Department has completed an administrative review or ordered automatic liquidation under 19 CFR 351.212(c) is March 1, 2006, through February 28, 2007. Any prior entries are subject to either the final results of review or automatic liquidation. Therefore, we will instruct CBP to liquidate, without regard to antidumping duties, shipments of stainless steel bar from the United Kingdom meeting the specifications of the product in question entered, or withdrawn from warehouse, for consumption on or after March 1, 2007. We will also instruct CBP to release any cash deposits or bonds and pay interest on such refunds in accordance with section 778 of the Act and 19 CFR 351.222(g)(4). The Department intends

to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: November 15, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-22865 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 071116709-7711-01]

Extension of the Award Period for Certain Minority Business Enterprise Centers

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is publishing this notice to allow for up to a 180-day funded extension, on a non-competitive basis, of the overall award periods for those Minority Business Enterprise Centers (MBECs) identified in this notice. MBDA is taking this action to allow for continued program delivery by the incumbent MBEC operators while MBDA completes the competitive solicitation and award processes for the next three (3) year MBEC award period.

DATES: The award period and related funding, if approved by the Department of Commerce Grants Officer, will commence January 1, 2008 and will continue for a period not to exceed 180 days.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Gonzalez, Chief, Office of Business Development, Minority Business Development Agency, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Mr. Gonzalez

may be reached by telephone at (202) 482-1940 and by e-mail at egonzalez@mbda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 11625, the MBEC Program provides standardized business assistance and development services directly to eligible minority-owned businesses. The MBEC Program is a key component of MBDA's overall business development assistance program and promotes the growth and competitiveness of minority business enterprises and further incorporates an entrepreneurial approach to the delivery of client services. This entrepreneurial strategy expands the reach and service delivery of the MBEC Program by requiring project operators to develop and to build upon strategic alliances with public and private sector partners as a means of serving eligible businesses within each MBEC's applicable geographical service area.

This notice amends MBDA's prior **Federal Register** notice dated August 17, 2004 (69 FR 51064), as amended on March 19, 2007 (72 FR 12769), to allow for up to a 180-day funded extension, on a non-competitive basis, of the overall award period for the following three MBECs: Miami/Ft. Lauderdale MBEC (M. Gill and Associates); Oklahoma City MBEC (Langston University); and the Honolulu MBEC (University of Hawaii). MBDA is taking this action to allow for continued program delivery by the incumbent MBEC operators while MBDA completes the competitive solicitation and award processes for the next three (3) year MBEC award period.

The allowable award extensions and additional funding set forth herein will be made at the sole discretion of MBDA and the Department of Commerce using the evaluation criteria and process used to determine the continuation of funding for the optional third-year of the original award. In making such determinations, the following factors will be considered: (1) The MBEC's program performance rating during the prior program period; (2) the availability of appropriated funds; and (3) MBDA and Department of Commerce priorities. MBDA will review the project's performance rating as evaluated through the standardized performance reports and assessments required under the MBEC Program.

Funding for the allowable award extensions listed in this notice is contingent upon the availability of Fiscal Year 2008 appropriations, which have not yet been appropriated for the NABEC program. MBDA therefore issues this notice subject to the appropriations made available under the

current continuing resolution, H.J. Res. 52, "Making continuing appropriations for the fiscal year 2008, and for other purposes," Public Law 110-92, as amended by H.R. 3222, Public Law 110-116. In no event will MBDA or the Department of Commerce be responsible to cover any costs incurred outside of the current award period by the incumbent operators of the MBEC projects affected by this notice if the MBEC Program fails to receive funding or is cancelled because of other MBDA or Department priorities. Publication of this announcement does not oblige MBDA or the Department to award any extensions or to obligate any available funds for such purpose.

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the December 30, 2004 **Federal Register** notice (69 FR 78389) are applicable to this notice.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: November 16, 2007.

Ronald J. Marin,

Financial Management Officer, Minority Business Development Agency.

[FR Doc. E7-22844 Filed 11-21-07; 8:45 am]

BILLING CODE 3510-21-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 7, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418-5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07-5819 Filed 11-20-07; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 21, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418-5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 07-5820 Filed 11-20-07; 11:30 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 14, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, (202) 418-5084.

David A. Stawick,
Secretary of the Commission.
[FR Doc. 07-5821 Filed 11-20-07; 11:30 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING:
Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 7, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:
Sauntia S. Warfield, (202) 418-5084.

David A. Stawick,
Secretary of the Commission.
[FR Doc. 07-5822 Filed 11-20-07; 11:30 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, December 6, 2007, 10 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Upholstered Furniture

The staff will brief the Commission on its briefing package regarding regulatory options on upholstered furniture flammability.

For a recorded message containing the latest agenda information, call (301) 504-7948.

CONTACT PERSON FOR MORE INFORMATION:
Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Bethesda, MD 20814 (301) 504-7923.

Dated: November 20, 2007.

Todd A. Stevenson,
Secretary.
[FR Doc. 07-5827 Filed 11-20-07; 1:02 pm]
BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement/Environmental Impact Report for the Berths 136-147 [TraPac] Container Terminal Project, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the Port of Long Angeles, has completed a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 136-147 [TraPac] Container Terminal Project. The Port of Los Angeles requires authorization pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act to expand and modernize the container terminal at Berths 136-147 [TraPac], including: Expanding, redeveloping, and constructing container terminal facilities and a new on-dock rail facility; constructing 500 space parking lot for union workers; wharf work including dredging 295,000 cubic yards, renovating 2,900 feet of existing wharf, and constructing 705 feet of new wharf; installing five new gantry cranes to replace six existing gantry cranes; relocating the existing PHL Pier A switcher yard to Rear Berth 200; widening Harry Bridges Boulevard and constructing a new 30-acre landscaped buffer area between "C" Street and Harry Bridges Boulevard; and filling the 10-acre Northwest Slip, constructing backlands facilities on the fill, and constructing a new 400-foot wharf along the edge of the fill. In addition, the Port of Los Angeles is considering transporting and discharging at ocean disposal sites excess clean material generated by the dredging activities, which would require authorization pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act.

FOR FURTHER INFORMATION CONTACT:

Questions or comments concerning the Final EIS/EIR should be directed to Dr. Spencer D. MacNeil, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA 90053-2325, (805) 585-2152.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,
Chief, Regulatory Division, Los Angeles District.

[FR Doc. E7-22873 Filed 11-21-07; 8:45 am]
BILLING CODE 3710-KF-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by email to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of

the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 15, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: REL West Educational Needs Assessment Survey.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,157.

Burden Hours: 1,042.

Abstract: This OMB package requests clearance for data collection instruments to be used in the REL West Educational Needs Assessment Survey, which will be administered by Berkeley Policy Associates (BPA), under contract with WestEd. The purpose of the survey is to determine the needs of educators in the western region in order to inform further research to support the region. Developed for teachers and school and district administrators in the western states (Arizona, California, Nevada, and Utah), the survey is designed to yield valuable information about practitioner needs and priorities as they relate to issues of school improvement, educating English learners, quality of teaching, teacher workforce, assessment, student readiness to learn, and secondary school reform.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3449. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E7-22831 Filed 11-21-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (Euratom) and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and Canada.

This subsequent arrangement concerns the retransfer of 2,442,308 kg of Natural UF₆, containing 1,651,000 kg of Uranium. This material will be retransferred from Areva Resources Canada Inc, Saskatoon, Canada to Eurodif Production, Pierrelatte, France for ultimate use as nuclear power reactor fuel by Electricite de France, France. Eurodif Production is authorized to receive nuclear material pursuant to the U.S.-Euratom Agreement for Cooperation.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: November 7, 2007.

For the Department of Energy.

Richard Goorevich,

Director, Office of International Regimes and Agreements.

[FR Doc. E7-22849 Filed 11-21-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92-463) and in accordance with Title 41 of the Code of Federal Regulations, section 102-3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 7, 2009. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including the environment, labor, research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been deemed essential to the conduct of the Department's business and in the public interest in conjunction with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel Samuel at 202/586-3279.

Issued at Washington, DC, on November 7, 2007.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E7-22886 Filed 11-21-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92-463) and in accordance with title 41 of the Code of Federal Regulations, section 102-3.65, and following consultation with

the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 7, 2009. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and to all segments of the oil and natural gas industries.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all segments of the oil and natural gas industries and related interests, from all sections of the United States, and from large and small companies. The Council also includes members representing academia, research and environmental groups, State governments and organizations, and Tribal governments. Membership and representation of all pertinent interests are determined in accordance with the requirements of the Federal Advisory Committee Act and its implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business, and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Council will operate in accordance with the Federal Advisory Committee Act and its implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel Samuel at (202) 586-3279.

Issued at Washington, DC, on: November 7, 2007.

Carol A. Matthews,
Acting Committee Management Officer.
[FR Doc. E7-22887 Filed 11-21-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, December 12, 2007. 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 576-4025; Fax (865) 576-2347 or e-mail: halseypj@oro.doe.gov or check the Web site at <http://www.oakridge.doe.gov/em/ssab>.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting topics will be "Status of K-25/K-27 Decontamination and Decommissioning" and "Status of Appendix E and J Milestones for the East Tennessee Technology Park and Other Projects."

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site <http://www.oakridge.doe.gov/em/ssab/minutes.htm>.

Issued at Washington, DC, on November 19, 2007.

Rachel Samuel,
Deputy Committee Management Officer.
[FR Doc. E7-22885 Filed 11-21-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08-17-000, CP08-18-000]

Cimarron River Pipeline, LLC, Northern Natural Gas Company; Notice of Applications

November 14, 2007.

Take notice that on November 2, 2007 Cimarron River Pipeline, LLC (Cimarron), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application under section 7 of the Natural Gas Act (NGA) in Docket No. CP08-17-000, requesting a certificate of public convenience and necessity to acquire, own, and operate Anadarko Basin pipeline and compression facilities in the northern Texas panhandle, northwest Oklahoma, and southwest Kansas now owned by Northern Natural Gas Company. Cimarron also requests blanket certificates pursuant to Subpart F of Part 157 and Subpart G of Part 284 of the Commission's regulations, all as more fully set forth in the application which is on file with Commission and open to public inspection. Any questions regarding Cimarron's application should be directed to Katie Rice, Director, Regulatory Affairs, DCP Midstream, LP, 370 17th Street, Suite 2500, Denver, Colorado 80202; Phone at (303) 605-2166.

Also take notice that on November 2, 2007, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application under Section 7 of the NGA, in Docket No. CP08-18-000, requesting permission and approval to abandon by sale to Cimarron its Anadarko Basin area Beaver Wet System, including pipeline, compression, dehydrating, purification and delivery point facilities and appurtenances in various counties in Texas, Oklahoma and Kansas, all as more fully set forth in the request which is on file with Commission and open to public inspection. Any questions regarding Northern's application should be directed to Michael T. Loeffler, Senior Director of Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124; Phone at (402) 398-7103.

Northern proposes to convey to Cimarron about 419 miles of its pipeline, compressor stations and all delivery and receipt points located along the various lengths of the pipeline and all other appurtenant facilities. The facilities are referred to by Northern as the Beaver Wet System and handle wet

gas for processing. Cimarron is currently a subsidiary of Northern (formed for the purpose of this transaction); however, when the transaction is complete, Cimarron will come under the control of DCP Midstream, LP, formerly Duke Energy Field Services, LP.

Northern requests that any required authorization under Section 7 of the NGA be granted since all of the assets that will be transferred to Cimarron. Northern also requests Commission approval to abandon the services it provides with respect to primary receipt and/or delivery points located on the facilities proposed for abandonment. Northern states that it proposes to convey the subject facilities to Cimarron at Northern's net book value. Finally, Northern requests that the Commission determine that Northern's proposed incidental compression service for Cimarron at the Beaver compressor station is in the public interest.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 5, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22824 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC07-132-001]

Cottonwood Energy Company, LP, Dogwood Energy LLC, Magnolia Energy LP, Redbud Energy LP; Notice of Filing

November 16, 2007.

Take notice that on November 14, 2007, Cottonwood Energy Company, LP, Dogwood Energy LLC, Magnolia Energy LP, and Redbud Energy LP, tendered for filing an Application for Order Authorizing Blanket Authorization of Certain Future Transactions under section 203 of the Federal Power Act and Request for Waivers and Expedited Action for blanket authorization of indirect dispositions of FERC-jurisdictional facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, 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 November 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22833 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-14-000]

El Paso Natural Gas Company; Notice of Application

November 15, 2007.

Take notice that on November 1, 2007, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP08-14-000, 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 delivery lateral and compression facilities near the Town of Hobbs in Lea County, New Mexico, permission to abandon in place a segment of pipeline in Lea County, New Mexico, and authorization to undertake pipeline and station modifications at facilities located in Lea County, New Mexico and Winkler County, Texas.

Specifically, El Paso proposes to: (1) Install a 3,550 horsepower gas-driven reciprocating jumper compressor at its existing Eunice "C" Station in Lea County, New Mexico; (2) construct and operate the 7.3 mile, 20-inch diameter Hobbs Lateral extending from its existing Monument Station to an interconnection with the header system of MarkWest New Mexico, L.P. (MarkWest), all in Lea County, New Mexico; and (3) make various pipeline and station modifications to its system in Lea County, New Mexico and Winkler County, Texas to modify the flow of its system in that area. El Paso states that the proposed facilities will allow it to transport 150,000 Dth per day to MarkWest for ultimate delivery to the SPS Hobbs Power Plant. El Paso estimates that the proposed facilities will cost \$16.9 million.

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 L. 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: December 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22801 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG07-75-000, EG07-76-000, EG07-77-000 EG07-78-000, EG07-79-000]

FH Opco LLC, Logan Wind Energy, LLC, Airtricity Champion Wind Farm, LLC, Airtricity Roscoe Wind Farm, LLC, NRG Texas Power LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

November 14, 2007.

Take notice that during the month of October 2007, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22825 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07-32-003]

Gulf South Pipeline Company, LP; Notice of Amendment

November 14, 2007.

Take notice that on October 31, 2007, Gulf South Pipeline Company, LP (Gulf South), filed in Docket No. CP07-32-003, an application pursuant to section 7(c) of the Natural Gas Act (NGA) to amend the September 28, 2007 Commission Order (120 FERC ¶ 61,291 (2007)) issuing Gulf South a certificate to construct and operate its Southeast Expansion Project. Specifically, to support the authorized Southeast Expansion Project services, Gulf South states that due to changing market conditions, it has identified that additional operational efficiencies could be gained by facility modifications, and is now proposing the construction of two smaller sized compressor units at the new Delhi Compressor Station, rather than the four larger units authorized in the September 28 Order, all as more fully set forth in the application which 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.

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.

Any questions regarding the application should be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Houston, Texas 77046; or fax to 713-479-1846; or e-mail to kyle.stephens@bwpmlp.com.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on December 5, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22830 Filed 11-21-07; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-16-000]

Hardy Storage Company, LLC; Notice of Application

November 14, 2007.

Take notice that on November 2, 2007 Hardy Storage Company, LLC (Hardy), and Hampshire Gas Company (Hampshire), filed with the Federal Energy Regulatory Commission (Commission) applications under section 7(b) and (c) of the Natural Gas Act seeking authorization related to the restructuring of a historical lease arrangement whereby Hardy's

predecessor to the lease arrangement, Columbia Gas Transmission Corporation provided certain transportation to Hampshire, all as more fully described in the application.

This 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.

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.

Any questions regarding this application should be directed to counsel for Hardy, Fredric J. George, P.O. Box 1273, Charleston, West Virginia 25325-1273; telephone 304-357-2359, fax 304-357-3206.

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, before the comment date of this notice, 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.

Comment Date: December 5, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22823 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07-15-003]

Ontelaunee Power Operating Company, LLC v. Metropolitan Edison Company; Notice of Filing

November 15, 2007.

Take notice that on November 5, 2007, Metropolitan Edison Company filed a compliance filing pursuant to the Commission's "Order Approving Uncontested Settlement," 121 FERC ¶ 61,017, issued October 4, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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 November 26, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22802 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P-2157-000]

Public Utility District No. 1 of Snohomish County, WA and the City of Everett; Henry M. Jackson Hydroelectric Project; Notice of Filing of Joint Petition for Declaratory Order

November 15, 2007.

Take notice that on November 1, 2007, The City of Everett, Washington (City) and Public Utility District No. 1 of Snohomish County, Washington (PUD) filed a joint petition for declaratory order requesting the Commission to issue an order finding that the City need not be named a co-applicant for a new license to operate the Henry M. Jackson Hydroelectric Project after its current license expires in 2011.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 3, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22800 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08-6-000]

Sierra Pacific Power Company and Nevada Power Company; Notice of Institution of Proceeding and Refund Effective Date

November 14, 2007.

On November 13, 2007, the Commission issued an order that instituted a proceeding in the above-referenced docket, pursuant to Section 206 of the Federal Power Act (FPA) 16 U.S.C. 824e, concerning the justness and reasonableness of Sierra Pacific Power Company's and Nevada Power Company's rates, as discussed in the November 13, 2007 Order. *Sierra Pacific Power Company and Nevada Power Company*, 121 FERC ¶ 61,160 (2007).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA,

will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22826 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08-9-000]

Cargill Power Markets, LLC, Complainant, v. Southwest Power Pool, Inc., Respondent; Notice of Complaint

November 15, 2007.

Take notice that on November 9, 2007, Cargill Power Markets, LLC (CPM) filed a formal complaint against Southwest Power Pool, Inc. (SPP), alleging that SPP processed a queue of requests for long-term firm point-to-point transmission service in a manner that violated FERC policy and SPP's open access transmission tariff.

CPM certifies that copies of the complaint were served on the contacts for SPP as listed on the Commission's Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on November 29, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22803 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

November 14, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07-1109-001.
Applicants: American Electric Power Service Corp.

Description: American Electric Power Corp on behalf of Ohio Power Co *et. al.*, submits a Stipulation and Agreement with attachments etc.

Filed Date: 10/15/2007.
Accession Number: 20071017-0106.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 21, 2007.

Docket Numbers: ER02-305-006.
Applicants: Condon Wind Power, LLC.

Description: Condon Wind Power, LLC submits a notice of non-material change in status in accordance with Order 652.

Filed Date: 11/09/2007.
Accession Number: 20071114-0083.
Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER07-1019-002; ER07-1020-002; ER07-1021-002.
Applicants: Niagara Mohawk Power Corporation.

Description: Refund Report of Niagara Mohawk Power Corporation in Compliance with October 30, 2007 Order.

Filed Date: 11/14/2007.
Accession Number: 20071114-5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 5, 2007.

Docket Numbers: ER07-1386-002.
Applicants: Tatanka Wind Power, LLC.

Description: Tatanka Wind Power LLC amends an application to replace the pivotal supplier screen and market share screen currently set forth in section III.A of the 9/17/07 application with screens as Attachment A etc.

Filed Date: 11/08/2007.

Accession Number: 20071113-0003.

Comment Date: 5 p.m. Eastern Time on Friday, November 23, 2007.

Docket Numbers: ER08-107-000.

Applicants: FirstEnergy Generation Mansfield Unit 1.

Description: FirstEnergy Generation Mansfield Unit 1 Corp submits application for order granting market based rate authority, accepting market-based rate tariff etc.

Filed Date: 10/26/2007.

Accession Number: 20071114-0177.

Comment Date: 5 p.m. Eastern Time on Monday, November 26, 2007.

Docket Numbers: ER08-197-000.

Applicants: FPL Energy Oliver Wind II, LLC.

Description: FPL Energy Oliver Wind II, LLC submits their request for authorization to sell energy and capacity at market-based rates, and waiver of the 60-day notice requirement.

Filed Date: 11/08/2007.

Accession Number: 20071113-0004.

Comment Date: 5 p.m. Eastern Time on Thursday, November 29, 2007.

Docket Numbers: ER08-198-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits an annual adjustment to a transmission service rate under the Interconnection Agreement with Sacramento Municipal Utility District.

Filed Date: 11/09/2007.

Accession Number: 20071113-0005.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Director.

[FR Doc. E7-22796 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 15, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08-13-000.

Applicants: Progress Energy Service Company LLC.

Description: Application of Carolina Power & Light Co *et al.* for an order authorizing the issuance and selling of short term debt securities having a maturity of not more than one year.

Filed Date: 11/13/2007.

Accession Number: 20071115-0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99-2984-008.

Applicants: Green County Energy, LLC.

Description: Green County Energy, LLC submits a notice of non-material change in status.

Filed Date: 11/09/2007.

Accession Number: 20071114-0092.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER00-1780-007; ER00-840-007; ER01-137-005; ER01-2641-011; ER01-2690-009; ER01-389-007; ER01-557-010; ER01-558-010; ER01-559-010; ER01-560-010; ER01-596-005; ER02-1942-006; ER02-24-009; ER02-25-008; ER02-2509-006; ER02-26-008; ER02-77-009; ER02-963-008; ER05-524-003; ER94-389-027; ER98-1767-010; ER99-2992-007; ER99-3165-007; ER99-415-014.

Applicants: TEXAS ELECTRIC MARKETING, LLC; Tenaska Alabama Partners, L.P.; Tenaska Alabama II Partners, L.P.; High Desert Power Project, LLC; California Electric Marketing, LLC; Calumet Energy Team, LLC; University Park Energy, LLC; Holland Energy, LLC; Wolf Hills Energy, LLC; Big Sandy Peaker Plant, LLC; ALABAMA ELECTRIC MARKETING, LLC; Tenaska Virginia Partners, LP; Armstrong Energy LLLP; Troy Energy, LLC; Kiowa Power Partners, LLC; Pleasants Energy LLC; New Mexico Electric Marketing, LLC; Crete Energy Venture, LLC; Lincoln Generating Facility, LLC; Tenaska Power Services Co.; Tenaska Frontier Partners, Ltd.; TENASKA GATEWAY PARTNERS LTD; TENASKA GEORGIA PARTNERS LP; Commonwealth Chesapeake Company LLC.

Description: Tenaska Energy, Inc *et al.* submits notification of change in status in connection with their recent acquisition of indirect control over Lincoln Generating Facility, LLC and Crete Energy Venture, LLC.

Filed Date: 11/13/2007.

Accession Number: 20071115-0058.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER01-2742-006; ER02-1695-004; ER02-2309-003;

Applicants: Rock River I, LLC; Cabazon Wind Partners, LLC; Whitewater Hill Wind Partners LLC;

Description: Cabazon Wind Partners, LLC *et al.* submits a notice of non-material change in status, in compliance with the reporting requirements in Order 652.

Filed Date: 11/09/2007.

Accession Number: 20071114-0082.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER02-1437-004; ER02-1785-012;

Applicants: Triton Power Michigan LLC; Thermo Cogeneration Partnership LP.

Description: Triton Power Michigan LLC *et al.* submits a notice of non-material change in status in compliance.

Filed Date: 11/09/2007.

Accession Number: 20071114-0091.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER03-719-007; ER03-720-007; ER03-721-007;

Applicants: New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC.

Description: New Athens Generating Company *et al.* submits Notice of Non-material Change in Status and Substitute First Revised Sheet 1 *et al.* to provide an effective date of 9/18/07 which coincides with Order 697.

Filed Date: 11/13/2007.

Accession Number: 20071115-0111.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER07-1285-001.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp dba National Grid submits an informational response to FERC's 10/3/07 letter to provide additional information.

Filed Date: 11/09/2007.

Accession Number: 20071114-0089.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER07-1335-001.

Applicants: Santa Rosa Energy LLC

Description: Notice of non-material change in status re Santa Rosa Energy Center, LLC.

Filed Date: 11/09/2007.

Accession Number: 20071114-0080.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER07-1421-001; ER07-1422-001.

Applicants: PJM Interconnection, L.L.C.

Description: Virginia Electric and Power Company dba Dominion Virginia Power amends its 9/28/07 filing in the proceeding by updating Attachment H-16D to the Open Access Transmission Tariff administered by PJM.

Filed Date: 11/13/2007.

Accession Number: 20071115-0120.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-14-001.

Applicants: Alpha Domestic Power Trading, L.L.C.

Description: Alpha Domestic Power Trading, LLC submits Substitute Original Sheet 1 to FERC Electric Tariff, Original Volume 1.

Filed Date: 11/14/2007.

Accession Number: 20071115-0116.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 5, 2007.

Docket Numbers: ER08-110-001.

Applicants: Starwood Power-Midway, LLC.

Description: Starwood Power-Midway LLC submits additional detailed information concerning its generation market power screens, a clean and redline version of Page 2 of the proposed Tariff *et al.* submitted on 10/29/07.

Filed Date: 11/13/2007.

Accession Number: 20071115-0112.

Comment Date: 5 p.m. Eastern Time on Friday, November 23, 2007.

Docket Numbers: ER08-125-001; ER08-125-002.

Applicants: Luminant Energy Company LLC.

Description: Notice of Change in Status Pursuant to Order Nos. 652 and 697 and Submission of Revised Rate Schedule Sheets of Luminant Energy Company LLC.

Filed Date: 11/09/2007.

Accession Number: 20071109-5091.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-191-001.

Applicants: Aquila, Inc.

Description: Aquila, Inc submits a supplement to the 11/6/07 filing of an Amended and Restated Coordinating Agreement.

Filed Date: 11/13/2007.

Accession Number: 20071114-0079.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-198-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits an annual adjustment to a transmission service rate under the Interconnection Agreement with Sacramento Municipal Utility District.

Filed Date: 11/09/2007.

Accession Number: 20071113-0005.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-199-000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits various revisions to FCM Rules.

Filed Date: 11/09/2007.

Accession Number: 20071114-0088.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-200-000.

Applicants: Waterbury Generation, LLC.

Description: Waterbury Generation, LLC submits an application for Order accepting Market-Based Rate Tariff for filing and granting Waivers and Blanket Approvals.

Filed Date: 11/09/2007.

Accession Number: 20071114-0087.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-201-000.

Applicants: Cogentrix Virginia Leasing Corporation.

Description: Petition of Cogentrix Virginia Leasing Corp for Order accepting Market-Based Rate Tariff for filing and granting Waivers and Blanket Approvals etc.

Filed Date: 11/09/2007.

Accession Number: 20071114-0086.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-202-000.

Applicants: James River Cogeneration Company.

Description: Petition of James River Cogeneration Co. for Order accepting Market-Based Rate Tariff for filing and granting Waivers and Blanket Approvals.

Filed Date: 11/09/2007.

Accession Number: 20071114-0085.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-203-000.

Applicants: Primary Energy of North Carolina LLC.

Description: Primary Energy of North Carolina LLC submits an application for Market-Based Rate Authority, Certain Waivers and Blanket Approvals etc.

Filed Date: 11/09/2007.

Accession Number: 20071114-0084.

Comment Date: 5 p.m. Eastern Time on Friday, November 30, 2007.

Docket Numbers: ER08-204-000.

Applicants: POWEREX CORP.

Description: Powerex Corp submits a Notice of Cancellation of a Certificate of Concurrence.

Filed Date: 11/13/2007.

Accession Number: 20071114-0081.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-206-000.

Applicants: FPL Energy Oliver Wind, LLC.

Description: FPL Energy Oliver Wind LLC submits Shared Facilities Agreement with FPL Energy Wind II LLC, dated 8/24/07, designated as its Rate Schedule FERC 1.

Filed Date: 11/13/2007.

Accession Number: 20071115-0119.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-207-000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator Inc. submits its proposed revisions to its Open Access Transmission and Energy Markets Tariff, to clarify that load serving entities with service obligation etc.

Filed Date: 11/13/2007.

Accession Number: 20071115-0118.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-208-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company an amended Electric Interconnection Agreement with Northwest Idaho Power Cooperative, dated 10/25/07.

Filed Date: 11/13/2007.

Accession Number: 20071115-0117.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-209-000

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits an executed Large Generator Interconnection Agreement with Prairie State Generating Co, LLC.

Filed Date: 11/13/2007.

Accession Number: 20071115-0059.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Docket Numbers: ER08-210-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits its Request for Waiver of PJM Emergency Load Response Program Rules wherein it moves for a one-time waiver of the ELRP verification rule that prohibits energy payments to participants etc.

Filed Date: 11/14/2007.

Accession Number: 20071115-0115.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 5, 2007.

Docket Numbers: ER08-211-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits an amended Letter Agreement with CPV Sentinel LLC.

Filed Date: 11/14/2007.

Accession Number: 20071115-0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 5, 2007.

Docket Numbers: ER08-212-000.

Applicants: NSTAR Electric Company.

Description: NStar Electric Company submits Amendment 1 to the Interconnection Agreement with the Town of Norwood Municipal Light Department along with a conformed copy of the Interconnect Agreement etc.

Filed Date: 11/14/2007.

Accession Number: 20071115-0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 5, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08-5-000.

Applicants: Progress Energy Service Company LLC.

Description: Application of Carolina Power & Light Co et al. for an order authorizing the issuance and selling of short term debt securities having a maturity of not more than one year.

Filed Date: 11/13/2007.

Accession Number: 20071115-0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06-1-013.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corp. in Response to the October 18, 2007 Order.

Filed Date: 11/13/2007.

Accession Number: 20071113-5148.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 4, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or

call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E7-22797 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07-398-000; CP07-401-000]

Gulf Crossing Pipeline Company, LLC; Gulf South Pipeline Company, L.P.; Notice of Public Comment Meetings for the Gulf Crossing Project; Draft Environmental Impact Statement

November 15, 2007.

On November 2, 2007, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a Draft Environmental Impact Statement (EIS) for the Gulf Crossing Project, proposed by Gulf Crossing Pipeline Company, LLC and Gulf South, L.P. Issuance of the Draft EIS began a 45-day public comment period which will end on December 24, 2007. In addition to accepting written comments on the Draft EIS, the Commission staff will be hosting public comment meetings in the project area to accept oral comments as listed in the following table.

Public meeting date and time	Location
Tuesday, November 27, 2007, 7 p.m	Rayville Recreation Center, 109 Benedette St., Rayville, LA 71269.
Wednesday, November 28, 2007, 7 p.m	Homer City Hall, 400 East Main St., Homer, LA 71040.
Thursday, November 29, 2007, 7 p.m	Atlanta High School Auditorium, 705 Rabbit Blvd., Atlanta, TX 75551.
Monday, December 3, 2007, 7 p.m	Love Civic Center, 2025 S. Collegiate Dr., Paris, TX 75460.
Tuesday, December 4, 2007, 7 p.m	Stonebridge Hotel & Suites, Large Ballroom, 3605 Highway 75 South, Sherman, TX 75090.

Comment Procedure

Instructions for submitting written comments are included in the Draft EIS and the Notice of Availability that were issued on November 2, 2007. These documents can be found on the FERC Internet website as discussed below. Oral comments presented at the public comment meetings will be given the same consideration as written comments received by mail before the close of the public comment period on December 24, 2007.

As with previous public meetings on the Gulf Crossing Project, attendees will be asked to provide their name and address so that any project-related environmental information issued by

the Commission may be mailed to all attendees. Additionally, those wishing to provide oral comments will be asked to put their name on a Speakers List. Depending on the number of individuals wishing to provide oral comments, speakers may be asked to limit their presentations to 5 minutes in order that all speakers may be accommodated. Transcripts of the public comment meetings will be prepared and placed into the FERC's public record.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>)

using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission,

such as orders, notices, and rulemakings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22804 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082-027]

PacifiCorp, Oregon and California; Notice of Availability of the Final Environmental Impact Statement for the Klamath Hydroelectric Project

November 16, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Klamath Hydroelectric Project (FERC No. 2082), located primarily on the Klamath River, in Klamath County, Oregon and Siskiyou County, California, and has prepared a Final Environmental Impact Statement (final EIS) for the project. The existing project occupies 219 acres of lands of the United States, which are administered by the U.S. Bureau of Land Management or the U.S. Bureau of Reclamation.

The final EIS contains staff evaluations of the applicant's proposal and alternatives for relicensing the Klamath Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

The final EIS will be part of the record from which the Commission will make its decision.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Internet at <http://www.ferc.gov> under the eLibrary link. Enter the docket number (P-2082) to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22832 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07-417-000]

Texas Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement and Public Comment Meeting for the Proposed Fayetteville/Greenville Expansion Project

November 16, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft Environmental Impact Statement (EIS) for the natural gas pipeline facilities proposed by Texas Gas Transmission, LLC's (Texas Gas) under the above-referenced docket. Texas Gas's Fayetteville/Greenville Expansion Project (Project) would be located in Faulkner, Cleburne, White, Woodruff, St. Francis, Lee, and Phillips Counties, Arkansas; and Coahoma, Washington, Sunflower, Humphreys, Holmes, and Attalla Counties, Mississippi.

The Draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The FERC staff concludes that the proposed Project, with the appropriate mitigation measures as recommended, would have limited adverse environmental impact.

The purpose of the Project is to add pipeline capacity to Texas Gas's existing interstate pipeline system to transport the new natural gas supplies being developed from the Fayetteville Shale gas production area in north-central Arkansas to markets in the mid-western, northeastern, and southeastern United States. Texas Gas is proposing to construct at total of about 262.6 miles of 36-inch-diameter pipeline in two separate pipeline laterals, two tie-in laterals, a compressor station, and associated ancillary facilities.

The Draft EIS addresses the potential environmental impacts resulting from the construction and operation of the following facilities:

- *Fayetteville Lateral*: 166.2 miles of 36-inch-diameter pipeline in Faulkner, Cleburne, White, Woodruff, St. Francis, Lee, and Phillips Counties, Arkansas, and Coahoma County, Mississippi;
- *Greenville Lateral*: 96.4 miles of 36-inch-diameter pipeline in Washington, Sunflower, Humphreys, Holmes, and Attalla Counties, Mississippi;
- *36-inch tie-in lateral*: 0.8 mile of 36-inch-diameter pipeline in Attalla County, Mississippi;
- *20-inch tie-in lateral*: 0.4 mile of 20-inch-diameter pipeline in Attalla County, Mississippi;

- the 10,650 horsepower Kosciusko Compressor Station in Attalla County, Mississippi;

- twenty-nine metering and regulating stations; and

- three pig launchers and three pig receivers.

The entire project would be capable of transporting about 841,000 million British thermal units per day (Btu/d) of natural gas on the Fayetteville Lateral and about 768,000 MMBtu/d on the Greenville Lateral. Texas Gas proposes to construct the pipeline facilities in two phases. Phase I would include construction of the first 66 miles of the Fayetteville Lateral and related facilities from Conway County to the Bald Knob area of White County, Arkansas. Phase II would include construction of the remaining 100 miles of the Fayetteville Lateral from White County, Arkansas, to Coahoma County, Mississippi, the entire Greenville Lateral and associated tie-in laterals, and the Kosciusko Compressor Station. Texas Gas proposes beginning construction of both Phases I and II in June 2008. However, Phase I would be placed in service by August 1, 2008, and Phase II would be placed in service by January 1, 2009.

Any person wishing to comment on the Draft EIS may do so. To ensure that your comments are timely and properly recorded so that they may be considered in the Final EIS, please carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments to the attention of Gas Branch 2, DG2E;
- Reference Docket No. CP07-417-000 on the original and both copies; and
- Mail your comments so that they will be received in Washington, DC, on or before January 7, 2008.

Please note that the Commission strongly encourages electronic filing of any comments to this proceeding. Instructions on "eFiling" comments can be found on the Commission's Web site at <http://www.ferc.gov> under the "Documents and Filings" link and the link to the User's Guide. Before you can file comments, you will need to open a free account which can be created online.

In lieu of or in addition to sending written comments, we invite you to attend public comment meetings the FERC will conduct in the Project area to receive comments on the Draft EIS. FERC staff will be in attendance. The meetings will all begin at 6:30 p.m. on the following dates and locations:

December 11, 2007, Carmichael Community Center, Harry Miller Auditorium, 801 S. Elm St., Searcy, AR.

December 12, 2007, Forrest City Civic Center, 1335 N. Washington, Forrest City, AR.

December 13, 2007, Billie Professional Building, 115 Spring Street, Lexington, MS.

The public comment meetings will be posted on the FERC's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx>. Interested groups and individuals are encouraged to attend and present oral comments on the Draft EIS. Transcripts of the meetings will be prepared. This notice is being mailed to parties who are on the mail list for the Draft EIS.

After the comments received are reviewed, any significant new issues are investigated, and modifications are made to the Draft EIS, a Final EIS will be published and distributed by the FERC staff. The Final EIS will contain the staff's responses to timely comments received on the Draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Anyone may intervene in this proceeding based on this Draft EIS. You must file your request to intervene as specified above.¹ You do not need intervenor status to have your comments considered.

The Draft EIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

A limited number of copies of the Draft EIS are available from the Public Reference Room identified above. In addition, CD copies of the Draft EIS have been mailed to affected landowners; various Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; intervenors; and other individuals that expressed an interest in the proposed Project. Hard copies of the Draft EIS have also been mailed to those who requested that format during the scoping

and comment periods for the proposed Project.

Additional information about the proposed Project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>).

To access information via the FERC Web site click on the "eLibrary" link then click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. The "eLibrary" link provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. For assistance with "eLibrary," please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659.

In addition, the Commission now offers a free service called eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to these documents. To learn more about eSubscription and to sign up for this service please go to <http://www.ferc.gov/esubscribenow.htm>.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22839 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662-009; Project No. 12968-000]

FirstLight Hydro Generating Company; City of Norwich Department of Public Utilities; Notice of Intent To File Competing License Applications, Filing of Pre-Application Documents (PADs), Commencement of Licensing Proceeding, Scoping, Solicitation of Study Requests and Comments on the PADs and Scoping Document

November 14, 2007.

a. *Type of Filing:* Notices of Intent to File Competing License Applications for a New License and Commencing Licensing Proceeding.

b. *Project Nos.:* 2662-009 & 12968-000.

c. *Date Filed:* August 30, 2007.

d. *Submitted By:* Existing licensee—FirstLight Hydro Generating Company

(FirstLight); and Competitor—City of Norwich Department of Public Utilities (Norwich Public Utilities).

e. *Name of Project:* Scotland Hydroelectric Project.

f. *Location:* On the Shetucket River, in Windham County, Connecticut. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicants' Contacts:*

For Project No. 2662: John Whitfield, Senior Project Engineer, FirstLight Hydro Generating Company, 20 Church Street, Hartford, CT 06103.

For Project No. 12968: John F. Bilda, General Manager, Norwich Public Utilities, 16 South Golden Street, Norwich, CT 06360.

i. *FERC Contact:* Sarah Florentino at (202) 502-6863 or e-mail at sarah.florentino@ferc.gov.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in the paragraphs below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. By letters dated September 17, 2007, we designated FirstLight and Norwich Public Utilities as the Commission's nonfederal representatives for carrying out informal consultation pursuant to section 106 of the National Historic Preservation Act.

m. FirstLight and Norwich Public Utilities both filed Pre-Application Documents (PADs; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of both PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

in the docket number field to access the documents. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Copies are also available for inspection and reproduction at the addresses in paragraph h.

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the applicants' PADs and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PADs and SD1, and study requests should be sent to the addresses above in paragraph h. In addition, all comments on the PADs and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential applications (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include, on the first page, the project name (Scotland Hydroelectric Project) and number ("P-2662-009" for FirstLight, and/or "P-12968-000" for Norwich Public Utilities), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PADs or SD1, and any agency requesting cooperating status must do so by December 31, 2007.

Comments on the PADs and SD1, study requests, requests for cooperating agency status, and other permissible forms of communication with the Commission or its staff 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 (<http://www.ferc.gov>) under the "e-filing" link. The Commission strongly encourages electronic filings.

p. At this time, Commission staff intends to prepare an environmental assessment (EA), in accordance with the National Environmental Policy Act (NEPA). The meetings outlined below will satisfy the scoping requirements of NEPA.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The evening meeting is primarily for receiving input from the public, while the daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting:

Date: Monday, November 19, 2007.

Time: 7 p.m.

Location: Windham High School, 355 High Street, Willimantic, CT 06226, Phone: (860) 465-2480.

Daytime Scoping Meeting:

Date: Tuesday, November 20, 2007.

Time: 8 a.m.

Location: Windham Town Hall, 979 Main Street, Willimantic, CT 06226, Phone: (860) 465-3000.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list on October 30, 2007. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 will include any revisions to the list of issues outlined in SD1 that are identified during the scoping process, and may include a revised process plan and schedule.

Site Visit

The potential applicants and Commission staff will conduct a site visit of the project on Monday, November 19, 2007, starting at 1p.m. All participants should meet at the Scotland Project dam, located on Station Road, Windham, CT, 06280. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Ms. Rosemary Plue at (860) 350-3607.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3)

review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PADs in preparation for the scoping meetings. Instructions on how to obtain copies of the PADs and SD1 are included in item n, above.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22822 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12939-000]

FFP Project 52, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 14, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-12939-000.

c. *Date Filed:* August 6, 2007.

d. *Applicant:* FFP Project 52, LLC.

e. *Name of the Project:* Gale Light Project.

f. *Location:* The project would be located on the Mississippi River in Scott and Cape Girardeau Counties, Missouri and Alexander County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicants Contact:* Mr. Dan Irvin, FFP Project 52, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact*: Patricia W. Gillis, (202) 502-8735.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12939-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) 1700 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 34-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 148.92-gigawatt-hours and be sold to a local utility.

l. *Location of Application*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a

proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

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.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22827 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 12940-000]****FFP Project 51, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests**

November 14, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: P-12940-000.

c. *Date Filed*: August 6, 2007.

d. *Applicant*: FFP Project 51 LLC.

e. *Name of the Project*: Greenfield Bend Project.

f. *Location*: The project would be located on the Mississippi River in Mississippi County, Missouri and Alexander County, Illinois. The project uses no dam or impoundment.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicants Contact*: Mr. Dan Irvin, FFP Project 51, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact*: Patricia W. Gillis, (202) 502-8735.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12940-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1)

4100 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 82-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 359.16-gigawatt-hours and be sold to a local utility.

l. *Location of Application*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

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.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent,

competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22828 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12941-000]

FFP Project 50, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 14, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: P-12941-000.

c. *Date Filed*: August 6, 2007.

d. *Applicant*: FFP Project 50 LLC.

e. *Name of the Project*: Wickliffe Project.

f. *Location*: The project would be located on the Mississippi River in Mississippi County, Missouri and Ballard County, Kentucky. The project uses no dam or impoundment.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicants Contact*: Mr. Dan Irvin, FFP Project 50, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact*: Patricia W. Gillis, (202) 502-8735.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12941-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenor filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) 1450 proposed 20-kilowatt Free Flow generating units having a total installed capacity of 29-megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an average annual generation of 127.02-gigawatt-hours and be sold to a local utility.

l. *Location of Application*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

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.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title “COMMENTS”, “NOTICE OF INTENT TO FILE COMPETING APPLICATION”, “COMPETING APPLICATION”, “PROTEST”, and “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission’s regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–22829 Filed 11–21–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12896–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 16, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Preliminary Permit.
- b. *Project No.*: 12896–000.
- c. *Date filed*: July 30, 2007.
- d. *Applicant*: BPUS Generation Development, LLC.
- e. *Name of Project*: Mississippi Lock & Dam No. 15 Hydroelectric Project.

f. *Location*: Mississippi River in Rock Island County, Illinois, and Scott County, Iowa. It would use the U.S. Army Corps of Engineers’ Mississippi Lock & Dam No. 15.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact*: Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P–12896–000) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers’ Mississippi Lock & Dam No. 15 and operated in a run-of-river mode would consist of: (1) A new 245-foot long, 160-foot wide, 60-foot high concrete powerhouse; (2) a new intake channel and tailrace channel in two existing gates on the northwest side of the river opposite the existing lock structure; (3) six turbine/generator units with a combined installed capacity of 31 megawatts; (4) a new 26,400-foot long above ground transmission line extending from the switchyard near the powerhouse to an interconnection point with an existing transmission line north of the powerhouse on the Iowa side of the river; and (5) appurtenant facilities. The proposed Mississippi Lock & Dam No. 15 Project would have an average annual generation of 172 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis,

preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22834 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12897-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 16, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12897-000.

c. *Date Filed*: July 30, 2007.

d. *Applicant*: BPUS Generation Development, LLC.

e. *Name of Project*: Tionesta Dam Hydroelectric Project.

f. *Location*: Tionesta Creek in Forest County, Pennsylvania. It would use the U.S. Army Corps of Engineers' Tionesta Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Jeffrey M. Ausser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact*: Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12897-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army

Corps of Engineers' Tionesta Dam and operated in a run-of-river mode would consist of: (1) A new 100-foot long, 100-foot wide, 50-foot high concrete powerhouse adjacent to the existing stilling basin; (2) a new 125-foot long steel liner in the downstream end of the Corps' 19-foot diameter concrete outlet tunnel and a bifurcating steel fabrication in the outlet (one side of the bifurcating outlet would be a 40-foot long, 12-foot diameter steel penstock leading to the powerhouse and the other side would be equipped with a suitable gate or valve for project bypass); (3) two turbine/generator units with a combined installed capacity of 5.3 megawatts; (4) a new 9,800-foot long above ground transmission line extending from the switchyard near the powerhouse to a transmission connection at an existing substation that serves the town of Tionesta; and (5) appurtenant facilities. The proposed Tionesta Dam Project would have an average annual generation of 23.2 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development

application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and

Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22835 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12898-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 16, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12898-000.

c. *Date filed:* July 30, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Mississippi Lock & Dam No. 16 Hydroelectric Project.

f. *Location:* Mississippi River in Rock Island County, Illinois, and Muscatine County, Iowa. It would use the U.S. Army Corps of Engineers' Mississippi Lock & Dam No. 16.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Ausser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact:* Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12898-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Mississippi Lock & Dam No. 16 and operated in a run-of-river mode would consist of: (1) A new 205-foot long, 160-foot wide, 60-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the north side of the river opposite the existing lock structure; (3) five turbine/generator units with a combined installed capacity of 13.75 megawatts; (4) a new 8,200-foot long aboveground transmission line extending from the switchyard near the powerhouse to an interconnection point with an existing 69-kilovolt transmission line at the Highway 92 bridge on the Iowa side of the river; and (5) appurtenant facilities. The proposed Mississippi Lock & Dam No. 16 Project would have an average annual generation of 92 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail Ferconlinesupport@Ferc.Gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the

specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22836 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12900-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 16, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12900-000.

c. Date filed: July 30, 2007.

d. Applicant: BPUS Generation Development, LLC.

e. Name of Project: Hildebrand Lock & Dam Hydroelectric Project.

f. Location: Monongahela River in Monongalia County, West Virginia. It would use the U.S. Army Corps of Engineers' Hildebrand Lock & Dam.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. FERC Contact: Robert Bell, (202) 502-4126.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

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. 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. The Commission strongly encourages electronic filings. Please include the project number (P-12900-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project using the U.S. Army Corps of Engineers' Hildebrand Lock & Dam and operated in a run-of-river mode would consist of: (1) A new 60-foot long, 110-foot wide, 40-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the north side of the river opposite the existing lock structure; (3) two turbine/generator units with a combined installed capacity of 10 megawatts; (4) a new 1,600-foot long above ground transmission line extending from the switchyard near the powerhouse to an interconnection point with an existing transmission line located upstream of the powerhouse; and (5) appurtenant facilities. The proposed Hildebrand Lock & Dam Project would have an average annual generation of 40 gigawatt-hours.

1. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail

Ferconlinesupport@Ferc.Gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these

studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-22837 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12901-000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 16, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12901-000.

c. *Date Filed*: July 30, 2007.

d. *Applicant*: BPUS Generation Development, LLC.

e. *Name of Project*: Allegheny Lock & Dam No. 7 Hydroelectric Project.

f. *Location*: Allegheny River in Armstrong County, Pennsylvania. It would use the U.S. Army Corps of Engineers' Allegheny Lock & Dam No. 7.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413-2700.

i. *FERC Contact*: Robert Bell, (202) 502-4126.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: 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; 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. Please include the project number (P-12901-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army

Corps of Engineers' Allegheny Lock & Dam No. 7 and operated in a run-of-river mode would consist of: (1) A new 125-foot long, 160-foot wide, 60-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the eastern side of the river; (3) three turbine/generator units with a combined installed capacity of 16.5 megawatts; (4) a new 12,000-foot long above ground transmission line extending from the switchyard near the powerhouse to a connection at a substation located south of the powerhouse on the Kittanning side of the river; and (5) appurtenant facilities. The proposed Allegheny Lock & Dam No. 7 Project would have an average annual generation of 89 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail ferconlinesupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-22838 Filed 11-21-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6693-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070377, ERP No. D-COE-E39070-TN, Center Hill Dam and Lake Project, Changes to Operational Guide Curves Pool Elevations, Chancey Fork River and Cumberland River, Dekalb County, TN.

Summary: EPA expressed environmental concerns about impacts to water quantity and impacts related to dam releases, and also requested additional dam failure risk assessment information.

Rating EC2.

EIS No. 20070396, ERP No. D-AFS-L65542-ID, Cherry Dinner Project, Management of Vegetation, Hazardous Fuels, and Access Plus Watershed Improvements, Amendment to the Forest Plan, Palouse Ranger District, Clearwater National Forest, Latah County, ID.

Summary: EPA expressed environmental concerns about water quality impacts within streams and creeks that are already on the state of Idaho's current 303(d) list due to temperature and sediment load exceedances.

Rating EC2.

EIS No. 20070445, ERP No. D-USN-E11063-00, Shock Trail of the MESA VERDE (LPD 19), San Antonio (LPD 17) Class Ship designated as the Shock Ship for Proposed Shock Trail, Possible Offshore Locations are Naval Station Norfolk, VA; Naval Station Mayport, FL; and Naval Air Station Pensacola, FL.

Summary: EPA expressed environmental concerns about impacts to avian and marine species.

Rating EC1.

EIS No. 20070364, ERP No. DS-COE-E01013-FL, Rock Mining in the Lake Belt Region Plan, Continuance of Limestone Mining Construction, section 404 Permit, Miami-Dade County, FL.

Summary: EPA expressed environmental concerns about water quality, wetland and mining-related seepage impacts, and requested additional mitigation and monitoring measures.

Rating EC2.

Dated: November 19, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-22851 Filed 11-21-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6693-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>

Weekly receipt of Environmental Impact Statements

Filed 11/12/2007 through 11/16/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070495, Final Supplement, APH, 00, Importation of Solid Wood Packing Material, To Reevaluate and Refine Estimates of Methyl Bromide Usage in the Treatment, Implementation, United States. Wait Period Ends: 12/24/2007. Contact: David A. Bergston, 301-734-6103.

EIS No. 20070496, Draft EIS, FRC, 00, Fayetteville/Greenville Expansion Project, Construction and Operation of the Natural Gas Pipeline Facilities in Arkansas and Mississippi. Comment Period Ends: 01/07/2008. Contact: Andy Black, 1-866-208-3372.

EIS No. 20070497, Draft EIS, FAA, CA, Horizon Air Service to Mammoth Yosemite Airport Project, Proposed Operations Specifications

Amendment to Provide Scheduled Air Service, Town of Mammoth Lakes, Mono County, CA. Comment Period Ends: 01/11/2008. Contact: Chuck Cox, 425-227-2243.

EIS No. 20070498, Draft EIS, FHW, UT, I-15 Corridor Project, Transportation Improvement from Utah County to Salt Lake County, UT. Comment Period Ends: 01/11/2008. Contact: Carlos Machado, 801-963-0182.

EIS No. 20070499, Final EIS, FRC, 00, Klamath Hydroelectric Project, Continued Operation for Hydropower License FERC No. 2082-27, Klamath River, Klamath County, OR and Siskiyou County, CA. Wait Period Ends: 12/24/2007. Contact: John Mudre, 202-502-8902.

Amended Notices

EIS No. 20070409, Draft EIS, AFS, MT, Beartooth Ranger District Travel Management Planning, Proposing to Designate Routes for Public Motorized Use, and Change Management of Pack and Saddle Stock on Certain Trail, Beartooth Ranger District, Custer National Forest, Carbon, Stillwater, Sweet Grass, and Park Counties, MT. Comment Period Ends: 12/19/2007. Contact: Doug Epperly, 406-657-6205 Ext 225. Revision for FR Notice Published 10/05/2007: Extending Comment Period from 11/19/2007 to 12/19/2007.

EIS No. 20070478, Final EIS, AFS, AK, Helicopter Access to Conduct Forest Inventory and Analysis (FIA) in Wilderness, in Tongas and Kedgwick National Forest, AK. Wait Period Ends: 12/24/2007. Contact: Ken Post, 907-586-8796. Review to FR Notice Published 11/09/2007: Extending Wait Period from 12/10/2007 to 12/24/2007 and Correction to Title.

Dated: November 19, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-22852 Filed 11-21-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2007-1080; FRL-8341-3]

Endocrine Disruptor Screening Program; Workshop to Discuss Draft Policies and Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is convening a 1-day public workshop to discuss the

Agency's draft administrative policies and procedures for completing the initial screening and testing under EPA's Endocrine Disruptor Screening Program (EDSP) and the burden and cost estimates for the related information collection activities. In two forthcoming notices in the **Federal Register**, EPA will announce the availability for public review and comment of: (1) The draft policies and procedures EPA is considering adopting for conducting the initial screening and testing under the EDSP and (2) the draft Information Collection Request (ICR) for the initial screening and testing. The purpose of the public workshop is to allow the public to ask questions and for EPA to provide further explanation about these aspects of the EDSP, which in turn may facilitate the preparation of comments.

DATES: The meeting is on Monday, December 17, 2007, from 9 a.m. to 5 p.m.

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** 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 the Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: William Wooge, Office of Science Coordination and Policy (OSCP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 546-8476; e-mail address: wooge.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Who Should Attend?

You may be interested in attending this workshop if you produce, manufacture, use, or import pesticide/agricultural chemicals and other chemical substances; or if you are or may otherwise be involved in the testing of chemical substances for potential endocrine effects. To determine whether you or your business may have an interest in this workshop you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA). [21 U.S.C. 346a(p)]

II. What is the EDSP?

The EDSP was established in 1998 to carry out the mandate in section 408(p) of FFDCA [21 U.S.C. 346a et. seq.],

which directed EPA “to develop a screening program . . . to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.” If a substance is found to have an effect, FFDCA section 408(p)(6) directs the administrator to take action under available statutory authority to ensure protection of public health. That is, the ultimate purpose of the EDSP is to provide information to the Agency that will allow the Agency to evaluate the risks associated with the use of a chemical and take appropriate steps to mitigate any risks. The necessary information includes identifying any adverse effects that might result from the interaction of a substance with the endocrine system and establishing a dose-response curve. Section 1457 of the Safe Drinking Water Act (SDWA) also authorizes EPA to screen substances that may be found in sources of drinking water, and to which a substantial population may be exposed, for endocrine disruption potential. [42 U.S.C. 300j–17]

EPA currently is implementing its EDSP in three major parts that are being developed in parallel and with substantial work on each well underway. This document announces a public workshop related specifically to the third component of the EDSP (i.e., policies and procedures). The three parts are briefly summarized as follows:

1. *Assay validation.* Under FFDCA section 408(p), EPA is required to use “appropriate validated test systems and other scientifically relevant information” to determine whether substances may have estrogenic effects in humans. EPA is validating assays that are candidates for inclusion in the Tier 1 screening battery and Tier 2 tests, and will select the appropriate screening assays for the Tier 1 battery based on the validation data. Validation is defined as the process by which the reliability and relevance of test methods are evaluated for the purpose of supporting a specific use. The status of each assay can be viewed on the EDSP website in the Assay Status table: <http://www.epa.gov/scipoly/oscpendo/pubs/assayvalidation/status.htm>. In addition, on July 13, 2007, EPA published a **Federal Register** document that outlined the approach EPA intends to take for conducting the peer reviews of the Tier 1 screening assays and Tier 2 testing assays and EPA’s approach for conducting the peer review of the Tier 1 battery (72 FR 38577) (FRL–8138–4). EPA also announced the availability of a “list server” (Listserv) that will allow

interested parties to sign up to receive e-mail notifications of EDSP peer review updates, including information on the availability of peer review materials to be posted on the EDSP website.

2. *Priority setting.* EPA described its priority setting approach to select pesticide chemicals for initial screening on September 27, 2005 (70 FR 567449) (FRL–7716–9), and announced the draft list of initial pesticide active ingredients and pesticide inerts to be considered for screening under FFDCA on June 18, 2007 (72 FR 33486) (FRL–8129–3). The Agency expects to finalize this initial list of chemicals before screening is initiated in 2008. More information on EPA’s priority setting approach and the draft list of chemicals is available at <http://www.epa.gov/scipoly/oscpendo/prioritysetting>. The first 73 pesticide chemicals to undergo screening is also referred to as “initial screening” in this document.

3. *Policies and procedures.* A forthcoming **Federal Register** document will describe EPA’s draft policies relating to:

- The procedures that EPA is considering using to issue orders.
- How joint data development, cost sharing, data compensation, and data protection would be addressed.
- Procedures that order recipients would use to respond to an order.
- Other related procedures and/or policies.

In addition, EPA has developed an ICR to obtain the necessary approval under the Paperwork Reduction Act (PRA) for the related paperwork activities. The ICR document, which describes the information collection activities and related estimated paperwork burden and costs, will also be announced for public review and comment in a forthcoming **Federal Register** document.

III. Why Hold a Workshop?

EPA is holding this workshop to facilitate the public’s comments on the draft policies and procedures that EPA is considering for conducting the initial screening and testing under the EDSP, as well as the Agency’s estimated burden and costs for the related paperwork activities. The workshop is an opportunity for the public, stakeholders and the regulated community to discuss the draft EDSP policies and procedures and the draft ICR documents that are expected to be released for public comment shortly. Although the workshop is not intended to collect oral comments, the Agency intends to consider the discussion and will be documenting the discussion for the public docket.

In addition to attending this workshop, EPA invites you to provide comments on the draft policies and procedures and the draft ICR for initial EDSP screening and testing. The **Federal Register** documents announcing their availability will include a specific list of questions on which the Agency is specifically seeking comment, along with instructions for how to submit comments on those documents. This list, along with an agenda for the workshop, will be posted on the Agency’s website and provided at the workshop. EPA will consider all comments received and EPA will announce the availability of the final versions of the policies and procedures and the ICR for the initial EDSP screening and testing in the **Federal Register**.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests, Reporting and recordkeeping.

Dated: November 16, 2007.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–22895 Filed 11–21–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–1126; FRL–8498–8]

Notice of Availability and Request for Comment on Draft Plan of Action for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico and Improving Water Quality in the Mississippi River Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA), on behalf of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force), invites public comments on the draft Gulf Hypoxia Action Plan 2008 for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico and Improving Water Quality in the Mississippi River Basin (*2008 Action Plan*). The Task Force is comprised of senior policymakers from eight Federal agencies, nine States, and two Tribal governments. The Action Plan is the result of several years of study and discussion by the members of the Task Force and many interested officials and

citizens who participated in their deliberations.

DATES: Comments must be received on or before January 4, 2008. All comments received during the formal comment period will be reviewed and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration prior to the development of the final Action Plan. Late comments will be considered as time allows. Submission of comments prior to the end of the comment period is highly encouraged.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2007-1126, by one of the following methods:

- **Web:** Visit www.regulations.gov or <http://www.epa.gov/msbasin/>. Follow the online instructions for submitting comments.
- **Mail:** U.S. Environmental Protection Agency, Docket ID No. EPA-HQ-OW-2007-1126, EPA Docket Center (EPA/DC), Water Docket, MC 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- **FedEx, UPS, or Hand Delivery:** U.S. EPA Docket Center, Attention Docket EPA-HQ-OW-2007-1126, 1301 Constitution Ave., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2007-1126. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Greg Colianni, U.S. EPA, Office of Wetlands, Oceans, and Watersheds, 1200 Pennsylvania Avenue, NW., Mail Code 4504T, Washington, DC 20460 (202) 566-1249; Internet: OW-Hypoxia@epa.gov. The draft Action Plan below, as well as related information, may be reached via the EPA Web site: at <http://www.epa.gov/msbasin/>.

SUPPLEMENTARY INFORMATION:

I. General Information

Additional Comment Information: Comments may also be submitted electronically. Comments should be sent to the following Internet address: OW-Hypoxia@epa.gov.

II. Background

In January 2001, pursuant to section 604(b) of Public Law 105-383, the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, Title VI, enacted on November 13, 1998, the Task Force published its first Action Plan, *2001 Plan of Action for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico*. The Task Force has updated this initial plan through a multiple-step reassessment which is reflected in the current draft *2008 Action Plan* and will culminate in the *2008 Action Plan*. The draft *2008 Action Plan* reflects the Task Force's efforts over the past six years to track progress, update the science, and adapt the actions to improve the effectiveness of the efforts throughout the Mississippi River Basin. Building on the *2001 Action Plan*, the plan lays out specific steps that need to be accomplished to reach the goals. It also reiterates the long-term goals and continues the Task Force's commitment to a voluntary and adaptive management approach to improve water quality in the Mississippi River Basin and reduce the size of the hypoxic zone in the northern Gulf of Mexico. This adaptive management approach involves continual feedback between the interpretation of new information and improved management actions and is the key to targeting actions within watersheds where they will be most effective.

Information about the Task Force and its reassessment can be found at the following Web site: <http://www.epa.gov/msbasin/>.

The draft *2008 Action Plan* can be viewed and downloaded by navigating to the following Web site: <http://www.epa.gov/msbasin/>.

Dated: November 19, 2007.

Benjamin Grumbles,

Assistant Administrator for Water.

[FR Doc. E7-22899 Filed 11-21-07; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meetings

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, November 29, 2007 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2008 & Item No. 2: Ex-Im Bank Advisory Committee for 2008.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Items No. 1 and No. 2 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202-565-3957).

Howard A. Schweitzer,

General Counsel.

[FR Doc. 07-5830 Filed 11-20-07; 1:46 pm]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2841]

Petition for Reconsideration of Action in Rulemaking Proceeding

November 14, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY-B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160). Oppositions

to this petition must be filed by December 10, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Improving Public Safety Communications in the 800 MHz Band (WT Docket No. 02-55).

Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels.

Amendment of Part 2 of the Commission's Rules Allocate Spectrum below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00-258).

Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service.

Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service.

Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at GHz for Use by the Mobile Satellite Service (ET Docket No. 95-18).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-22790 Filed 11-21-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Jay L. Dunlap*, Lincoln, Nebraska; to retain voting shares of New Richmond Bancorporation, Inc., and thereby indirectly retain voting shares of River Hills Bank, National Association, both of New Richmond, Ohio.

2. *Samad Yaltaghian*, Rushden, Northants, England; to acquire voting shares of New Richmond Bancorporation, Inc., and thereby indirectly acquire voting shares of River Hills Bank, National Association, both of New Richmond, Ohio.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Richard Tucker Plumstead Revocable Trust, Richard Tucker Plumstead as trustee and individually; Richard Tucker Plumstead IRA; Vicki L. Turnquist Revocable Trust, Vicki L. Turnquist as trustee and individually; Vicki L. Turnquist IRA; and Vicki L. Turnquist Simplified Employee Pension Plan*, as a group acting in concert; to retain voting shares of Private Bancorporation, Inc., and thereby indirectly retain voting shares of Private Bank Minnesota, all of Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, November 19, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-22848 Filed 11-21-07; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Klein Financial, Inc.*, Chaska, Minnesota; to acquire 100 percent of the voting shares of First Community Bank, Savage, Minnesota.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *State Bancorp Northwest*; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank Northwest, both of Spokane Valley, Washington.

Board of Governors of the Federal Reserve System, November 19, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7-22847 Filed 11-21-07; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-08-0638]

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

Follow-up Survey of Chronic Fatigue Syndrome in Georgia—New—
Coordinating Center for Infectious Diseases (CCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is planning a follow-up study of chronic fatigue syndrome (CFS) in metropolitan, urban and rural communities in Georgia. This is in response to Congressional recommendations that the Centers for Disease Control and Prevention (CDC) utilize advanced surveillance

methodologies for CFS to examine its natural history and identify risk factors and biomarkers.

In 2004, OMB approved the information collection, Survey of Chronic Fatigue Syndrome and Chronic Unwellness in Georgia, under OMB Number 0920–0638, which provided baseline information on prolonged fatiguing illness in metropolitan, urban, and rural regions in Georgia. Data from the proposed Follow-up Study of Chronic Fatigue Syndrome in Georgia will be used to describe the clinical course of CFS and evaluate behavioral and biochemical factors associated with outcome. This follow-up study will also determine access to and utilization of health care by persons with CFS and

measure direct and indirect economic burden due to the illness. As part of a control strategy, the information from this follow up study will be used in national and pilot regional provider education programs.

The proposed study continues the Georgia survey using similar methodology and data collection instruments. This follow-up study begins with a detailed telephone interview to obtain additional data on participant health status during the last twelve month period. Eligible subjects will be asked to participate in clinical evaluations. There will be no cost to respondents other than their time. The estimated total annualized burden hours are 861.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden/response (in hours)
Follow-up Study Detailed Interview	2,870	1	18/60

Dated: November 15, 2007.
Marilyn Radke,
Reports Clearance Officer, Centers for Disease Control and Prevention.
[FR Doc. E7–22808 Filed 11–21–07; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0566]

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

Use of a Reader Response Postcard for Workers Notified of Results of Epidemiologic Studies Conducted by the National Institute for Occupational Safety and Health (NIOSH)—

Reinstatement—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Section 20(a)(1), (a)(4), (a)(7)(c), and Section 22 (d), (e)(5)(7) of the Occupational Safety and Health Act (29 U.S.C. 669), has the responsibility to “conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.” NIOSH also has the responsibility to “conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health [e.g., worker notification], which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of the Act.” .

Since 1977, the National Institute for Occupational Safety and Health (NIOSH) has been developing methods and materials for the notification of subjects of its epidemiological studies. NIOSH involvement in notifying workers of past exposures relates primarily to informing surviving cohort members of the findings of retrospective

cohort studies conducted by NIOSH. Current policy within NIOSH is to notify subjects of the results of its epidemiologic studies. The extent of the notification effort depends upon the level of excess mortality or the extent of the disease or illness found in the cohort. Current notification efforts range from posting results at the facilities studied to mailing individual letter notifications to surviving cohort members and other stakeholders. The Industry-wide Studies Branch (IWSB) of NIOSH, Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), usually conducts about two or three notifications per year, which typically require individual letters mailed to cohorts ranging in size from 200–20,000 workers each. In order to assess the effectiveness of the notification materials received by the recipients and to improve future communication of risk information, the evaluation instrument proposed was developed.

The NIOSH Institute-wide Worker Notification Program routinely notifies subjects about the results of epidemiologic studies and the implications of the results. The overall purpose of the proposed project is to gain insight into the effectiveness of NIOSH worker notification in order to improve the quality and usefulness of the Institute’s worker notification activities. Researchers from the NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS)

propose to provide notified workers with a Reader Response postcard for routinely assessing notified study subjects' responses to individual letter

notification materials sent to them by NIOSH. We are requesting approval for three years. Participation is voluntary and there is no cost to respondents

except for their time. The total estimated annualized burden hours are 1,333.

ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Reader Response Card	8,000	1	10/60	1,333

Dated: November 15, 2007.

Marilyn Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-22809 Filed 11-21-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-08-07AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

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. Written comments should be received within 60 days of this notice.

Proposed Project

Pilot Project for a National Monitoring System for Major Adverse Effects of Medication Use During Pregnancy and Lactation—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection is based on the following components of the Public Health Service Act: (1) Act 42 U.S.C. 241, Section 301, which authorizes "research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man." (2) 42 U.S.C. 247b-4, Section 317 C, which authorizes the activities of the National Center on Birth Defects and Developmental Disabilities. This section was created by Public Law 106-310, also known as "the Children's Health Act of 2000." This portion of the code has also been amended by Public Law 108-154, which is also known as the "Birth Defects and Developmental Disabilities Prevention Act of 2003".

The use of a number of medications during pregnancy is known to be associated with serious adverse effects in children. However, because pregnant and lactating women are traditionally excluded from clinical trials, and because pre-marketing animal studies do not necessarily predict the experience of humans, little information is available about the safety of most prescription medications during pregnancy and lactation at the time they are marketed. Nevertheless, many women inadvertently use medications early in gestation before realizing they are pregnant, and many maternal conditions require treatment during pregnancy and breastfeeding to safeguard the health of both mother and infant. Currently, the United States does not have a comprehensive early warning system for major adverse pregnancy or infant outcomes related to medication exposures.

Teratology Information Services (TIS) utilize trained specialists to provide free phone consultation, risk assessment, and counseling about exposures during pregnancy and breastfeeding—including medications—to women and healthcare providers. Altogether, they respond to approximately 70,000–100,000 inquiries each year in the United States and Canada. Because they have direct contact with pregnant and breastfeeding women, TIS are in a unique position to monitor the adverse effects of medication exposures during pregnancy and lactation. The objective of this project is to conduct a pilot study to assess whether TIS in the United States can serve as an effective monitoring and early warning system for major adverse effects on (1) pregnancy outcomes (e.g., live birth, stillbirth, premature birth, low birth weight, etc.) and (2) maternal and infant health. The project will assess the willingness of pregnant and breastfeeding women who contact a TIS about medication exposure to participate in and complete a follow-up study; whether these women are similar in demographic characteristics to the U.S. population of child-bearing age women; the specificity and completeness of the information obtained from such a study about adverse pregnancy outcomes, and maternal and infant health; and the amount of time required to conduct the follow-up.

Within a continuous six-month period, three individual TIS will recruit all women who contact their service (up to a maximum of 250 enrollees per TIS) who have used any prescription or over-the-counter medication, vitamin, herbal, or other dietary supplement during pregnancy or while breastfeeding to participate in a follow-up study. Informed consent to participate will be obtained from each woman by telephone. For each pregnant woman who agrees to participate, the TIS will then conduct 4 telephone interviews: At enrollment; during the third trimester of pregnancy; approximately one month after delivery; and when the infant is about 3 months old. For each

breastfeeding woman who agrees to participate, the TIS will then conduct 3 telephone interviews: At enrollment; approximately one month after enrollment; and 3 months after enrollment, if the woman is still taking

medication and still breastfeeding. The interviews will assess maternal and fetal health throughout pregnancy, maternal and infant health at delivery, during the newborn and early infancy period, and while breastfeeding, and correlate these

outcomes with medication exposure during pregnancy and while breastfeeding. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Pregnancy Exposure Group	338	5	23/60	648
Lactation Exposure Group	74	4	20/60	99
Pregnancy and Lactation Exposure Group (pregnant women who subsequently breastfeed)	338	5	30/60	845
Total	750			1,592

Dated: November 14, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-22811 Filed 11-21-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2272-FN]

Medicare and Medicaid Programs; Approval of the American Osteopathic Association's Deeming Authority for Critical Access Hospitals

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

ACTION: Final notice.

SUMMARY: This notice announces our decision to approve the American Osteopathic Association (AOA) for recognition as a national accreditation program for critical access hospitals (CAHs) seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective December 28, 2007 through December 28, 2013.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786-0310. Patricia Chmielewski, (410) 786-6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a CAH provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Under this authority, the minimum requirements

that a CAH must meet to participate in Medicare are set forth in regulations at 42 CFR part 485, subpart F (Conditions of Participation: Critical Access Hospitals (CAHs)) which determine the basis and scope of CAH covered services. Conditions for Medicare payment for CAHs can be found at 42 CFR 413.70. Applicable regulations concerning provider agreements are at 42 CFR part 489 (Provider Agreements and Supplier Approval) and those pertaining to facility survey and certification are at part 488, subparts A and B.

A. Verifying Medicare Conditions of Participation

In general, we approve a CAH for participation in the Medicare program if it is participating as a hospital at the time it applies for CAH designation, and it is in compliance with parts 482 (Conditions of Participation for Hospitals) and 485, subpart F (Conditions of Participation: Critical Access Hospital (CAHs)).

For a CAH to enter into a provider agreement, a State survey agency must certify that the CAH is in compliance with the conditions or standards set forth in Section 1820 of the Social Security Act and part 485 of our regulations. Thereafter, the CAH is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. There is, however, an alternative to State compliance surveys. Certification by a nationally-recognized accreditation program can substitute for ongoing State review.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization that all applicable Medicare conditions are met or exceeded, we may "deem" those provider entities as having met the

requirements. Accreditation by an accreditation organization is voluntary and is not required for Medicare participation.

If an accreditation organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, a provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accreditation organization applying for approval of deeming authority under part 488, subpart A must provide us with reasonable assurance that the accreditation organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning re-approval of accrediting organizations are set forth at section § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accreditation organizations to reapply for continued approval of deeming authority every six years, or sooner as we determine. The American Osteopathic Association's (AOA) term of approval as a recognized accreditation program for CAHs expires December 27, 2007.

II. Deeming Applications Approval Process

Section 1865 (b) (3) (A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public

comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Proposed Notice

On July 27, 2007, we published a proposed notice (72 FR 41331) announcing the AOA's request for re-approval as a deeming organization for CAHs. In the proposed notice, we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and our regulations at § 488.4 (Application and reapplication procedures for accredited organizations), we conducted a review of the AOA application in accordance with the criteria specified by our regulation, which include, but are not limited to the following:

- An onsite administrative review of AOA's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation;
- A comparison of AOA's CAH accreditation standards to our current Medicare CAH conditions for participation; and,
- A documentation review of AOA's survey processes to:
 - Determine the composition of the survey team, surveyor qualifications, and the ability of AOA to provide continuing surveyor training;
 - Compare AOA's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;
 - Evaluate AOA's procedures for monitoring providers or suppliers found to be out of compliance with AOA program requirements. The monitoring procedures are used only when the AOA identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d);
 - Assess AOA's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner;
 - Establish AOA's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of AOA's survey process;
 - Determine the adequacy of staff and other resources;
 - Review AOA's ability to provide adequate funding for performing required surveys;

- Confirm AOA's policies with respect to whether surveys are announced or unannounced; and
- Obtain AOA's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the July 27, 2007 proposed notice (72 FR 41331) also solicited public comments regarding whether AOA's requirements met or exceeded the Medicare conditions of participation for CAHs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between the AOA's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards contained in AOA's accreditation requirements for CAHs and its survey process in AOA's Application for Renewal of Deeming Authority for CAH Facilities with the Medicare CAH conditions for participation and our State Operations Manual. Our review and evaluation of AOA's deeming application, which were conducted as described in section III of this final notice, yielded the following:

- AOA provided a list of trained surveyors that are able to provide consultative services to requesting facilities. In order to eliminate any real or perceived conflict of interest between the AOA's accreditation activities and AOA's list of surveyors able to provide consultation, AOA has formalized policies and procedures that adequately cover the conflict of interest process for surveyors that provide consultations;
- AOA has revised its complaint policies to address timeframes for addressing complaints that involve immediate jeopardy;
- AOA modified its application process for facilities undergoing a certification or recertification survey to allow fewer "black-out" dates to address CMS' concern of ensuring that surveys conducted by AOA comply with CMS' policy of unannounced surveys;
- AOA formalized a process to ensure that all surveyors are receiving an annual performance evaluation;
- AOA added standards to their CAH Manual to meet the requirements at § 485.603 rural health network, § 485.604 Personnel qualification, § 485.606 Designation and certification of CAHs, § 485.610 Status and location, and § 485.612 Compliance with hospital requirements at the time of application;

- In order to meet the requirements at § 485.616(b), AOA added language to its standards to address agreements for credentialing and quality assurance requirements for CAHs that are members of a rural health network;

- To meet the requirements at § 485.623(a), AOA revised its standard at 11.00.01 to address the requirement of adequate space for the provision of direct services;

- To meet the requirements at § 485.623(d)(7), AOA revised its standards to address alcohol based hand rubs;

- AOA revised its standards to address the supervision requirements for patients cared for by nurse practitioners, clinical nurse specialists, certified nurse midwives, and physician assistants in order to meet the requirements at § 485.631(b)(1)(v) and § 485.631(b)(1)(vi);

- In order to meet the requirements at § 485.635(a)(1), AOA added clarifying language to specify that health care services provided in the CAH are consistent with applicable State laws;

- To meet the requirements of § 485.635(a)(2), AOA added language to its standard to address the requirement that policies are developed with at least one member of a group of professional personnel that is not a member of the CAH staff;

- In order to meet the requirements of § 485.635(a)(3)(vii), AOA inserted language to address the requirements at § 483.25(i) with respect to inpatients receiving post-hospital skilled nursing facility (SNF) care;

- AOA revised its standard to include a representative sample of active and closed records in the periodic evaluation of its total program in order to meet the requirements at § 485.641(a)(1)(ii);

- AOA added language to its standards to address the requirements at § 482.30(b)(1) through § 482.30(b)(3) regarding requirements for utilization review;

- In order to meet the additional criteria in a distinct part unit of the CAH, the language addressed in the Medicare requirements § 412.25 Excluded hospital units: Common requirements and § 412.29 Excluded rehabilitation units: Additional requirements were adopted and added to AOA standards;

- AOA added additional standards to meet the eligibility requirements for CAH distinct part units found at § 485.647;

- Once AOA has implemented their revised standards, CMS will conduct a survey observation at the next available

opportunity to validate proper application of the standards.

- In order to meet the requirements of § 488.8(a)(2)(v), AOA has agreed to provide CMS with timely electronic data for effective validation and assessment of the organization's survey process; and

- To comply with the Medicare requirements of conducting unannounced certification and recertification surveys, AOA revised its survey procedures to prohibit any advance mailings of surveyor materials to the facility prior to the survey and will not permit the hospital to mail back the surveyor findings to AOA after completion of the survey.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that AOA's requirements for CAHs meet or exceed our requirements. Therefore, we approve the AOA as a national accreditation organization for CAHs that request participation in the Medicare program, effective December 28, 2007 through December 28, 2013.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare-Supplemental Medical Insurance Program)

Dated: October 11, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7-22628 Filed 11-21-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1377-N]

Medicare Program; Listening Session on Hospital-Acquired Conditions and Present on Admission Indicator Reporting, December 17, 2007

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a listening session being conducted as part of the selection of Hospital-Acquired Conditions (HAC) and implementation of Present on Admission (POA) Indicator Reporting, as authorized by section 5001(c) of the Deficit Reduction Act of 2005 (DRA). The purpose of this listening session is to solicit informal comments in preparation for the fiscal year 2009 inpatient prospective payment system (IPPS) rulemaking process. Hospitals, hospital associations, representatives of consumer purchasers, payors of health care services, and all interested parties are invited to attend and make comments in person or in writing. It will also be possible to listen to the session by teleconference. However, because of time constraints, telephone participants will not be able to make verbal comments. Informal written comments will be accepted. This meeting is open to the public, but registration is required due to limited space and security requirements to enter the meeting location. This Listening Session is being held as a joint partnership between the Centers for Medicare & Medicaid Services and Centers for Disease Control and Prevention.

DATES: *Meeting Date:* The listening session will be held on Monday, December 17, 2007 from 10 a.m. until 5 p.m., e.s.t.

Deadline for Meeting Registration and Submitting Requests for Special Accommodations: Registration must be completed no later than 5 p.m., e.s.t. on Monday, December 10, 2007. Requests for special accommodations must be received no later than 5 p.m., e.s.t. on Monday, December 10, 2007.

Deadline for Presentations and Written Comments: Written comments may be sent electronically to the address specified in the **ADDRESSES** section of this notice and must be received by 5 p.m., e.s.t. on Monday, December 31, 2007.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Registration and Special Accommodations: Persons interested in attending the meeting or listening by teleconference must register by completing the on-line registration at <http://registration.intercall.com/go/cms2>. Individuals who need special accommodations should contact Colette Shatto (410) 786-6932, or via e-mail at MFG@cms.hhs.gov.

Written Comments or Statements: Written comments may be sent by e-mail. Please e-mail comments to hacpoa@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Further information regarding the December 17, 2007 listening session will be posted on the HAC & POA section of the CMS Web site at http://www.cms.hhs.gov/HospitalAcqCond/01_Overview.asp. You may also contact Colette Shatto, MFG@cms.hhs.gov, in the Medicare Feedback Group. Press inquiries are handled through the CMS Press Office at 202-690-6145.

I. Background

On February 8, 2006, the President signed the Deficit Reduction Act of 2005 (Pub. L. 109-171) (DRA). Section 5001(c) of the DRA requires the Secretary to identify, by October 1, 2007, at least two conditions that: (1) Are high cost or high volume or both; (2) result in the assignment of a case to a DRG that has a higher payment when present as a secondary diagnosis; and (3) could reasonably have been prevented through the application of evidence-based guidelines.

For discharges occurring on or after October 1, 2008, hospitals will not receive additional payment for cases in which one of the selected conditions occurring during hospitalization was not present on admission. That is, the case would be paid as though the secondary diagnosis was not present. Section 5001(c) of the DRA provides that we can revise the list of conditions from time to time, as long as it contains at least two conditions. In addition, CMS Change Request (CR) 5499 required hospitals to begin reporting the Present On Admission (POA) indicator for all diagnoses on claims beginning October 1, 2007.

II. Listening Session Format

The December 17, 2007 listening session will begin at 10 a.m., e.s.t. with an overview of the objectives for the

session and a presentation on Hospital Acquired Conditions (HAC) and POA background. A brief overview regarding the implementation strategy for selecting the hospital-acquired conditions will then be presented. Next, a review of the conditions included in the FY 2008 hospital inpatient prospective payment systems (IPPS) final rule with comment period will be presented followed by a public comment session. There will be a lunch break from approximately 1 to 2 p.m., e.s.t. Following lunch, there will be presentations on the following: (1) The role of providers in documentation; (2) POA Indicator Reporting; and (3) HAC & POA Outreach and Education. An additional public comment period will follow the presentations. The meeting will conclude by 5 p.m., e.s.t.

III. Registration Instructions

For security reasons, any persons wishing to attend this meeting must register by the date listed in the DATES section of this notice. Persons interested in attending the meeting or listening by teleconference must register by completing the on-line registration located at <http://registration.intercall.com/go/cms2>. The on-line registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt.

Individuals may also participate in the listening session by teleconference. Registration is required as the number of call-in lines will be limited. The call-in number will be provided upon confirmation of registration.

An audio download of the listening session will be available through the CMS HAC and POA Indicator Web site at http://www.cms.hhs.gov/HospitalAcqCond/01_Overview.asp after the listening session.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. The on-site check-in for visitors will begin at 9 a.m., e.s.t. Please allow sufficient time to complete security checkpoints.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk

inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.

- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 550 registrants.

Authority: Section 5001(c) The Deficit Reduction Act (DRA) of 2005.

Dated: November 16, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 07-5801 Filed 11-21-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "Employee Building Pass File (EBP) System, System No. 09-70-3002," last published at 67 FR 40937 (June 14, 2002). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09-70-0529.

We propose to modify existing routine use number 2 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separately from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 3 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the "prior written consent" of the data subject.

Finally, we will delete the section titled "Additional Circumstances Affecting Routine Use Disclosures," that addresses "Protected Health Information (PHI)" and "small cell size." The requirement for compliance with HHS regulation "Standards for Privacy of Individually Identifiable Health Information" does not apply because this system does not collect or maintain PHI. In addition, our policy to prohibit release if there is a possibility that an individual can be identified through "small cell size" is not applicable to the data maintained in this system.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to issue and control United States Government building passes issued to all CMS employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS facilities. Information retrieved from this SOR will be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist other Federal agencies with activities related to this system; and (3) support litigation

involving the Agency. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See *Effective Dates* section for comment period.

DATES: *Effective Dates:* CMS filed a modified system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 15, 2007. To ensure that all parties have adequate time in which to comment, the modified SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2-04-27, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Marcia Levin, Security System Administrator, Emergency Management and Response Group, Office of Operations Management, CMS, Room SLL-11-28, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Ms. Levin can be reached by telephone at 410-786-7840, or via e-mail at Marcia.Levin@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of this system of records is given under Section 5 United States Code (U.S.C.) 301, 40 USCA 121(c)(2), and 41 Code of Federal Regulations (CFR) 102-74.375.

B. Collection and Maintenance of Data in the System

The system contains information on Federal employees, contractors,

consultants or grantees, Government Services Administration employees, and contract guards working in CMS's central office complex in Baltimore, Maryland, and other CMS and HHS Federal buildings. The system contains the name of the employee or other authorized individuals, social security number, identification card number, building/work location, phone number, position, title, grade, supervisor's name and telephone number.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release EBP information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of EBP. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., to issue and control United States Government building passes issued to all CMS employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS facilities.
2. Determines that:
 - a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;
 - b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and
 - c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).
3. Requires the information recipient to:

- a. Establish administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

- b. Remove or destroy at the earliest time all patient-identifiable information; and

- c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the EBP without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system.

CMS occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. CMS must be able to give a contractor, consultants, or grantees whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultants, or grantees from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To assist other Federal agencies with activities related to this system and who need to have access to the records in order to perform the activity.

The Federal Protection Service may require EBP data to enable them to assist in inquiries about an individual's

authorization to enter CMS's central office complex in Baltimore, Maryland and other CMS and HHS Federal buildings.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with another Federal agency to assist in accomplishing CMS functions relating to purposes for this SOR.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. the Agency or any component thereof; or

b. any employee of the Agency in his or her official capacity; or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. the United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but

are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: November 7, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09-70-0529

SYSTEM NAME:

"Employee Building Pass File (EBPF)," HHS/CMS/OOM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500

Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244-1850 and at various other contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Federal employees, contractors, consultants or grantees, Government Services Administration employees, and contract guards working in CMS's central office complex in Baltimore, Maryland, and other CMS and HHS Federal buildings.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name of the employee or other authorized individuals, social security number (SSN), identification card number, building/work location, phone number, position, title, grade, supervisor's name and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system of records is given under Section 5 United States Code (U.S.C.) 301, 40 USCA 121(c)(2), and 41 Code of Federal Register (CFR) 102-74.375.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to issue and control United States Government building passes issued to all CMS employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS facilities. Information retrieved from this SOR will be used to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist other Federal agencies with activities related to this system; and (3) support litigation involving the Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need

to have access to the records in order to assist CMS.

2. To assist other Federal agencies with activities related to this system and who need to have access to the records in order to perform the activity.

3. To the Department of Justice (DOJ), court or adjudicatory body when

a. the Agency or any component thereof; or

b. any employee of the Agency in his or her official capacity; or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. the United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., name or SSN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to

information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A-130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources, also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND

Director Security & Emergency Management Group, Office of Operations Management, CMS, Room SLL-11-28, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with

Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

CMS obtains information in this system from the individuals who are covered by this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7-22817 Filed 11-21-07; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Notice of Lien.

OMB No.: 0970-0153.

Description: Section 452(a)(11) of the Social Security Act requires the Secretary of Health and Human Services to promulgate a form for imposition of liens to be used by the State child support enforcement (Title IV-D) agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each State to cooperate with any other State in using the Federal form for imposition of liens in interstate child support cases. Tribal IV-D agencies are not required to use this form but may choose to do so. OMB approval of this form is expiring in January 2008 and the Administration for Children and Families is requesting an extension of this form.

Respondents: State, local or Tribal agencies administering a child support enforcement program under title IV-D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Notice of Lien	123,637	1	.25	30,909
Estimated Total Burden Hours:				30,909

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974,

Attn: Desk Officer for the Administration for Children and Families.

Dated: November 14, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-5787 Filed 11-21-07; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Annual Report (ACF-700 Report).

OMB No.: 0980-0241.

Description: The Child Care and Development Fund (CCDF) report requests annual Tribal aggregate

information on services provided through the CCDF, which is required by the CCDF Final Rule (45 FR parts 98 and 99). Tribal Lead Agencies (TLAs) are required to submit annual aggregate data appropriate to Tribal programs on children and families receiving CCDF-funded child care services. The CCDF statute and regulations also require TLAs to submit a supplemental narrative as part of the ACF-700 report. This narrative describes general child care activities and actions in the TLA's service area and is not restricted to CCDF-funded child care activities. Instead, this description is intended to address all child care available in the TLA's service area. The ACF-700 and supplemental narrative report will be included in the Secretary's report to Congress, as appropriate, and will be shared with all TLA's to inform them of CCDF-funded activities in other Tribal programs.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF-700 Report	260	1	38	9,880
Estimated Total Annual Burden Hours:				9,880.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: November 15, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07-5788 Filed 11-21-07; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225-07-8005]

Memorandum of Understanding Between the Food and Drug Administration and Duke University

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and Duke University. The purpose of this MOU is to establish the terms of collaboration between FDA and Duke, beginning with an initiative to strengthen Human Subjects Protection

by reexamining and modernizing the conduct of clinical trials to ensure that design, execution, and analysis are of optimal quality. To this end, Duke will be the convener of a Public Private Partnership, to which FDA will be a founding partner, to systematically modernize the clinical trial process.

DATES: The agreement became effective September, 22, 2007.

FOR FURTHER INFORMATION CONTACT:

Melissa Robb, Office of Critical Path Programs, Office of Scientific and Medical Programs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1516.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 16, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160-01-P

MEMORANDUM OF UNDERSTANDING
Between
THE UNITED STATES FOOD AND DRUG ADMINISTRATION
Office of Critical Path Programs
And
DUKE UNIVERSITY
DURHAM, NC

This Memorandum of Understanding (MOU) between the U.S. Food and Drug Administration (FDA) and Duke University (Duke) formalizes an agreement to develop collaborative activities in the areas of research, education, and outreach.

I. Purpose

The purpose of this MOU is to establish terms of collaboration between FDA and Duke, beginning with an initiative to reexamine the clinical trials process. To this end, Duke will be the convener of a Public Private Partnership (PPP), to which FDA will be a founding partner, to systematically modernize the clinical trial process. This initiative will add a unique aspect to the training being provided to the next generation of health care professionals at Duke, and provide FDA with a mechanism to promote one aspect of their Critical Path agenda, the modernization of clinical trials. Participants will have the opportunity to participate in a program that will focus on clinical trial quality. FDA and Duke will explore the possibilities of other collaborative activities including: sabbaticals, pre-doctoral and post-doctoral fellowships and student internships as this partnership develops.

II. Background

FDA and Duke have a shared interest in strengthening Human Subject Protection (HSP) by modernizing the conduct of clinical trials to ensure that design, execution, and analysis are of optimal quality. Duke's mission includes a commitment to help those who suffer, cure disease and promote health through sophisticated medical research and thoughtful patient care. This mission is consistent with a fundamental part of FDA's mission to protect and promote public health. Both FDA and Duke endorse scientific training for government employees, academicians, and students to establish a solid foundation in interdisciplinary science and medicine.

III. Substance of MOU

For this initiative, participants may include Duke students, residents, fellows, and faculty or FDA staff.

A. General

Through the PPP described above, this national effort will focus on developing generalizable standards to ensure that clinical trials are as efficient as possible, without compromising the reliability of the inferences drawn. The primary focus will be on clinical trial conduct in the United States, but global implications will be considered.

The parties agree to the following in support of this effort:

- The creation of PPP, consisting of the following components:
 - Executive Committee to be composed of members from involved parties;
 - Steering Committee to provide direction and guidance in support of this effort; and
 - Core functional groups to implement strategies to achieve the outlined deliverables.

- To collaborate in order to achieve short-term deliverables, such as:
 - Standards for monitoring and auditing;
 - Standards for data quality and quantity;
 - Standards for case report forms; and
 - Identification of pragmatic research topics (research on research).
- To collaborate in order to achieve long-term deliverables that reexamine the clinical trial enterprise, such as:
 - Developing a functional definition of clinical trial types with descriptions of optimal quality parameters;
 - Developing a model for the “ideal” clinical trial site;
 - Developing metrics for evaluating site functionality;
 - Developing metrics for evaluating site quality (cleanliness of data, inclusiveness of enrollment, HSP, etc.);
 - Developing best practices for key processes (Clinical Trial Management Systems);
 - Developing best practices for interface of the site with key components of research enterprise;
 - Exploring the concept of a clinical trial site accreditation program (including training);
 - Exploring the concept of Individual investigator and support personnel credentialing program; and
 - Assess customer (i.e., public, industry, and regulators) satisfaction.

B. FDA

FDA Office of Critical Path Programs (OCPP) will provide the following:

- Scientific and regulatory expertise related to the objectives of the partnership;
- Project management to achieve the short-term and long-term deliverables;
- Opportunities to participate in certain training courses and seminars at FDA or web-based training provided through FDA or Center Staff College's, as resources permit;
- Communication with OCPP staff via face-to-face meetings, conference calls or teleconference; and
- Communication of this collaborative effort through web pages, press releases, teleconferences, information conversations with colleagues, faculty and students, joint conferences and symposia.

C. Duke

Duke will provide the following:

- Function as a host of the PPP;
- Proactive efforts in establishing collaborative research efforts;
- Continuing and frequent communication with Duke faculty and staff, to include face-to-face communication and teleconferences;
- Welcome to FDA staff wishing to visit relevant Duke programs and laboratories;
- Communication of this collaborative effort through web pages, press releases, informal conversations with colleagues, faculty and students, joint conferences and symposia;
- Encouragement of graduate students/residents to elect short-term opportunities at FDA; and
- Opportunities to attend graduate courses.

Coverances

Duke and FDA may decide to enter into a Cooperative Research and Development Agreement (CRADA) at a future time to conduct collaborative research and projects of mutual interest. The terms of such a CRADA will address Intellectual Property rights.

Finances and Resources

Duke and FDA agree that this MOU does not commit either to make specific levels of financial or personnel support or to provide specific office or laboratory space for the programs and that the provision of such support will be based on available resources and provided in accordance with the laws, regulations and policies under which each entity operates.

Citizenship and Security Clearance

Duke participants in the collaboration envisioned in this MOU will be United States citizens or permanent residents. Information may be obtained from participants by the Agency for security clearance or access to FDA facilities and offices. The information obtained may be re-disclosed to the other Federal agencies in fulfillment of official responsibilities to the extent that such disclosure is permitted by law.

Protection of Non-Public Information

As a condition of their participation, Duke participants whose involvement will require access to any information that is not customarily releasable by FDA to the public will be required to sign an appropriate commitment to protect non-public information, to be provided by FDA.

IV. Liaison Contact

The individual to whom all inquiries to FDA should be addressed is:

Melissa Robb
Senior Regulatory Program Manager
Office of Critical Path Programs
Office of Scientific and Medical Programs
Office of the Commissioner
Food and Drug Administration

The individual to whom all inquiries to Duke should be addressed is:

Deborah A. Roth
Associate Dean for Clinical Research Administration
Duke University
Chief Operating Officer
Duke Translational Medicine Institute

AGREED TO:

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY:

Signature of authorized Representative

Date

Janet Woodcock, MD

Deputy Commissioner and Chief Medical Officer

DUKE UNIVERSITY

BY:

Signature of authorized Representative

Date

R. Sanders Williams, MD

Dean, School of Medicine



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D-0499]

Compliance Policy Guide; Radiofrequency Identification Feasibility Studies and Pilot Programs for Drugs; Notice to Extend Expiration Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of expiration date.

SUMMARY: The Food and Drug Administration (FDA) is extending the expiration date of the compliance policy guide (CPG) entitled "Sec. 400.210—Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs" to December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Ilisa Bernstein, Office of the Commissioner, Office of Policy, Planning, and Preparedness (HF-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3360.

SUPPLEMENTARY INFORMATION: On November 17, 2004, FDA announced the availability of the CPG entitled "Sec. 400.210—Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs." FDA has identified RFID as a promising technology to be used in the various efforts to combat counterfeit drugs. The CPG describes how the agency intends to exercise its enforcement discretion regarding certain regulatory requirements that might otherwise be applicable to studies involving RFID technology for drugs. The goal of the CPG is to facilitate performance of RFID studies and to allow industry to gain experience with the use of RFID technology and its effect on the long-term safety and integrity of the U.S. drug supply.

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA) was signed into law. Section 913 of FDAAA addresses pharmaceutical safety and creates section 505D of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355D). Section 505D(b) of the act requires the development of standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. Section 505D(b)(3) of the act states that these new standards shall address promising technologies, which may include RFID technology.

As FDA considers the overlapping and complementary issues raised in the

CPG and section 505D of the act, as well as the experience of stakeholders and the agency under the CPG, and whether to amend, revoke, or further extend the CPG, the CPG will remain in effect until December 31, 2008.

Dated: November 15, 2007.

David Horowitz,

Assistant Commissioner for Regulatory Affairs.

[FR Doc. E7-22818 Filed 11-21-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D-0439]

Draft Guidance for Industry on Smallpox (Variola) Infection: Developing Drugs for Treatment or Prevention; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Smallpox (Variola) Infection: Developing Drugs for Treatment or Prevention." In this draft guidance, FDA provides recommendations on the development of drugs to be used to treat or prevent smallpox (variola) infection. This guidance is intended to help sponsors plan and design appropriate studies during the development of these drugs.

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 22, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for

electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Debra B. Birnkrant, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6332, Silver Spring, MD 20993-0002, 301-796-1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Smallpox (Variola) Infection: Developing Drugs for Treatment or Prevention." This guidance provides recommendations on the development of drugs to be used to treat or prevent smallpox (variola) infection. The study of smallpox drug development poses special challenges in drug development because of the unique attributes of the pathogen. Therefore, this guidance focuses on the importance of pre-investigational new drug application interactions between sponsors and FDA, appropriate approaches to nonclinical studies in early drug development, generation and use of supporting data from related poxviruses, design and characterization of animal models, approaches to clinical trials including safety studies, advance preparation of protocols for potential use in emergency settings, and use of combinations of animal and human data.

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 developing drugs to treat or prevent smallpox (variola) infection. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. 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 312 have been approved under OMB Control No. 0910-0014.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: November 15, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-22884 Filed 11-21-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D-0139]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Revised Guidance for Industry on Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry (#73) entitled "Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision) VICH GL3(R)." This revised guidance has been developed for

veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This revised document is intended to provide guidance regarding the development of stability testing data for new animal drug applications (referred to as registration applications in the guidance) submitted to the European Union (EU), Japan, and United States.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. Submit electronic comments on the guidance via the Internet at <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Dennis Bensley, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-6956, e-mail: dennis.bensley@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of

Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. VICH is a parallel initiative for veterinary medicinal products. VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH steering committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH steering committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH steering committee meetings.

II. Revised Guidance on Stability Testing of New Veterinary Drug Substances and Medicinal Products

In the **Federal Register** of April 14, 2006 (71 FR 19525), FDA published a notice of availability for a draft revised guidance entitled "Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision)", VICH GL3(R) giving interested persons until May 15, 2006, to comment on the draft revised guidance. No comments were received. The revised guidance announced in this notice finalizes the draft revised guidance announced on April 14, 2006. The revised guidance is a product of the quality expert working group of the VICH. The revised guidance seeks to exemplify the core stability data package to be included in registration applications for new veterinary drug substances and medicinal products.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in section 2 of the guidance have been approved under OMB Control No. 0910–0032.

IV. Significance of Guidance

This revised document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The revised VICH guidance (GFI #73) is consistent with the agency's current thinking on the stability testing of new veterinary drug substances and medicinal products. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this revised guidance 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. A copy of the guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the guidance at CVM's home page (<http://www.fda.gov/cvm>) and from the Division of Dockets Management Web site (<http://www.fda.gov/ohrms/dockets/default.htm>).

Dated: November 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–22900 Filed 11–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–2145]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Revised Guidance for Industry on Impurities in New Veterinary Medicinal Products (Revision); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry (#93) entitled "Impurities in New Veterinary Medicinal Products (Revision)" VICH GL11(R). This revised guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This revised document is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States. The revised guidance addresses only those impurities in new veterinary medicinal drug products classified as degradation products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. Submit electronic comments on the guidance via the Internet at <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: dennis.bensley@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated for several years in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also

participates in the VICH Steering Committee meetings.

II. Revised Guidance on Impurities in New Veterinary Medicinal Products

In the **Federal Register** of January 10, 2006 (71 FR 1543), FDA published a notice of availability for a draft revised guidance entitled "Impurities in New Veterinary Medicinal Products (Revision)" VICH GL11(R), which gave interested persons until February 9, 2006, to comment on the draft revised guidance. No comments were received. The revised guidance announced in this document finalizes the draft revised guidance announced on January 10, 2006. The revised guidance is a product of the Quality Expert Working Group of the VICH.

The document is intended to provide guidance for new animal drug applications on the content and qualification of impurities in new veterinary medicinal products produced from chemically synthesized new veterinary drug substances not previously registered in a country, region, or member State.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections II through VI of the guidance have been approved under OMB Control Number 0910–0032.

IV. Significance of Guidance

This revised document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "require," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The revised VICH guidance (guidance for industry #93) is consistent with the agency's current thinking on impurities in new veterinary drug medicinal products. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

V. Comments

Interested persons may, at any time, submit written or electronic comments regarding the revised guidance document to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two copies of written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the guidance from either the CVM home page (<http://www.fda.gov/cvm>) or the Division of Dockets Management Web site (<http://www.fda.gov/ohrms/dockets/default.htm>).

Dated: November 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–22901 Filed 11–21–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–2215]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Revised Guidance for Industry on Impurities in New Veterinary Drug Substances (Revision); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry (#92) entitled "Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R). This revised guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The revised document is intended to provide guidance for registration applicants on the content and qualification of impurities in new veterinary drug substances produced by chemical syntheses and not previously

registered in a country, region, or member state.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. Submit electronic comments on the guidance via the Internet at <http://www.fda.gov/dockets/ecomments> or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: dennis.bensley@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated for several years in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of

veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Revised Guidance on Impurities in New Veterinary Drug Substances

In the **Federal Register** of January 4, 2006 (71 FR 351), FDA published a notice of availability for a draft revised guidance entitled "Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R) giving interested persons until February 3, 2006, to comment on the draft revised guidance. No comments were received. The revised guidance announced in this document finalizes the draft revised guidance announced on January 4, 2006. The revised guidance has been amended to add to the glossary a definition for the term "Degradation Products".

The document is intended to provide guidance for new animal drug applicants (referred to in the guidance as registration applicants) on the content and qualification of impurities in new veterinary drug substances intended to be used for new veterinary medicinal products produced by chemical synthesis and not previously registered in a country, region, or member state. The revised guidance is the product of the Quality Expert Working Group of the VICH.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These

collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 2 through 7 of the guidance have been approved under OMB Control Number 0910–0032.

IV. Significance of Guidance

This revised document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "required," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The revised VICH guidance (guidance for industry #92) is consistent with the agency's current thinking on impurities in new veterinary drug substances. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

V. Comments

Interested persons may, at any time, submit written or electronic comments regarding the revised guidance document to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two copies of written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the guidance from either the CVM home page (<http://www.fda.gov/cvm>) or the Division of Dockets Management Web site (<http://www.fda.gov/ohrms/dockets/default.htm>).

Dated: November 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–22902 Filed 11–21–07; 8:45 am]

BILLING CODE 4160–01–S

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.

Inactivation of Enveloped Viruses and Tumor Cells for Infectious Disease and Cancer Vaccines

Description of Invention: The current technology describes the inactivation of viruses, parasites, and tumor cells by the hydrophobic photoactivatable compound 1,5-iodoanthylazide (INA). This non-toxic compound will diffuse into the lipid bilayer of biological membranes and upon irradiation with light will bind to proteins and lipids in this domain, thereby inactivating fusion of enveloped viruses with their corresponding target cells. Furthermore, the selective binding of INA to protein domains in the lipid bilayer preserves the structural integrity and therefore immunogenicity of proteins on the exterior of the inactivated virus. This technology is universally applicable to other microorganisms that are surrounded by biological membranes like parasites and tumor cells. The broad utility of the subject technology has been demonstrated using influenza virus, HIV, SIV, Ebola and equine encephalitis virus (VEE) as representative examples. The inactivation approach for vaccine development presented in this technology provides for a safe, non-

infectious formulation for vaccination against the corresponding agent. Vaccination studies demonstrated that mice immunized with INA inactivated influenza, ebola and VEE mounted a protective immune response against lethal doses of the corresponding virus. A second technology for inactivating HIV and other retroviruses by inactivation of zinc fingers is described in E-174-1993/1,2.

Applications: Vaccines against enveloped viruses, including influenza and HIV; Cancer vaccines.

Development Status: Animal data (mouse) available for influenza.

Inventors: Yossef Raviv *et al.* (NCI).

Publication: Y Raviv *et al.*

Inactivation of retroviruses with preservation of structural integrity by targeting the hydrophobic domain of the viral envelope. *J Virol.* 2005 Oct;79(19):12394-12400.

Patent Status:

PCT application, serial number PCT/US2005/009559 (publication number WO 2005/093049), filed 22 Mar 2005 claiming priority to 22 Mar 2004; National Stage applications pending in Australia, Canada, China, Europe, India, and U.S. (HHS Reference No. E-303-2003/0).

PCT application, serial number PCT/US2007/007338, filed 23 Mar 2007 claiming priority to 24 Mar 2006 (HHS Reference No. E-135-2006/1-PCT-01; influenza-specific inactivation).

U.S. Patent No. 6,001,555, issued 14 Dec 1999 (HHS Reference No. E-174-1993/1); PCT application, serial number PCT/US95/11915 (publication number WO 96/09406), filed 19 Sept 1995 claiming priority to 23 Sept 1994, now EP patent number 0782632, issued 16 April 2003 in Italy, Belgium, Switzerland, Germany, and United Kingdom (HHS Reference No. E-174-1993/2; second HIV inactivation technology).

Licensing Contacts:

For HHS Reference Nos. E-303-2003 and E-135-2006—Susan Ano, PhD; phone: (301) 435-5515; e-mail: anos@mail.nih.gov.

For HHS Reference No. E-174-1993—Sally Hu, PhD, MBA; phone: (301) 435-5606; e-mail: hus@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute's Membrane Structure and Function Section is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize non-infectious formulation for vaccination. Please contact John D. Hewes, Ph.D. at 301-435-3121 or hewesj@mail.nih.gov for more information.

Monoclonal Antibodies That Bind or Neutralize Dengue Virus

Description of Invention: Among the arthropod-borne flaviviruses, the four dengue virus serotypes, dengue type 1 virus (DENV-1), dengue type 2 virus (DENV-2), dengue type 3 virus (DENV-3), and dengue type 4 virus (DENV-4) are most important in terms of human morbidity and geographic distribution. Dengue viruses cause dengue outbreaks and major epidemics in most tropical and subtropical areas where *Aedes albopictus* and *Aedes aegypti* mosquitoes are abundant. Dengue infection produces fever, rash, and joint pain in humans. A more severe and life-threatening form of dengue, characterized by hemorrhagic fever and hemorrhagic shock, has occurred with increasing frequency in Southeast Asia and Central and South America, where all four dengue virus serotypes circulate. A safe and effective vaccine against dengue is currently not available. Passive immunization with monoclonal antibodies from non-human primates or humans represents a possible alternative to vaccines for prevention of illness caused by dengue virus.

The application claims monoclonal antibodies that bind or neutralize dengue type 1, 2, 3, and/or 4 viruses. The application also claims fragments of such antibodies retaining dengue virus-binding ability, fully human or humanized antibodies retaining dengue virus-binding ability, and pharmaceutical compositions including such antibodies. The application also claims isolated nucleic acids encoding the antibodies of the invention. Additionally, application claims prophylactic, therapeutic, and diagnostic methods employing the antibodies and nucleic acids of the invention.

Application: Prophylaxis against dengue serotypes 1, 2, 3 and 4.

Development Status: Antibodies have been synthesized and preclinical studies have been performed.

Inventors: Ching-Juh Lai and Robert Purcell (NIAID).

Publications: The antibodies are further described in:

1. R Men *et al.* Identification of chimpanzee Fab fragments by repertoire cloning and production of a full-length humanized immunoglobulin G1 antibody that is highly efficient for neutralization of dengue type 4 virus. *J Virol.* 2004 May;78(9):4665-4674.

2. AP Goncalves *et al.* Chimpanzee Fab fragments and a derived humanized immunoglobulin G1 antibody that efficiently cross-neutralize dengue type

1 and type 2 viruses. *J Virol.* 2004 Dec;78(23):12910-12918.

3. AP Goncalves *et al.* Epitope determinants of a chimpanzee Fab antibody that efficiently cross-neutralizes dengue type 1 and type 2 viruses map to inside and in close proximity to fusion loop of the dengue type 2 virus envelope glycoprotein. *J Virol.* 2004 Dec;78(23):12919-12928.

4. AP Goncalves *et al.* Monoclonal antibody-mediated enhancement of dengue virus infection in vitro and in vivo and strategies for prevention. *Proc Natl Acad Sci U S A.* 2007 May 29;104(22):9422-9427.

Patent Status: U.S. Patent Application No. 10/582,006 filed 07 Jun 2006 (HHS Reference No. E-066-2003/5-US-02); Canadian Patent Application No. 2548808 filed 03 Dec 2004 (HHS Reference No. E-066-2003/5-CA-03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The NIAID Laboratory of Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Ching-Juh Lai at 301-594-2422 for more information.

Novel Non-Nucleoside Agents for the Inhibition of HIV Reverse Transcriptase for the Treatment of HIV-1

Description of Invention: Despite recent developments in drug and compound design to combat the human immunodeficiency virus (HIV), there remains a need for a potent, non-toxic compound that is effective against wild type reverse transcriptase (RT) as well as RTs that have undergone mutations and thereby become refractory to commonly used anti-HIV compounds. There are two major classes of RT inhibitors. The first comprises nucleoside analogues, which are not specific for HIV-RT and are incorporated into cellular DNA by host DNA polymerases. Nucleoside analogues can cause serious side effects and have resulted in the emergence of drug resistance viral strains that contain mutations in their RT. The second major class of RT inhibitors comprises non-nucleoside RT inhibitors (NNRTIs) that do not act as DNA chain terminators and are highly specific for HIV-RT. This technology is a novel class of NNRTIs (substituted benzimidazoles) effective in the inhibition of HIV-RT wild type as well as against variant HIV strains resistant to many non-nucleoside

inhibitors. These NNRTIs are highly specific for HIV-1 RT and do not inhibit normal cellular polymerases, resulting in lower cytotoxicity and fewer side effects than the nucleoside analogues, such as AZT. This novel class of compounds could significantly improve the treatment of HIV by increasing compliance with therapy.

Inventors: Christopher A. Michejda, Marshall Morningstar, Thomas Roth (NCI).

Patent Status: U.S. Patent No. 6,369,235 issued 09 Apr 2002 (HHS Reference No. E-076-1997/1-US-01); U.S. Patent No. 6,894,068 issued 17 May 2005 (HHS Reference No. E-076-1997/1-US-02).

Licensing Contact: Sally Hu, PhD., MBA; 301/435-5606; hus@mail.nih.gov.

Dated: November 9, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7-22821 Filed 11-21-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Teleconference Regarding Licensing and Collaborative Research Opportunities for: "Brother of the Regulator of Imprinted Sites" (BORIS): A Novel Protein That Can Be Used for Diagnosis and as a Therapeutic Target for the Treatment of Several Cancers; Dr. Victor Lobanenkov et al. (NIAID)

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

Technology Summary

The technology describes the discovery of a novel gene encoding the DNA-binding factor, "Brother of the Regulator of Imprinted Sites", BORIS, related to the unique, evolutionarily conserved, CTCF factor involved in regulation of genomic imprinting and cancer. Furthermore, it describes several splice variants of BORIS that translate into different proteins and antibodies of BORIS that can be used for diagnosis and treatment of cancer.

Technology Description

A very recent finding is that protein CTCF (expressed in all somatic tissues) binds, in a methylation-dependent manner, to the imprinting control regions thus allowing somatic cells to distinguish functionally maternal from paternal alleles. The new factor, BORIS,

shares with CTCF the same spectrum of DNA sequence specificity and it is normally expressed only in germ cells of human gonads (when patterns of gene imprinting are re-established), but not in CTCF-expressing somatic cells.

Additionally, since cell-growth controlling CTCF has properties of a tumor suppressor gene, abnormal activation of BORIS upon cancerous transformation of somatic cells results in competition with the normal function of CTCF, thereby promoting tumor growth. The inventors found that antibodies against BORIS are present and can be detected in human blood serum taken from patients with cancer but not from healthy donors.

Additionally, 14 new alternative splice forms of the BORIS polypeptide have been identified which show specificity to specific cancers, suggesting that circulating antibodies for specific BORIS splice variants in cancer patients can be associated with specific types or stages of malignant tumors.

Therefore, BORIS can be used in both diagnostic and therapeutic arenas: First, mutations in BORIS genomic locus or detection of encoded by the BORIS locus mRNAs or polypeptides expressed in any tissue besides normal gonads may be indicative of a pre-cancerous or cancerous state thus serving a diagnostic and/or prognostic purpose; and, second, targeting of abnormally activated BORIS should serve as a novel therapeutic approach to treat cancer.

BORIS Technology Can Have Three Major Applications

1. BORIS can be used as a therapeutic target for anti-cancer treatments.

2. BORIS expression can serve as a diagnostic marker for specific cancers other than testis.

3. Detection of antibodies against BORIS in blood serum samples can also be used as an indicator of pre-cancerous or cancerous condition existing.

Competitive Advantage of Our Technology

Cancer/testis (CT) genes, predominantly expressed in the testis (germ cells) and generally not in other normal tissues, are aberrantly expressed in human cancers. This highly restricted expression provides a unique opportunity to use these CT genes for diagnostics, immunotherapeutic, or other targeted therapies. BORIS is a newly described CT gene shown to be expressed in several cancers including lung, brain, uterine and endometrial among others and thus can be used as a novel diagnostic and therapeutic target.

Patent Estate

This technology consists of the following patents and patent applications:

1. U.S. Patent Application No. 10/505,377 filed October 20, 2004 and all foreign counterparts [E-227-2001/0-US-03];

2. U.S. Patent Application No. 11/575,732 filed March 21, 2007 and all foreign counterparts [E-241-2004/0-US-04]; and

3. PCT Application No. PCT/US2007/7728 filed August 30, 2007 [E-117-2006/0-PCT-02]

Next Step: Teleconference

There will be a teleconference where the principal investigator will explain this technology. Licensing and collaborative research opportunities will also be discussed. If you are interested in participating in this teleconference please call or e-mail Mojdeh Bahar; (301) 435-2950; baharm@mail.nih.gov. OTT will then e-mail you the date, time and number for the teleconference.

Dated: November 9, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7-22820 Filed 11-21-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Genetic Environmental Training.

Date: November 27, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel RTP, Sheraton Imperial Hotel, 4700 Emperor Blvd, Durham, NC 27703.

Contact Person: Leroy Worth, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/ Room 3171, Research Triangle Park, NC 27709, 919/541-0670, worth@niehs.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-5779 Filed 11-21-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endocrinology and Metabolism.

Date: December 5, 2007.

Time: 10 a.m. to 12 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 A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301-435-4514, jerkinsa@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: November 14, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-5778 Filed 11-21-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate, Office of Infrastructure Protection, Submission for Review Chemical Security Assessment Tool (CSAT) Information Collection 1670-0007

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments: Revision of an existing information collection request 1670-0007, DHS Forms 9010, 9002, 9007, 9012, and 9015.

SUMMARY: The Department of Homeland Security, Office of the Under Secretary for National Protection and Programs Directorate, Office of Infrastructure Protection, Chemical Security Compliance Division (CSCD) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until January 22, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Office of Infrastructure Protection, Attn: Matthew Bettridge, Department of Homeland Security, NPPD/OIP/CSCD Mail Stop 8100, DHS, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Office of Infrastructure Protection, Attn: Matthew Bettridge, Department of Homeland Security, NPPD/OIP/CSCD Mail Stop 8100, DHS, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: Section 550 of the Department of Homeland Security Appropriations Act of 2007, Pub. L. 109-295 (Section 550), directed the Department of Homeland Security to promulgate and enforce regulations to enhance the security of the nation's high risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule, implementing this statutory mandate. (72 FR 17688). Section 550 requires a risk-based approach to security. To facilitate this approach, the Department is employing a risk assessment methodology known as the Chemical Security Assessment Tool (CSAT). The CSAT is a series of public web-based computer applications: Help Desk, User Registration, Top-Screen, Security Vulnerability Assessment, Site Security Plan, and Chemical-terrorism Vulnerability Information (CVI) Authorization. All information collected supports the Department's effort to reduce the risk of a successful terrorist attack against chemical facilities. These CSAT collections either directly or indirectly support the identification of high risk facilities, the determination of the risk tiers of the facilities, the review and approval of assessments and plans for security measures at the facilities, and/or the protection of Chemical-terrorism Vulnerability Information that would, if disclosed, substantially assist terrorists in planning and targeting the facilities.

The Office of Management and Budget is particularly interested in comments which:

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, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Office of the Under Secretary for National Protection and Programs Directorate, Office of Infrastructure

Protection, Chemical Security
Compliance Division.

Title: Chemical Security Assessment
Tool (CSAT).

OMB Number: 1670-0007.

Help Desk—(DHS Form 9010)

Frequency: On Occasion.

Affected Public: Chemical Sector
Facility owners and operators; general
public.

Number of Respondents: 20,800
phone calls & 1,300 e-mails annually.

Estimated Time Per Respondent: 10
minutes per phone call & 15 min. per
e-mail.

Total Burden Hours: 3,467 hours for
calls & 325 hours for e-mail = 3,792
annual hours.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$304,408 phone calls &
\$28,538 e-mails = \$332,946 total annual
cost.

User Registration—(DHS Form 9002)

Frequency: On Occasion.

Affected Public: Chemical Sector
Facility owners and operators.

Number of Respondents: 16,667.

Estimated Time Per Respondent: 1
hour.

Total Burden Hours: 16,667.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$1,463,499.

Top-Screen—(DHS Form 9007)

Frequency: On Occasion.

Affected Public: Chemical Sector
Facility owners and operators.

Number of Respondents: 16,667.

Estimated Time Per Respondent: 30
Hours.

Total Burden Hours: 505,314 Hours
Annually.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$44,371,535.

CVI User Training—(DHS Form 9012)

Frequency: Once.

Affected Public: Chemical Sector
Facility owners and operators.

Number of Respondents: 16,667.

Estimated Time Per Respondent: 30
minutes.

Total Burden Hours: 8,333 annually.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$731,750.

Security Vulnerability Assessment— (DHS Form 9015) and Alternative Security Program in lieu of SVA

Frequency: On Occasion.

Affected Public: Chemical Sector
Facility owners and operators.

Number of Respondents: 2,500
annually.

Estimated Time Per Respondent: 153
hours.

Total Burden Hours: 382,269
annually.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$34,786,190 annually.

Site Security Plan (SSP) and Alternative Security Program in lieu of SSP

Frequency: On Occasion.

Affected Public: Chemical Sector
Facility owners and operators.

Number of Respondents: 2,167.

Estimated Time Per Respondent: 84
hours.

Total Burden Hours: 183,036.

Total Burden Cost (capital/startup):
\$0.00.

*Total Burden Cost (operating/
maintaining):* \$14,594,411.

Dated: November 15, 2007.

Charlie Church,

*Chief Information Officer, National Protection
and Programs Directorate, Department of
Homeland Security.*

[FR Doc. E7-22858 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5125-N-47]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies
unutilized, underutilized, excess, and
surplus Federal property reviewed by
HUD for suitability for possible use to
assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing
and Urban Development, 451 Seventh
Street, SW., Room 7266, Washington,
DC 20410; telephone (202) 708-1234;
TTY number for the hearing- and
speech-impaired (202) 708-2565 (these
telephone numbers are not toll-free), or
call the toll-free Title V information line
at 800-927-7588.

SUPPLEMENTARY INFORMATION: In
accordance with 24 CFR part 581 and
section 501 of the Stewart B. McKinney
Homeless Assistance Act (42 U.S.C.
11411), as amended, HUD is publishing

this Notice to identify Federal buildings
and other real property that HUD has
reviewed for suitability for use to assist
the homeless. The properties were
reviewed using information provided to
HUD by Federal landholding agencies
regarding unutilized and underutilized
buildings and real property controlled
by such agencies or by GSA regarding
its inventory of excess or surplus
Federal property. This Notice is also
published in order to comply with the
December 12, 1988 Court Order in
*National Coalition for the Homeless v.
Veterans Administration*, No. 88-2503-
OG (D.D.C.).

Properties reviewed are listed in this
Notice according to the following
categories: Suitable/available, suitable/
unavailable, suitable/to be excess, and
unsuitable. The properties listed in the
three suitable categories have been
reviewed by the landholding agencies,
and each agency has transmitted to
HUD: (1) Its intention to make the
property available for use to assist the
homeless, (2) its intention to declare the
property excess to the agency's needs, or
(3) a statement of the reasons that the
property cannot be declared excess or
made available for use as facilities to
assist the homeless.

Properties listed as suitable/available
will be available exclusively for
homeless use for a period of 60 days
from the date of this Notice. Where
property is described as for "off-site use
only" recipients of the property will be
required to relocate the building to their
own site at their own expense.
Homeless assistance providers
interested in any such property should
send a written expression of interest to
HHS, addressed to John Hicks, Division
of Property Management, Program
Support Center, HHS, room 5B-17, 5600
Fishers Lane, Rockville, MD 20857;
(301) 443-2265. (This is not a toll-free
number.) HHS will mail to the
interested provider an application
packet, which will include instructions
for completing the application. In order
to maximize the opportunity to utilize a
suitable property, providers should
submit their written expressions of
interest as soon as possible. For
complete details concerning the
processing of applications, the reader is
encouraged to refer to the interim rule
governing this program, 24 CFR part
581.

For properties listed as suitable/to be
excess, that property may, if
subsequently accepted as excess by
GSA, be made available for use by the
homeless in accordance with applicable
law, subject to screening for other
Federal use. At the appropriate time,
HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM-ZS, Rm 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601-2545; ENERGY: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME-90, 1000 Independence Ave, SW., Washington, DC 20585; (202) 586-0072; GSA: Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0084; NAVY: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (these are not toll-free numbers).

Dated: November 15, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

**Title V, Federal Surplus Property Program
Federal Register Report for 11/23/2007**

Suitable/Available Properties

Building

Mississippi
Federal Building
200 East Washington St.
Greenwood MS 38930.
Landholding Agency: GSA

Property Number: 54200740006
Status: Underutilized
GSA Number: 4-G-MS-0562.
Comments: 11134 sq. ft., presence of asbestos, reserve a 24-month period to relocate Federal tenants

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067

Landholding Agency: GSA
Property Number: 54200740005
Status: Excess

GSA Number: 1-I-MA-910

Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quartars/admin., may be issues w/right of entry, utilities privately controlled, contaminants

Suitable/Available Properties

Land

Arizona

Parking Lot

322 n 2nd Ave.

Phoenix AZ 85003

Landholding Agency: GSA

Property Number: 54200740007

Status: Surplus

GSA Number: AZ-6293-1

Comments: approx. 21,000 sq. ft., parcel in OU3 study area for clean-up

Unsuitable Properties

Building

Alabama

Bldg. 00049

Anniston Army Depot

Calhoun AL 36201

Landholding Agency: Army

Property Number: 21200740107

Status: Unutilized

Reasons:

Within 2000 ft. of flammable or explosive material

Secured Area

Unsuitable Properties

Building

Alabama

4 Bldgs.

Redstone Arsenal 01414, 3686, 07532, 07737

Madison AL 35898

Landholding Agency: Army

Property Number: 21200740108

Status: Unutilized

Reasons:

Secured Area

Extensive deterioration

Alaska

Bldg. 02A60

Noatak Armory

Kotzebue AK

Landholding Agency: Army

Property Number: 21200740105

Status: Excess

Reasons:

Within 2000 ft. of flammable or explosive material

Bldg. 01212

Ft. Greely

Ft. Greely AK 99731

Landholding Agency: Army
Property Number: 21200740106
Status: Unutilized

Reasons:

Extensive deterioration

Within 2000 ft. of flammable or explosive material

Secured Area

Unsuitable Properties

Building

Alaska

Admin. Site

624 Mill St.

Ketchikan Co: Gateway AK 99901

Landholding Agency: GSA

Property Number: 54200740004

Status: Excess

GSA Number: 9-I-AK-814

Reasons:

Within 2000 ft. of flammable or explosive material

Arizona

Bldg. 00002

Camp Navajo

Bellemont AZ 86015

Landholding Agency: Army

Property Number: 21200740109

Status: Unutilized

Reasons:

Secured Area

Bldgs. 00203, 00216, 00218

Camp Navajo

Bellemont AZ 86015

Landholding Agency: Army

Property Number: 21200740110

Status: Unutilized

Reasons:

Extensive deterioration

Secured Area

Unsuitable Properties

Building

Arizona

Bldgs. 00244, 00252, 00253

Camp Navajo

Bellemont AZ

Landholding Agency: Army

Property Number: 21200740111

Status: Unutilized

Reasons:

Secured Area

Extensive deterioration

7 Bldgs.

Camp Navajo

Bellemont AZ 86015

Landholding Agency: Army

Property Number: 21200740112

Status: Unutilized

Directions:

00302, 00303, 00304, 00311, S0312, S0313, S0319

Reasons:

Extensive deterioration

Secured Area

4 Bldgs.

Camp Navajo

Bellemont AZ 86015

Landholding Agency: Army

Property Number: 21200740113

Status: Unutilized

Directions:

S0320, 00323, S0324, 00329

Reasons:
Secured Area

Unsuitable Properties

Building

Arizona

7 Bldgs.

Camp Navajo

Bellemont AZ 86015

Landholding Agency: Army

Property Number: 21200740114

Status: Unutilized

Directions:

00330, 00331, 00332, 00335, 00336, 00338,
S0340

Reasons:

Secured Area

California

Bldg. 0139A

Fort Hunter Liggett

Monterey CA 93928

Landholding Agency: Army

Property Number: 21200740115

Status: Unutilized

Reasons:

Extensive deterioration

4 Bldgs.

Fort Hunter Liggett

00713, 00714, 00715, 00716

Monterey CA 93928

Landholding Agency: Army

Property Number: 21200740116

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

California

Bldgs. 445, 534

Lawrence Livermore Natl Lab

Livermore CA

Landholding Agency: Energy

Property Number: 41200740001

Status: Excess

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive
material

4 Bldgs.

Lawrence Livermore Natl Lab

802A, 811, 830, 854A

Livermore CA

Landholding Agency: Energy

Property Number: 41200740002

Status: Excess

Reasons:

Within 2000 ft. of flammable or explosive
material

Secured Area

Bldgs. 8806, 8710, 8711

Lawrence Livermore Natl Lab

Livermore CA

Landholding Agency: Energy

Property Number: 41200740003

Status: Excess

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive
material

Unsuitable Properties

Building

Georgia

Bldg. 00930

Hunter Army Airfield

Savannah GA 31409

Landholding Agency: Army

Property Number: 21200740117

Status: Excess

Reasons:

Extensive deterioration

Bldgs. 01241, 01246

Hunter Army Airfield

Savannah GA 31409

Landholding Agency: Army

Property Number: 21200740118

Status: Excess

Reasons:

Extensive deterioration

Bldg. 06052

Hunter Army Airfield

Savannah GA 31409

Landholding Agency: Army

Property Number: 21200740119

Status: Excess

Reasons:

Extensive deterioration

Bldgs. 2619, 2966, 3251

Fort Benning

Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740120

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

Georgia

Bldgs 8603, 8629, 8681

Fort Benning

Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740121

Status: Unutilized

Reasons:

Extensive deterioration

Bldg. 9128

Fort Benning

Ft. Benning GA 31905

Landholding Agency: Army

Property Number: 21200740122

Status: Unutilized

Reasons:

Extensive deterioration

Bldgs. 00957, 01001

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740123

Status: Excess

Reasons:

Extensive deterioration

Bldgs. 01013, 01014, 01016

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740124

Status: Excess

Reasons:

Extensive deterioration

Unsuitable Properties

Building

Georgia

Bldgs. 01080, 07337, 15016

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200740125

Status: Excess

Reasons:

Extensive deterioration

Idaho

Bldg. 00110

Wilder

Canyon ID 83676

Landholding Agency: Army

Property Number: 21200740134

Status: Unutilized

Reasons:

Secured Area

Extensive deterioration

Iowa

9 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740126

Status: Unutilized

Directions:

00176, 00204, B0205, C0205, 00206, 00207,
00208, 00209, 00210

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive
material

Unsuitable Properties

Building

Iowa

6 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740127

Status: Unutilized

Directions:

00211, 00212, 00213, 00217, 00218, C0218

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive
material

13 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740128

Status: Unutilized

Directions:

00287, 00288, 00289, 00290, A0290, 00291,
00292, 00293, A0293, B0293, C0293,
D0293, E0293

Reasons:

Within 2000 ft. of flammable or explosive
material

Secured Area

8 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740129

Status: Unutilized

Directions:

A0294, 00295, 00296, 00316, 00326, 00328, 00330 00341

Reasons:

Within 2000 ft. of flammable or explosive material

Secured Area

Unsuitable Properties

Building

Iowa

11 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740130

Status: Unutilized

Directions:

00949, 00962, 00963, 00964, 00965, 00967,

00968, 00969, 00970, 00971, 00972

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive material

9 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740131

Status: Unutilized

Directions:

01028, 01029, 01030, 01031, 01032, 01033,

01035, 01036, 01037

Reasons:

Secured Area

Within 2000 ft. of flammable or explosive material

7 Bldgs.

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740132

Status: Unutilized

Directions:

01038, B1038, C1038, D1038, E1038, 01042, 01043

Reasons:

Within 2000 ft. of flammable or explosive material

Secured Area

Unsuitable Properties

Building

Iowa

Bldgs. A1057, 01090, 05334

Iowa Army Ammo Plant

Middletown IA 52601

Landholding Agency: Army

Property Number: 21200740133

Status: Unutilized

Reasons:

Within 2000 ft. of flammable or explosive material

Secured Area

Kansas

Bldg. 00920

Fort Riley

Geary KS 66442

Landholding Agency: Army

Property Number: 21200740135

Status: Unutilized

Reasons:

Extensive deterioration

Kentucky

Bldg. 00198

Blue Grass Army Depot

Richmond KY 40475

Landholding Agency: Army

Property Number: 21200740136

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

Kentucky

Bldgs. 00242, 00244, 00245

Blue Grass Army Depot

Richmond KY 40475

Landholding Agency: Army

Property Number: 21200740137

Status: Unutilized

Reasons:

Extensive deterioration

Bldgs. 00561, 01165

Blue Grass Army Depot

Richmond KY 40475

Landholding Agency: Army

Property Number: 21200740138

Status: Unutilized

Reasons:

Extensive deterioration

Bldgs. 02950, 07845

Fort Campbell

Christian KY 42223

Landholding Agency: Army

Property Number: 21200740139

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

Maryland

Bldgs. 00903, 00904

Fort Detrick

Frederick MD 21702

Landholding Agency: Army

Property Number: 21200740140

Status: Unutilized

Reasons:

Secured Area

5 Bldgs.

Aberdeen Proving Ground

Harford MD 21005

Landholding Agency: Army

Property Number: 21200740141

Status: Unutilized

Directions:

00505, 01047, E1407, E1417, E1452

Reasons:

Secured Area

7 Bldgs.

Aberdeen Proving Ground

Harford MD 21005

Landholding Agency: Army

Property Number: 21200740142

Status: Unutilized

Directions:

E3007, E3221, E3222, E3223, E3224, E3226,

E3228

Reasons:

Secured Area

Unsuitable Properties

Building

Maryland

Bldgs. E3236, E3268, E3850

Aberdeen Proving Ground

Harford MD 21005

Landholding Agency: Army

Property Number: 21200740143

Status: Unutilized

Reasons:

Secured Area

Bldgs. E7012, E7822

Aberdeen Proving Ground

Harford MD 21005

Landholding Agency: Army

Property Number: 21200740144

Status: Unutilized

Reasons:

Secured Area

Missouri

Bldgs. 1448, 1449

Fort Leonard Wood

Pulaski MO 65473

Landholding Agency: Army

Property Number: 21200740145

Status: Unutilized

Reasons:

Extensive deterioration

Bldgs. 2841, 2842

Fort Leonard Wood

Pulaski MO 65473

Landholding Agency: Army

Property Number: 21200740146

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

Missouri

4 Bldgs.

Fort Leonard Wood 5234, 5339, 5345, 5351

Pulaski MO 65473

Landholding Agency: Army

Property Number: 21200740147

Status: Unutilized

Reasons:

Extensive deterioration

Bldgs. 5535, 5742

Fort Leonard Wood

Pulaski MO 65473

Landholding Agency: Army

Property Number: 21200740148

Status: Unutilized

Reasons:

Extensive deterioration

New Jersey

Bldg. 7427

Fort Dix

Burlington NJ 08640

Landholding Agency: Army

Property Number: 21200740149

Status: Unutilized

Reasons:

Extensive deterioration

Unsuitable Properties

Building

New York

Bldg. 00111

Fort Hamilton

Brooklyn NY 11252

Landholding Agency: Army

Property Number: 21200740150

Status: Underutilized

Reasons:

Secured Area

Bldgs. 0136A, 0136B, 0136C
Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21200740151
Status: Unutilized
Reasons:
Secured Area
Bldgs. 0138A, 0138B
Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21200740152
Status: Unutilized
Reasons:
Secured Area
4 Bldgs.
Fort Hamilton 00211, 00213, 00216, 00216A
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21200740153
Status: Unutilized
Reasons:
Secured Area

Unsuitable Properties*Building*

North Carolina
5 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740154
Status: Unutilized
Directions:
2847, 3226, 3228, 3232, 3236
Reasons:
Extensive deterioration
Secured Area
Within 2000 ft. of flammable or explosive material
6 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740155
Status: Unutilized
Directions:
3241, 3245, 3249, 3253, 3258, 3262
Reasons:
Extensive deterioration
Secured Area
Within 2000 ft. of flammable or explosive material
8 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740156
Status: Unutilized
Directions:
4143, 4147, 4152, 4156, 4160, 4164, 4169, 4774
Reasons:
Secured Area
Extensive deterioration
Within 2000 ft. of flammable or explosive material

Unsuitable Properties*Building*

North Carolina
5 Bldgs.
Fort Bragg

Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740157
Status: Unutilized
Directions:
5024, 5028, 5032, 5034, 5071
Reasons:
Within 2000 ft. of flammable or explosive material
Secured Area
Extensive deterioration
8 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740158
Status: Unutilized
Directions:
5182, 5381, 5473, 5645, 5779, 5849, 5878, 5880
Reasons:
Extensive deterioration
Secured Area
Within 2000 ft. of flammable or explosive material
4 Bldgs.
Fort Bragg
Ft. Bragg NC 28310
Landholding Agency: Army
Property Number: 21200740159
Status: Unutilized
Directions:
6026, 6060, 6126, 6559
Reasons:
Extensive deterioration
Secured Area
Within 2000 ft. of flammable or explosive material

Unsuitable Properties*Building*

Rhode Island
Bldgs. 303, 304
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200740011
Status: Excess
Reasons:
Secured Area
Bldgs. 1121, 1931
Naval Station
Newport RI 02841
Landholding Agency: Navy
Property Number: 77200740012
Status: Excess
Reasons:
Secured Area
Tennessee
Bldgs. 101, 118, 143
Holston Army Ammo Plant
Kingsport TN 37660
Landholding Agency: Army
Property Number: 21200740160
Status: Unutilized
Reasons:
Within 2000 ft. of flammable or explosive material
Secured Area

Unsuitable Properties*Building*

Texas
Bldgs. 1180, 1181

Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200740161
Status: Unutilized
Reasons:
Extensive deterioration
Utah
Bldg. 00007
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200740162
Status: Unutilized
Reasons:
Extensive deterioration
5 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200740163
Status: Unutilized
Directions:
00118, 00120, 00122, 00124, 00126
Reasons:
Extensive deterioration

Unsuitable Properties*Building*

Utah
5 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200740164
Status: Unutilized
Directions:
00141, 00145, 00147, 00148, 00149
Reasons:
Extensive deterioration
5 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200740165
Status: Unutilized
Directions:
00150, 00151, 00152, 00153, 00155
Reasons:
Extensive deterioration
Virginia
Bldgs. 06201, 10000, 19000
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200740166
Status: Unutilized
Reasons:
Extensive deterioration

Unsuitable Properties*Building*

Virginia
Bldg. 01335
Fort A.P. Hill
Bowling Green VA 22427
Landholding Agency: Army
Property Number: 21200740167
Status: Unutilized
Reasons:
Extensive deterioration
4 Bldgs.
Fort Eustis 00803, 00809, 00813, 00818

Ft. Eustis VA 23604
 Landholding Agency: Army
 Property Number: 21200740168
 Status: Unutilized
 Reasons:
 Extensive deterioration
 5 Bldgs.
 Radford Army Ammo Plant
 Radford VA 24143
 Landholding Agency: Army
 Property Number: 21200740169
 Status: Unutilized
 Directions:
 19980, 25710, 36020, 36370, 36380
 Reasons:
 Secured Area
 Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Virginia
 Radford Army Ammo Plant
 Radford VA 24143
 Landholding Agency: Army
 Property Number: 21200740170
 Status: Unutilized
 Directions:
 36410, 36470, 36500, 37060
 Reasons:
 Within 2000 ft. of flammable or explosive material
 Secured Area
 Bldgs. 50020, 50200
 Radford Army Ammo Plant
 Radford VA 24143
 Landholding Agency: Army
 Property Number: 21200740171
 Status: Unutilized
 Reasons:
 Secured Area
 Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Washington
 Bldgs. 00803, 00805, 00806
 Yakima Training Center
 Fort Lewis
 Yakima WA 98901
 Landholding Agency: Army
 Property Number: 21200740172
 Status: Underutilized
 Reasons:
 Secured Area
 Bldgs. 110, 116
 Naval Air Station
 Oak Harbor WA 98278
 Landholding Agency: Navy
 Property Number: 77200740013
 Status: Excess
 Reasons:
 Secured Area
 Bldg. 839
 Puget Sound Naval Shipyard
 Bremerton WA 98314
 Landholding Agency: Navy
 Property Number: 77200740014
 Status: Excess
 Reasons:
 Secured Area
 Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Wisconsin
 Wisconsin 4 Bldgs.
 Fort McCoy 01088, 01089, 01090, 01091
 Monroe WI 54656
 Landholding Agency: Army
 Property Number: 21200740173
 Status: Unutilized
 Reasons:
 Extensive deterioration
 4 Bldgs.
 Fort McCoy 05003, 05005, 05006, 05008
 Monroe WI 54656
 Landholding Agency: Army
 Property Number: 21200740174
 Status: Unutilized
 Reasons:
 Extensive deterioration
 Bldgs. 07011, 07021, 07031
 Fort McCoy
 Monroe WI 54656
 Landholding Agency: Army
 Property Number: 21200740175
 Status: Unutilized
 Reasons:
 Extensive deterioration
 [FR Doc. E7-22686 Filed 11-21-07; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application and Availability of an Environmental Assessment for an Incidental Take Permit for Capital Improvement Projects within Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Charlotte County Board of Commissioners (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) for the take of the Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay). The Applicant anticipates taking 84.2 acres of occupied scrub-jay breeding, foraging, and sheltering habitat, incidental to otherwise lawful activities of road construction and community redevelopment (Projects) in Charlotte County, Florida. The development of this habitat is expected to result in the take of 11 families of scrub-jays. The Applicant's habitat conservation plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Projects to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP application, HCP, and environmental

assessment (EA) should be sent to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**) and should be received on or before January 22, 2008.

ADDRESSES: Persons wishing to review the ITP application, EA, and HCP may obtain a copy by writing the Fish and Wildlife Service's Southeast Regional Office. Please reference permit number TE135674-0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, or the South Florida Ecological Services Office, Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960-3559.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, Fish and Wildlife Service Regional Office (see **ADDRESSES**), telephone: 404/679-7313, facsimile 404/679-7081; or Mr. George Dennis, Ecologist, South Florida Ecological Services Office (see **ADDRESSES**), telephone: 772/562-3909 ext. 309, facsimile 772/562-4288.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit written comments by any one of several methods. Please reference permit number TE135674-0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to david_dell@fws.gov. Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Fish and Wildlife Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety.

The scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation that has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Four Projects are proposed including three road extensions at Winchester Boulevard, Edgewater Drive, and Solomon Drive, and a community redevelopment project at Murdock Village. All Projects are within the previously subdivided, partly developed urban areas of Charlotte County. The Applicant has identified 11 scrub-jay families within the Project areas. The four Projects are expected to destroy 84.2 acres of occupied scrub-jay habitat. Scrub-jays using the Project areas are part of two scrub-jay metapopulations in Charlotte County: The Sarasota-western Charlotte metapopulation, which occurs on the Cape Haze peninsula, and the northwestern Charlotte metapopulation, which occurs between the Myakka and Peace Rivers. The continued persistence of scrub-jays in this area may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat.

Construction of the Projects will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed road construction and community redevelopment will reduce the availability of nesting, foraging, and sheltering habitat for 11 families of scrub-jays. The Applicant proposes to mitigate take of scrub-jays by preserving, restoring, and managing in perpetuity 275 acres of scrub-jay habitat within the affected scrub-jay metapopulations.

The Fish and Wildlife Service has made a preliminary determination that issuance of the requested ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of National Environmental Policy Act (NEPA). This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Fish and Wildlife Service will evaluate the HCP and comments submitted thereon to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If the Fish and Wildlife Service determines that those requirements are met, an ITP will be issued for the incidental take of the Florida scrub-jay. The Fish and Wildlife Service will also evaluate whether issuance of this section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: October 26, 2007.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E7-22815 Filed 11-21-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability for the Renewal of an Expired Section 10(a)(1)(B) Permit for Incidental Take of the Golden-cheeked Warbler in Travis County, TX (Scarpato)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: On October 19, 2001, the U.S. Fish and Wildlife Service (Service) issued a section 10(a)(1)(B) permit, pursuant to Section 10(a) of the Endangered Species Act (Act), for incidental take of the golden-cheeked warbler (*Dendroica chrysoparia*)(GCWA) to Thomas Scarpato and Janet Neyland-Scarpato (Applicant). The permit (TE-042733-0) was for a period of five years and expired on October 19, 2006. The requested permit renewal by Mr. and Mrs. Scarpato will extend the permit expiration by five years from the date the permit is reissued.

DATES: To ensure consideration, written comments must be received on or before December 24, 2007.

ADDRESSES: Persons wishing to review the request for extension, former incidental take permit, or other related documents may obtain a copy by written or telephone request to Allison Arnold, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin,

Texas 78758 (512/490-0057 ext. 242). Documents will be available for public inspection by written request, or by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Austin Office. Comments concerning the request for renewal should be submitted in writing to the Field Supervisor at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE-042733-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT:

Allison Arnold at the U.S. Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057 ext. 242).

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.

Applicant: Mr. and Mrs. Scarpato plan to construct a single family residence on their 2.67-acre lot located at 8110 Two Coves Drive, Austin, Texas. The construction of a single family residence on approximately 0.75 acres of the 2.67-acre lot will eliminate less than one acre of GCWA habitat and indirectly impact less than four additional acres of habitat. The original permit included, and the Applicant has already provided \$1,500 to the Balcones Canyonlands Preserve to mitigate impacts to the GCWA. This money will be used by the Balcones Canyonlands Preserve to acquire additional GCWA habitat. The Applicant has agreed to follow all other existing permit terms and conditions. If renewed, all of the permit terms and conditions will remain the same, and no additional take will be authorized.

Section 9 of the Act prohibits the "taking" of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C.

4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Thomas L. Bauer,

*Acting Regional Director, Region 2,
Albuquerque, New Mexico.*

[FR Doc. E7-22819 Filed 11-21-07; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Residential Construction in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and Habitat Conservation Plan (HCP). The Carlisle Group (applicant) requests an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 12.72 acres of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and nesting habitat incidental to lot preparation for the construction of a multiple-family apartment complex and supporting infrastructure in Charlotte County, Florida (project). The applicant's HCP describes the mitigation and minimization measures proposed to address the effects of the project on the scrub-jay.

DATES: We must receive your written comments on the ITP application and HCP on or before December 24, 2007.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing the South Florida Ecological Services Office, *Attn:* Permit number TE168754-0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960-3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: (772) 562-3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the ITP application and HCP, you may submit comments by

any one of the following methods. Please reference permit number TE168754-0 in such comments.

1. Mail or hand-deliver comments to our South Florida Ecological Services Office address (see **ADDRESSES**).

2. E-mail comments to *trish_adams@fws.gov*. If you do not receive a confirmation that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Multiple-family apartment complex construction for the applicant's HCP will take place within Sections 04 and 5, Township 40, Range 23, Punta Gorda, Charlotte County, Florida, at the lot identified by property identification number 00952621460004. This lot is within scrub-jay-occupied habitat.

The lot encompasses about 20.11 acres. The project will be constructed in two phases. Phase I consists of construction on 5.08 acres of the western 12.47 acres, and Phase II consists of the eastern 7.64 acres. Phase II construction is not expected to begin until Phase I is complete. The applicant proposes to place 2.85 acres of occupied scrub-jay habitat located in Phase I under a perpetual conservation easement. In order to minimize take on site, the applicant has reduced the site plan, will clear vegetation outside of the scrub-jay nesting season (March 1 through June 30) or will conduct a nest survey prior to vegetation clearing, and will landscape with native vegetation. The applicant proposes to mitigate for the loss of 12.72 acres of scrub-jay habitat by acquiring 25.44 acres of credit at a Service approved scrub-jay conservation bank, or contributing a total of \$569,417 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy for Phase I impacts and an amount determined by multiplying 15.28 acres and the cost per acre determined by the Florida Scrub-jay Conservation Fund at the time of Phase II impacts. Funds in the Florida Scrub-jay Conservation Fund are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

We have determined that the applicants' proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats and (2) minor or negligible effects on other environmental values or resources. Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets the requirements, we will issue the ITP for incidental take of the scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice pursuant to Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: November 1, 2007.

Paul Souza,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. E7-22816 Filed 11-21-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-030-1430-HN; NDM 032161]

Opening Order for Reconveyed Land; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens 3.61 acres of reconveyed land to appropriation under the public land laws.

DATES: *Effective Date:* November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Linda Gisvold, Bureau of Land

Management, North Dakota Field Office, 99 23rd Avenue West, Suite A, Dickinson, ND 58601, (701) 227-7711.

SUPPLEMENTARY INFORMATION: The land described below was patented under the Recreation and Public Purposes Act. The patentee no longer needed the land and agreed to a voluntary relinquishment. A quitclaim deed was issued to the United States on August 2, 2006.

Fifth Principal Meridian

T. 138 N., R. 80 W.,
Sec. 34, lot 18.

The area described contains 3.61 acres.

At 8 a.m. on November 23, 2007, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or after 8 a.m. on November 23, 2007, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 16, 2007.

Theresa M. Hanley,

Deputy State Director, Division of Resources.

[FR Doc. E7-22813 Filed 11-21-07; 8:45 am]

BILLING CODE 4310--SS-P

Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it therefore is necessary to administratively reestablish the Board to ensure that its work is not disrupted. The Board's 12 members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The administrative reestablishment of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration. The reestablishment will be effective on the date the charter is filed pursuant to section 9(c) of the Act and 41 CFR 102-3.70.

Certification: I hereby certify that the administrative reestablishment of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.*, and other statutes relating to the administration of the National Park System.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. E7-22877 Filed 11-21-07; 8:45 am]

BILLING CODE 4312-52-P

claims of the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of NJDEP as Trustee for Natural Resources, and the Administrator of the New Jersey Spill Compensation Fund ("State Plaintiffs") under CERCLA and State law against these same defendants in a related complaint filed on behalf of the State Plaintiffs in the United States District Court for the District of New Jersey, for performance of the soils remedy, recovery of State past costs, and payment for State natural resource damages relating to the Site.

The settling defendants consist of eleven Settling Performing Defendants and thirty one Settling Non Performing Defendants. The eleven Settling Performing Defendants are: American Standard Inc., Ashland Inc., Atlantic Richfield Company, BP Lubricants USA Inc., Brenntag Northeast Inc., Clean Earth of North Jersey, Inc., Crown Cork & Seal Company, Inc., E.I. duPont de Nemours & Co., Exxon Mobil Corporation, Quaker City Inc., and Rohm and Haas Company. The thirty one Settling Non-Performing Defendants are: 3M Company, American Inks and Coatings Corp., Avery Dennison Corporation, The Boeing Company, BTA North East Inc., Chevron Environmental Management Company, Continental Holdings Inc., FMC Corporation, General Motors Corporation, Goodall Rubber Company, Gould, Inc., Hatco Corporation, Loos & Dilworth, Inc., Mack Trucks, Inc., Marisol, Inc., New England Container Company, Inc., Novelis Corporation, Occidental Chemical Corporation, Owens Corning, Prior Coated Metals, Inc., Reichhold, Inc., Rexam Beverage Can Company, RUTGERS Organics Corp., The Sherwin-Williams Company, Simpson Paper Company, Southeastern Pennsylvania Transportation Authority, Stepan Company, Stevens Industries, Inc., Sun Chemical Corporation, Union Carbide Corporation, and Wyeth.

Pursuant to the Consent Decree, the Settling Performing Defendants will perform Phase 1 of the Remedial Action for the Martin Aaron Site, consisting primarily of soils remediation work, and will receive approximately \$5,504,000 from the Settling Non Performing Defendants to offset the costs of the work. In addition, the Performing Settling Defendants will pay the United States \$156,680 for past costs and pay the State Plaintiffs \$1,300,000 for past costs and \$175,898 for State natural resource damages. The Consent Decree also resolves the matters addressed in the Consent Decree with regard to the Defense Department ("Settling Federal Agency"). Pursuant to the Consent

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board Reestablishment

AGENCY: National Park Service, Interior.

ACTION: Notice of Reestablishment of the National Park System Advisory Board.

SUMMARY: The Secretary of the Interior intends to administratively reestablish the National Park System Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT:

Bernard Fagan, 202-208-7456; or Shirley Sears Smith, 202-208-7456; or Jennifer Lee, 202-219-1689.

SUPPLEMENTARY INFORMATION: The National Park System Advisory Board was first established by section 3 of the Act of August 21, 1935 (49 Stat. 667; 16 U.S.C. 463). The Board has been statutorily reauthorized several times since then. However, the Board's current statutory authorization expired January 1, 2007. The advice and recommendations provided by the

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 8, 2007, a proposed Consent Decree in *United States v. American Standard Inc., et al.*, Civil Action No. 1:07 CV 05334 (RBK), was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency ("EPA") under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, against all of the defendants in *United States v. American Standard Inc., et al.*, Civil Action No. 1:07 CV 05334 (RBK), for performance of the soils remedy and recovery of past United States response costs relating to the Martin Aaron Superfund Site ("Martin Aaron Site" or "Site"), in Camden, New Jersey. The proposed Consent Decree will also settle the

Decree, the United States, on behalf of the Settling Federal Agency, will pay the Settling Performing Defendants \$172,500 towards the performance of Phase 1 of the Remedial Action.

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, 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. American Standard Inc., et. al.*, Civil Action No. 1:07 CV 05334 (RBK), D.J. Ref. 90-11-3-08678.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, Camden Federal Building & U.S. Courthouse, 401 Market Street, Camden, NJ 08101 (contact Paul A. Blaine) and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007-1866 (contact Michael J. van Itallie). 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 by mail from the Consent Decree Library, please enclose a check in the amount of \$64.75 (\$0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. If requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of \$17.50 (\$0.25 per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5784 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 31, 2007, a proposed Settlement Agreement regarding the Golinsky Mine Site was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05-21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States on behalf of the Department of Agriculture Forest Service and the Environmental Protection Agency and Asarco LLC provides, *inter alia*, that the United States shall have an allowed general unsecured claim of \$4,050,000 with respect to the Site.

The Department of Justice will receive comments relating to the proposed Agreement 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 *In re Asarco LLC*, DJ Ref. No. 90-11-3-08633.

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476-2001, at the Office of the Department of Agriculture, Office of the General Counsel, Room 3351, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, and at the Region 9 Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed 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 proposed 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 \$2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5780 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 31, 2007, a proposed Settlement Agreement regarding the Azurite Mine Site in Whatcom County, Washington was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05-21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States on behalf of the Department of Agriculture Forest Service and the Environmental Protection Agency and Asarco LLC provides, *inter alia*, that the United States shall have an allowed general unsecured claim of \$5,000,000 with respect to the Site.

The Department of Justice will receive comments relating to the proposed Agreement 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 *In re Asarco LLC*, DJ Ref. No. 90-11-3-08633.

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476-2001, at the Office of the Department of Agriculture, Office of the General Counsel, Room 3351, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, and at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the proposed 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 proposed 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 \$2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5783 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on November 9, 2007, a proposed Consent Decree in *United States v. Groveland Resources Corp., et al.*, Civil Action No. 07-12120 (PBS) was lodged with the United States District Court for the District of Massachusetts.

In this action the United States sought cost recovery with respect to the Groveland Wells Nos. 1 & 2 Superfund Site in the Town of Groveland, Massachusetts ("the Site"), under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") against Groveland Resources Corporation and Valley Manufactured Products Company, Inc. (collectively, the "Settling Defendants"). Under the terms of the proposed settlement, the Settling Defendants will pay 100% of the Net Sale or Net Lease Proceeds in the event their Property on the Site is sold or leased to reimburse the United States for costs incurred at the Site. The Settling Defendants shall also impose certain "institutional controls" or deed restrictions on the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating 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 P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Groveland Resources Corp.*, (D. Mass.), D.J. Ref. 90-11-2-338/1.

The Consent Decree may be examined at the Office of the United States Attorney, United States Courthouse, One Courthouse Way, Boston, Massachusetts, and at the United States Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, Massachusetts. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to 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 \$6.50 (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.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5782 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")

Consistent with section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on November 6, 2007, a proposed consent Decree with Powerline Oil Company, CENCO Refining Company (n/k/a Lakeland Development Company), and Energy Merchant Corp. (referred to collectively as "Settling Defendants") in *United States v. Powerline Oil Company et al.*, Case No. 2:04-cv-6435 (C.D. Cal.), was lodged with the United States District Court for the Central District of California.

In this action, as set forth in the First Amended Complaint, the United States seeks to recover, pursuant to section 107 of CERCLA, 42 U.S.C. 9607, the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of

hazardous substances at and from the Waste Disposal Incorporated Site ("WDI Site") in Santa Fe Springs, California, the Operating Industries Site ("OII site"), in Monterey Park, California, and the Casmalia Resources Superfund Site ("Casmalia Site"), in Casmalia, California. Under the proposed Consent Decree, Settling Defendants will pay a total of \$1,450,000 as follows: 100,000.00 to the OII Site Special Account or transferred to the Hazardous Substance Superfund; \$93,394.00 to the Casmalia Site Escrow Account; and \$1,256,606.00 to the WDI Site Special Account or transferred to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Sites. The amount of the proposed settlement is based upon financial information provided by Settling Defendants indicating a limited ability to pay.

The proposed Consent Decree will also resolve certain claims of the State of California for the Sites alleged in a related complaint for a payment of \$40,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating 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 P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Powerline Oil Company, et al.* (DOJ Ref. No. 90-11-2-156/13).

The Consent Decree may be examined at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 (contact Taly Jolish, Esq. (415) 972-3925). 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, 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 number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to *United States v. Powerline Oil Company, et al.* (DOJ Ref. No. 90-11-2-156/13), and enclose a check in the amount of \$16.00 (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. 07-5785 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 2, 2007, a proposed Consent Decree in *United States v. County of San Bernardino, California*, Civil Action No. 5:07-cv-01454-SGL-op, was lodged with the United States District Court for the Central District of California.

The Consent Decree settles claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9207, in connection with the Newmark Groundwater Contamination Superfund Site in San Bernardino County, California. Under the Consent Decree the County will pay \$11 million to settle the United States' claims for past and future response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating 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 P.O. Box 7611, U.S.

Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. County of San Bernardino, California*, D.J. Ref. #90-11-06902/2. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(d).

The Consent Decree may be examined at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, at: <http://www.usdoj.gov/enrd/ConsentDecrees.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 \$6.25 (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 Friedman,
Assistant Section Chief, Environmental
Enforcement Section, Environment and
Natural Resources Division.

[FR Doc. 07-5786 Filed 11-21-07; 8:45 am]

BILLING CODE 4410-15-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States
Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement ("NAFTA") provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty ("AD/CVD") proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2008, through March 31, 2009.

DATES: Applications should be received no later than December 7, 2008.

ADDRESSES: Applications should be submitted (i) electronically, to FR0801@ustr.eop.gov, Attn: "Chapter 19 Roster Applications" in the subject line, or (ii) by fax to Sandy McKinzy at 202-395-3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Assistant General Counsel, Office of the United States Trade Representative, (202) 395-9617.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another

NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade ("GATT"), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103-182, as amended (19 U.S.C. 3432)) ("Section 402") provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The "Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20" (*see* http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=246), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members "shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved." The Code also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to "disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias." Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 1901.2 states that "[w]hile acting as a panelist, a panelist may not appear as counsel before another panel."

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative ("USTR") of

the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2008, through March 31, 2009, are invited to submit applications. Persons submitting applications may either send one copy by fax to Sandy McKinzy at 202-395-3640, or transmit a copy electronically to FR0801@ustr.eop.gov, with "Chapter 19 Roster Applications" in the subject line. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter 19 Roster." Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.

8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.

9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.

10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.

11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.

12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.

13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.

14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will not be subject to public disclosure. They may be referred to other federal agencies in the course of determining eligibility for the roster, and shared with foreign

governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act ("PRA") that has been approved by the Office of Management and Budget ("OMB"). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350-0014. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified

individuals for inclusion on the Chapter 19 roster and for service on Chapter 19 binational panels.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E7-22807 Filed 11-21-07; 8:45 am]

BILLING CODE 3190-W8-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 17e-1; SEC File No. 270-224; OMB Control No. 3235-0217.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17e-1 (17 CFR 270.17e-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "Act") is entitled "Brokerage Transactions on a Securities Exchange." The rule governs the remuneration that a broker affiliated with a registered investment company ("fund") may receive in connection with securities transactions by the fund. The rule requires a fund's board of directors to establish, and review as necessary, procedures reasonably designed to provide that the remuneration to an affiliated broker is a fair amount compared to that received by other brokers in connection with transactions in similar securities during a comparable period of time. Each quarter, the board must determine that all transactions with affiliated brokers during the preceding quarter complied with the procedures established under the rule. Rule 17e-1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule, setting forth: the amount and source of the commission; fee or other remuneration received; the identity of the broker; the terms of the

transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The Commission's examination staff uses these records to evaluate transactions between funds and their affiliated brokers for compliance with the rule.

The Commission staff estimates that 3583 portfolios of approximately 649 fund complexes use the services of one or more subadvisers. Based on discussions with industry representatives, the staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e-1.¹ The staff assumes that all existing funds amended their advisory contracts following amendments to rule 17e-1 in 2002 that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.²

Based on an analysis of fund filings, the staff estimates that approximately 600 fund portfolios enter into subadvisory agreements each year.³ Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours⁴ to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3-1, 10f-3, 17a-10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3-hour time burden equally to all four rules. Therefore, we

¹ Rules 12d3-1, 10f-3, 17a-10, and 17e-1 require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds would rely equally on the exemptions in these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules.

² We assume that funds formed after 2002 that intended to rely on rule 17e-1 would have included the contract provision in their initial subadvisory contracts.

³ The use of subadvisers has grown rapidly over the last several years, with approximately 600 portfolios that use subadvisers registering between December 2005 and December 2006. Based on information in Commission filings, we estimate that 31 percent of funds are advised by subadvisers.

⁴ The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry Association. The \$292 per hour figure for an attorney is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

estimate that the burden allocated to rule 17e-1 for this contract change would be 0.75 hours.⁵ Assuming that all 600 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 450 burden hours annually, with an associated cost of approximately \$131,400.⁶

Based on an analysis of fund filings, the staff estimates that approximately 300 funds use at least one affiliated broker. Based on conversations with fund representatives, the staff estimates that rule 17e-1's exemption would free approximately 40 percent of transactions that occur under rule 17e-1 from the rule's recordkeeping and review requirements. This would leave approximately 180 funds (300 funds $\times$.6 = 180) still subject to the rule's recordkeeping and review requirements. The staff estimates that each of these funds spends approximately 60 hours per year (40 hours by accounting staff, 15 hours by an attorney, and 5 director hours)⁷ at a cost of approximately \$10,495 per year to comply with rule 17e-1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule, and (ii) the fund's directors review those transactions quarterly.⁸ We estimate, therefore, that the total yearly hourly burden for all funds relying on this exemption is 10,800 hours,⁹ with yearly costs of approximately \$1,889,100.¹⁰ Therefore, the annual aggregate burden hour associated with rule 17e-1 is

⁵ This estimate is based on the following calculation (3 hours $\div$ 4 rules = .75 hours).

⁶ These estimates are based on the following calculations: (0.75 hours $\times$ 600 portfolios = 450 burden hours); (\$292 per hour $\times$ 450 hours = \$131,400 total cost).

⁷ The Commission staff's estimates concerning the wage rate for professional time are based on salary information for the securities industry compiled by the Securities Industry Association. The \$292 per hour estimate for an attorney, \$116 per hour estimate for accountant time, and \$295 per hour estimate for directors (based on comparable position) is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁸ This estimate is based on the following calculations: (40 hours accounting staff $\times$ \$116 per hour = \$4640) (15 hours by an attorney $\times$ \$292 per hour = \$4380); (5 hours by directors $\times$ \$295 = \$1475) (\$4640 + \$4380 + \$1475 = \$10,495 total cost).

⁹ This estimate is based on the following calculation: (180 funds $\times$ 60 hours = 10,800).

¹⁰ This estimate is based on the following calculation: (\$10,495 $\times$ 180 funds = \$1,889,100).

11,250,¹¹ and the annual aggregate cost associated with it is \$2,020,500.¹²

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. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: November 15, 2007.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-22843 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28040; 812-13376]

MyShares Trust, et al.; Notice of Application

November 19, 2007.

Correction

In FR Document No. E7-21739, beginning on page 62701 for Tuesday, November 6, 2007, the release number was incorrectly stated. The release

¹¹ This estimate is based on the following calculation: (450 hours + 10,800 hours = 11,250 total hours).

¹² This estimate is based on the following calculation: (\$131,400 + \$1,889,100 = \$2,020,500).

number is revised to read as noted above.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-22846 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56806; File No. 4-429]

Joint Industry Plan; Order Approving Joint Amendment No. 24 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Regarding Elimination of the Class Gate

November 16, 2007.

I. Introduction

On September 14, 2007, September 19, 2007, August 29, 2007, August 30, 2007, and September 26, 2007, American Stock Exchange LLC ("Amex"), Boston Stock Exchange, Inc. ("BSE"), Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), NYSE Arca, Inc. ("NYSE Arca"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder² an amendment ("Joint Amendment No. 24") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").³ In Joint Amendment No. 24, the Participants propose to eliminate the "Class Gate" restriction on Principal Order ("P Order") access through the Linkage. The proposed Joint Amendment No. 24 was published in the **Federal Register** on October 12, 2007.⁴ The Commission received no comments on Joint Amendment No. 24.

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), 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).

⁴ See Securities Exchange Act Release No. 56596 (October 2, 2007), 72 FR 58133.

This order approves Joint Amendment No. 24.

II. Description of the Proposed Amendment

In Joint Amendment No. 24, the Participants proposed to modify section 7(a)(ii)(C) of the Linkage Plan so as to eliminate the Class Gate restriction on P Order access through the Linkage. Currently, section 7(a)(ii)(C) of the Linkage Plan provides that, once a Participant automatically executes a P Order in a series of an Eligible Option Class, it may reject any other P Orders sent in the same Eligible Option Class by the same Participant for 15 seconds after the initial execution unless there is a price change in the receiving Participant's disseminated offer (bid) in the series in which there was the initial execution and such price continues to be the NBBO. After the 15 second period, and until the sooner of one minute after the initial execution or a change in its disseminated offer (bid), section 7(a)(ii)(C) provides that the Participant that provided the initial execution is not obligated to execute any P Orders received from the same Participant in the same Eligible Option Class in its automatic execution system. In Joint Amendment No. 24, the Participants proposed to eliminate the Class Gate restriction because all Participants have removed restrictions on non-customer access to the automatic execution systems, rendering the Class Gate restriction unnecessary.

III. Discussion and Commission Findings

After careful consideration of Joint Amendment No. 24, the Commission finds that approving Joint Amendment No. 24 is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that Joint Amendment No. 24 is consistent with section 11A of the Act⁵ and Rule 608 thereunder⁶ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission recognizes that, at the time of the creation of the Linkage, certain Participants had restrictions on non-customer access to their automatic execution systems. The Class Gate provision served to protect those Participants that did not limit non-customer access against being obligated to automatically execute an unlimited number of P Orders. Since the implementation of the Linkage, all

Participants have removed restrictions on non-customer access to their automatic execution systems. All of the exchanges, therefore, allow access to their trading platforms orders on behalf of non-member market makers. The Commission believes that the greater access to automatic execution systems has rendered the Class Gate provision unnecessary and that eliminating the Class Gate provision should facilitate the more efficient operation of the options markets.

IV. Conclusion

It is therefore ordered, pursuant to section 11A of the Act⁷ and Rule 608 thereunder,⁸ that Joint Amendment No. 24 is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22842 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56787; File No. SR-Amex-2007-108]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change To Increase the Annual Listing Fees for Certain Stock Issues of Listed Companies

November 15, 2007.

On October 3, 2007, the American Stock Exchange LLC ("Amex" 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 Section 141 of the Amex *Company Guide* to increase the annual listing fees for certain stock issues of listed companies. The proposed rule change was published for comment in the **Federal Register** on October 16, 2007.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Amex proposes to amend Section 141 of the Amex *Company Guide* to raise the

annual listing fee, for any stock issue of 50 million shares or less, to \$27,500 per year. Currently, for such issues, Amex charges between \$16,500 and \$24,500 per year, depending on the number of shares outstanding.

After careful review, the Commission finds that Amex's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁵ which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission notes that no comments were received on the proposed fee increase, which is comparable to the annual listing fee imposed by another exchange that has been approved by the Commission.⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-2007-108), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22777 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56805; File No. SR-Amex-2007-122]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Liability for the Actions or Omission of Amex Book Clerks

November 16, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,²

⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

⁶ See Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007) (SR-NASDAQ-2006-040) (approving \$27,500 annual fee on Nasdaq Capital Market issuers for any amount of shares outstanding).

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.

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 242.608.

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 242.608.

⁹ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56636 (October 10, 2007), 72 FR 58691.

notice is hereby given that on November 16, 2007, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 996—ANTE providing for the limited liability of the Exchange in connection with the actions of Amex Book Clerks ("ABCs"). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and <http://amex.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit members, member organizations, and associated persons of member organizations to bring a claim or claims against the Exchange, in limited circumstances, for the actions of an ABC. The Commission, in April 2007, published for public comment in the **Federal Register** the Exchange's proposal to eliminate the agency obligations of specialists and establish

ABCs.⁵ In connection with the approval of the ABC proposal, the Exchange submits this filing relating to the liability of the Exchange for the actions of ABCs.

The ABC will be an Exchange employee or independent contractor designated by the Exchange to be responsible for: (i) Maintaining and operating the customer limit order book and display book for assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC will be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader ("ROT"), remote registered options trader ("RROT") and supplemental registered options trader ("SROT") on the Exchange. In addition, ABCs are also responsible for handling Linkage Orders⁶ in all appointed options classes. As a result, the ABC will have the means to: (1) Utilize an options specialist's account to route P/A Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist's account to fill Satisfaction Orders that result from a trade-through that the Exchange effects.

Article IV, section 1(e) of the Amex Constitution provides that the Exchange, its affiliates, officers, Governors, committee members, employees or agents shall not be liable to a member, member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or

services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority. However, Article IV, section 1(e) does permit the Board of Governors of the Exchange to provide, by rule, Exchange liability with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the floor of the Exchange or between the floor of the Exchange and other markets. Accordingly, proposed Rule 996—ANTE would permit Exchange liability, in limited circumstances, relating to the actions of ABCs for: (i) Maintaining and operating the customer limit order book and display book; and (ii) effecting proper executions of orders placed in the customer order limit book.

Limitation of Liability. The liability of the Exchange for claims arising out of errors or omissions made by ABCs will be limited as follows:

- As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of \$75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because they exceed the applicable maximum amount of liability provided for above, then the maximum amount will be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

Exchange liability will also be limited if a member, member organization or the Exchange fails to close out an uncompleted trade as set forth in Rule

⁵ See Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007) (notice of filing of SR-Amex-2006-107).

⁶ "Linkage Order" means an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

960.⁷ In such a case, the opposing party's liability with respect to any claims arising from such trade will be limited to the lesser of: (1) The loss which would have been experienced by the claimant if the uncomparated trade had been closed out at the opening off trading on the next business day as provided in Rule 960; or (2) the actual loss realized by the claimant.

Furthermore, the Exchange's potential liability is also limited if any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization. Under such circumstances, the member organization will be required to indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

Procedure. Absent reasonable justification or excuse, any claim by a member, member organization, or persons associated with a member or member organization for losses arising from errors or omissions of an ABC, and any claim by the Exchange for indemnification under paragraph (g) of Proposed Rule 996—ANTE, must be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out but within ten (10) business days following such resolution of the unmatched trade.

For purposes of proposed Rule 996—ANTE, the term "transaction" means any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction will give rise to a "single claim" against the Exchange. The Exchange will retain any defenses to such claim or claims that it may have. In addition, no claim will be permitted to arise as to errors or omissions which are found to have resulted from any failure by a member or by any person acting on behalf of a member, to enter or cancel an order

with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

- (i) The description or symbol of the security involved; or
- (ii) The exercise price or option contract price; or
- (iii) The type of option; or
- (iv) The number of trading units; or
- (v) The expiration month; or
- (vi) Any other information or data which is material to the transaction.

Arbitration. Pursuant to proposed Rule 996—ANTE, all disputed claims will be referred to binding arbitration with the decision of a majority of the arbitrators selected to hear and determine the controversy deemed final. There will be no appeal right to the Board of Governors from any decision of an arbitration panel. The arbitration panel will be composed of an odd number of panelists. Each of the parties to the dispute will select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by a random draw who has no direct or indirect financial interest in the claim. The NASD Code of Arbitration Procedure for Industry Disputes (Article VIII of the Amex Constitution) shall apply to any arbitration proceeding.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act⁸ in general and furthers the objectives of section 6(b)(5) of the Act⁹ in particular in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to the Chicago Board Options Exchange's ("CBOE") rules regarding limitation of exchange liability for acts and omission of CBOE Par Officials,¹³ previously published for comment and approved by the Commission,¹⁴ and the Exchange's

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² The Exchange has satisfied the requirement under Rule 19b-4(f)(6)(iii) that it give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing.

¹³ See CBOE Rules 6.7, "Exchange Liability," and 7.11, "Liability of Exchange for Actions of Order Book Officials, and PAR Officials."

¹⁴ See Securities Exchange Act Release Nos. 52017 (July 12, 2005), 70 FR 41453 (July 19, 2005) (notice of filing of SR-CBOE-2005-46) and 52798

⁷ Commentary .01(b) to Rule 960 provides that all rejected options transaction notices ("ROTNs") must be "OK'd" or "DK'd" not later than one-half hour prior to the opening of trading on the first business day following the trade date unless an agent (including a specialist) was involved in the execution of a transaction, where the time limit shall be extended to fifteen minutes prior to such opening (these time limits may be extended by a Floor Official).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

proposal raises no new issues of regulatory concern. Waiving the operative delay will allow the proposal to become effective simultaneously with Amex's proposal to establish ABCs, which we are approving separately today.¹⁵ Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2006-67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-122. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-122 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56792; File No. SR-CBOE-2006-99]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Amendment Nos. 2 and 3 to Proposed Rule Change Relating to FLEX Options Trading and Order Granting Accelerated Approval to Proposed Rule Change as Amended

November 15, 2007.

I. Introduction

On November 27, 2006, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 providing for the trading of Flexible Exchange ("FLEX") Options on a new electronic platform, and to make certain corresponding revisions to its existing open-outcry FLEX rules. On August 17, 2007, CBOE filed Amendment No. 1 to the proposed rule change. On August 30, 2007, the proposed rule change, as

amended, was published for comment in the **Federal Register**.³ No comments were received on the proposal. On November 7, 2007 and November 15, 2007, CBOE filed Amendment Nos. 2 and 3, respectively, to the proposed rule change.⁴ This notice and order solicits comments from interested persons on Amendment Nos. 2 and 3 and grants accelerated approval to the proposed rule change, as amended.

II. Description of Proposal

FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, Exchange members may trade FLEX Options in open outcry. Markets are created when a member submits a request for quotes ("RFQ") to the crowd. This system is referred to herein as the "FLEX RFQ System." The Exchange has proposed an alternate framework for trading FLEX Options using a "hybrid" platform, which will incorporate both open outcry and electronic trading functionality (referred to herein as the "FLEX Hybrid Trading System" or the "System"). Some key features of the new FLEX Hybrid Trading System are the following:

- *Method of Operation:* Transactions can take place through either an open-outcry RFQ process similar to the existing FLEX RFQ System or a new, Internet- and API-based electronic trading platform. Currently, the FLEX RFQ System does not provide for a book, and quotes and orders expire at the conclusion of the RFQ process. By contrast, the new System may allow FLEX Orders to be entered and trade via an electronic book (the "Book"). The Exchange would determine on a class-by-class basis whether to make a Book available.⁵

- *Access:* CBOE members seeking to use the new System must apply to and be approved by the Exchange. Approved members are collectively referred to as "FLEX Traders." In addition, non-members that meet certain conditions may be offered "sponsored access" to the new System.

- *Market-Maker Participation:* As with the existing FLEX rules, there are two types of FLEX Market-Makers: FLEX Appointed Market-Makers and FLEX Qualified Market-Makers. The responsibilities and obligations of FLEX Market-Makers on the new System, and changes to the corresponding rules of

(November 18, 2005), 70 FR 71344 (November 28, 2005) (order approving SR-CBOE-2005-46).

¹⁵ See Securities Exchange Act Release No. 56804 (November 16, 2007) (order approving SR-Amex-2006-107).

¹⁶ For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56311 (August 23, 2007), 72 FR 50133.

⁴ See *infra* Section II(D).

⁵ See Rule 24B.5(b)(1).

the existing FLEX RFQ System, are discussed further below.

Detailed Summary of Proposed Rule Change

A. Proposed FLEX Hybrid Trading System Rules (Chapter XXIVB)

The rules governing the existing FLEX RFQ System are contained, and will continue to be maintained, in Chapter XXIVA of the Exchange rules. The proposed rules governing the new FLEX Hybrid Trading System are found in proposed Chapter XXIVB. The Exchange currently intends to maintain and operate both systems and will determine which system to use on a class-by-class basis. These determinations will be announced to the membership via regulatory circular. This rule further explains that Chapters I through XIX and XXIV of the Exchange rules apply to the new System, except as otherwise indicated. If the rules in Chapter XXIVB are inconsistent with other Exchange rules, the rules in Chapter XXIVB take precedence in relation to the trading of FLEX Options on the new System.

1. Definitions (Proposed Rule 24B.1)

Proposed Rule 24B.1, *Definitions*, corresponds with existing Rule 24A.1 but contains several new definitions necessary to accommodate the new System. For example, the term "FLEX Hybrid Trading System" means the Exchange's trading platform that allows FLEX Traders to submit RFQs, FLEX Quotes, and FLEX Orders. A "FLEX Quote" is a bid or offer entered by a FLEX Market-Maker or an order to purchase or sell entered by a FLEX Trader, in either case in response to an RFQ. A "FLEX Order" is a bid or offer entered by a FLEX Market-Maker or an order to purchase or sell entered by a FLEX Trader, in either case into the Book.

Proposed Rule 24B.1 also defines several terms relating to the RFQ process. The "Submitting Member" is the FLEX Trader who initiates the RFQ or who enters a FLEX Order into the Book. The "RFQ Response Period" is the period during which FLEX Traders may provide FLEX Quotes in response to an RFQ. The "RFQ Reaction Period" is the period during which the Submitting Member determines whether to accept or reject the RFQ Market.⁶ The "RFQ Market" consists of the FLEX Quotes entered in response to an RFQ and FLEX Orders resting in the Book. An "RFQ Order" is an order to buy or an order to sell entered by the

Submitting Member during the RFQ Reaction Period.

Proposed Rule 24B.1 also identifies certain trade conditions that can be placed on an RFQ Order or FLEX Order, such as fill-or-kill, all-or-none, minimum fill, "lots of," and hedge. FLEX Orders except for fill-or-kill orders would be designated by the System as day orders and, if unexecuted, would be canceled at the close of each trade day. An RFQ may include a hedge or "Intent to Cross" trade condition, discussed more fully below. Hedge and Intent to Cross trade conditions will be disclosed on the System.

2. Terms of FLEX Options (Proposed Rule 24B.4)

Proposed Rule 24B.4, *Terms of FLEX Options*, is similar to existing Rule 24A.4. Both rules set forth the variable terms of FLEX Options (such as the underlying security or index, put or call type, exercise style, expiration date, and exercise price). Other terms are not variable and are the same as those that apply to Non-FLEX Options. Both rules set forth the information required from a member who initiates an RFQ, such as the type and form of quote sought, any trade conditions, and the length of the RFQ Response Period.⁷

Proposed Rule 24B.4 lists additional contract and transaction specifications for RFQs, FLEX Quotes, FLEX Orders, and RFQ Orders. These specifications pertain in part to maximum expiration terms and second to minimum value size requirements. The maximum expiration terms are the same as in the existing FLEX rules.⁸ The minimum value size specifications are substantially similar to those in Rule 24A.4, though additional language has been added to clarify the minimum value size requirements for FLEX Orders entered in the Book. There are additional special terms for FLEX Index Options⁹ and FLEX Equity Options,¹⁰ which correspond to provisions in existing Rule 24A.4.

⁷ The length of the RFQ Response Period is defined by the Submitting Member but must fall within the time ranges established by the appropriate Procedure Committee on a class-by-class basis. The period cannot be less than three seconds. See proposed Rule 24B.4(a)(3)(iii).

⁸ For FLEX Equity Options, the maximum term is generally three years, although the Submitting Member may request up to five years. For FLEX Index Options, the maximum term is generally five years, although a Submitting Member may request up to ten years. See existing Rule 24A.4(a)(4); proposed Rule 24B.4(a)(5).

⁹ See proposed Rule 24B.4(b).

¹⁰ See proposed Rule 24B.4(c). For example, settlement of a FLEX Equity Option shall be by physical delivery of the underlying security.

3. FLEX Trading Procedures and Principles (Proposed Rule 24B.5)

On the new System, there will be no trading rotations in FLEX Options, either at the open or the close.¹¹ Instead, trading will result from RFQs submitted through the System or in open outcry, or from transactions on the Book.

(a) Electronic RFQ Process

Upon receipt of an RFQ in proper form, the System will cause the terms and specifications of the RFQ to be communicated to all FLEX Traders. Any FLEX Trader, including the Submitting Member, may then enter a FLEX Quote during the RFQ Response Period. Any FLEX Quote or FLEX Order may be entered, modified, or withdrawn at any point during the RFQ Response Period.¹² The System will dynamically calculate and disseminate to all FLEX Traders the RFQ Market.¹³

Following the RFQ Response Period, the Submitting Member may trade against the RFQ Market during the RFQ Reaction Period. The length of this period will be established by the appropriate Procedure Committee on a class-by-class basis and will not be more than five minutes.¹⁴ Failure of the Submitting Member to trade against the RFQ Market before expiration of the RFQ Reaction Period would equate to a rejection. During the RFQ Reaction Period: (1) FLEX Traders can continue to enter, modify, or withdraw FLEX Quotes and FLEX Orders; (2) FLEX Orders that are entered or modified during the RFQ Response and Reaction Periods will be treated the same as FLEX Quotes for purposes of the priority allocation; and (3) the System will dynamically calculate and disseminate to all FLEX Traders the RFQ Market given the current FLEX Quotes and resting FLEX Orders.¹⁵

The Submitting Member may decline to trade against the RFQ Market by canceling the RFQ or letting it expire. If the Submitting Member chooses to trade but has not indicated an Intent to Cross,

¹¹ See proposed Rule 24B.3.

¹² However, a FLEX Appointed Market-Maker must meet certain FLEX Quote maintenance obligations. See proposed Rule 24B.5(a)(1)(ii)(B).

¹³ See proposed Rule 24B.5(a)(1)(ii)(C) (as modified by Amendment No. 2).

¹⁴ The Exchange originally proposed to cap the RFQ Reaction Period at 30 seconds. In Amendment No. 2, the Exchange proposed to increase the maximum period to five minutes "to address feedback received from members and potential users that the RFQ Reaction Period should be lengthened to provide Submitting Members with additional time to assess an RFQ Market, determine whether to accept or reject it, and process a response accordingly."

¹⁵ See proposed Rule 24B.5(a)(1)(iii)(B)(II) (as modified by Amendment No. 2).

⁶ See proposed Rule 24B.1(u) (as modified by Amendment No. 3).

he or she may enter an RFQ Order to trade with one side of the RFQ Market (but not both). The Submitting Member's RFQ Order will be eligible to trade with FLEX Quotes and FLEX Orders at a single price that will leave bids and offers which cannot trade with each other (the "BBO clearing price"). In determining the priority of FLEX Quotes and FLEX Orders, the System gives priority to those priced better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price. Priority among FLEX Quotes and FLEX Orders at the BBO clearing price is as follows: (1) any FLEX Quotes that are subject to a FLEX Appointed Market-Maker participation entitlement; (2) FLEX Orders resting in the Book, based on the Book priority algorithm; (3) FLEX Quotes for the account of public customers and non-member broker-dealers based on time priority; and (4) all other FLEX Quotes based on time priority.

If the RFQ Market is locked or crossed, priority among FLEX Quotes and FLEX Orders at the BBO clearing price and on the same side as the RFQ Order is as follows: (1) FLEX Orders in the Book, based on the Book priority algorithm; (2) if applicable, an RFQ Order for the account of a public customer or non-member broker-dealer, then any FLEX Quote that is subject to a FLEX Appointed Market-Maker participation entitlement; (3) FLEX Quotes for the account of public customers and non-member broker-dealers, based on time priority; (4) if applicable, an RFQ Order for the account of a member, then any FLEX Quote that is subject to a FLEX Appointed Market-Maker participation entitlement; and (5) all other FLEX Quotes, based on time priority. The System will enter any remaining balance of the incoming RFQ Order in the Book (if available), unless the Submitting Member has indicated that the balance of the RFQ Order is to be automatically canceled if it is not traded.

If the Submitting Member has indicated an "Intent to Cross" in its RFQ request, the Submitting Member may receive a crossing participation entitlement if one has been established in that class by the appropriate Procedure Committee, and if the RFQ Order entered by the Submitting Member during the RFQ Reaction Period matches or improves the BBO clearing price. The RFQ Order will be eligible to trade with FLEX Quotes and FLEX Orders at the BBO clearing price giving priority to the FLEX Quotes and FLEX Orders priced better than the BBO clearing price, then to FLEX Quotes and

FLEX Orders at the BBO clearing price. Priority among multiple FLEX Quotes and FLEX Orders at the BBO clearing price is as follows: (1) FLEX Orders in the Book, based on the Book priority algorithm; (2) FLEX Quotes for the account of public customers and non-member broker-dealers, based on time priority; (3) the crossing participation entitlement; (4) any FLEX Quotes that are subject to a FLEX Appointed Market-Maker participation entitlement;¹⁶ and (5) then all other FLEX Quotes, based on time priority.

If a Book is available in that class, the System would enter any remaining balance of the incoming RFQ Order in the Book and treat it the same as other FLEX Orders. If there is no Book available, the System will expose any remaining balance of the incoming RFQ Order so other FLEX Traders can trade against it. After the remaining balance of the RFQ Order has been exposed for at least the Crossing Exposure Period,¹⁷ the Submitting Member may enter a contra-side order to trade all or any portion of the remaining balance.¹⁸

If the Submitting Member rejects the RFQ Market or to the extent the RFQ Market size exceeds the Submitting Member's size, the System automatically would execute any remaining FLEX Quotes and FLEX Orders that are marketable against each other at the BBO clearing price. Then, if a Book is available, any remaining balance of any FLEX Quote would be automatically entered into the Book unless the FLEX Trader who entered it had indicated that the FLEX Quote is to be automatically canceled if not traded. If no Book is available, any remaining balance of the FLEX Quotes will be automatically canceled at the conclusion of the RFQ Reaction Period.¹⁹

(b) Open-Outcry RFQ Process

To initiate a FLEX transaction using the open-outcry RFQ process under proposed Rule 24B.5, a Submitting Member would submit an RFQ to a FLEX Official. The Submitting Member would then immediately announce the

terms and specifications of the RFQ to the crowd. FLEX Traders present in the crowd may respond orally with FLEX Quotes during the RFQ Response Period. A FLEX Trader could enter, modify, or withdraw its FLEX Quote at any point during the RFQ Response Period. At the expiration of the RFQ Response Period, the Submitting Member would identify the BBO (considering responsive FLEX Quotes and, if applicable, FLEX Orders resting in the Book) and announce the BBO to the crowd.

If the Submitting Member does not indicate an Intent to Cross or act as principal with respect to any part of the trade, the Submitting Member may submit an agency RFQ Order to trade against the RFQ Market. If the Submitting Member rejects the BBO or is given a BBO for less than the entire size requested, the FLEX Traders in the crowd other than the Submitting Member would have an opportunity to match or improve the BBO during a BBO Improvement Interval. At the expiration of any BBO Improvement Interval, the Submitting Member must promptly accept or reject the BBO.

If the Submitting Member indicates an Intent to Cross or act as principal with respect to any part of the trade, acceptance of the displayed BBO would be automatically delayed until the expiration of the BBO Improvement Interval. Prior to the BBO Improvement Interval, the Submitting Member must announce to the crowd the price at which it expects to trade. In these circumstances, the Submitting Member may participate with all other FLEX Traders present in the crowd in attempting to improve or match the BBO during the BBO Improvement Interval. At the expiration of the BBO Improvement Interval, the Submitting Member could trade against the BBO or reject it.

If the Submitting Member rejects the BBO after an RFQ Response Period or BBO Improvement Interval, or the BBO size exceeds the FLEX transaction size indicated in the RFQ, FLEX Traders present in the crowd could accept the unfilled balance of the BBO. Such acceptance must occur by public outcry immediately following the Submitting Member's rejection of the BBO or any BBO Improvement Interval, or the Submitting Member's trade that does not exhaust the full size of the BBO.

The highest bid (lowest offer) would have priority. Among bids (offers) at the same price, priority generally is as follows: (1) The crossing participation entitlement, if the Submitting Member has indicated an Intent to Cross and an entitlement is available in that class; (2)

¹⁶ The crossing participation entitlement and the FLEX Appointed Market-Maker entitlement together may not exceed a certain percentage of the original order. See proposed Rule 24B.5(d)(2)(i)(A)-(B).

¹⁷ The length of this Crossing Exposure Period shall be determined by the appropriate Procedure Committee on a class-by-class basis and shall not be less than three seconds. See proposed Rule 24B.5(a)(1)(iii)(D)(IV).

¹⁸ The Submitting Member must, however, enter a contra-side order when necessary to satisfy applicable minimum value size requirements. See *id.*

¹⁹ See proposed Rule 24B.5(a)(1)(F).

any FLEX Quote subject to a FLEX Appointed Market-Maker participation entitlement; (3) all other FLEX Quotes, in the sequence in which they are entered;²⁰ and (4) FLEX Orders resting in the Book, based on the Book priority algorithm. However, if a member is relying on the "G" exception to section 11(a) of the Act,²¹ the member's bid (offer) must yield to any bid (offer) at the same price on the Book and all other bids (offers) that have priority over the Book. If a Submitting Member is asserting a crossing participation entitlement on behalf of a proprietary account of a member relying on the "G" exception and a FLEX Appointed Market-Maker is also asserting a participation entitlement, the Submitting Member's crossing participation entitlement combined with any guaranteed participation for FLEX Appointed Market-Makers shall not exceed 40% of the original order.

The proposed open-outcry RFQ process is similar to the existing process, with a few distinctions. Under the new System, the Submitting Member is responsible for announcing the terms and specifications of the RFQ to the crowd, receiving responsive FLEX Quotes, and at the conclusion of the RFQ Response Period announcing the BBO to the crowd. Under the existing process, the FLEX Post Official communicates the RFQ to the crowd over facilities maintained by the Exchange, responsive FLEX Quotes may be entered at the post, and the BBO is visibly displayed at the post and over the network.²² The proposed priority algorithm takes into consideration the Book, which does not exist currently, and provides that two bids submitted in open outcry at the same time and same price will be apportioned equally, as compared to the existing practice of affording priority to FLEX Appointed or Qualified Market-Makers.²³

(c) *The FLEX Book and FLEX Orders*

The Exchange may determine to make a FLEX Book available on a class-by-class basis. If a Book has been enabled, a Submitting Member may enter a FLEX Order if it satisfies the applicable

minimum value size requirements and the FLEX Order is in compliance with section 11(a) of the Act. A FLEX Order submitted on behalf of the proprietary account of a member relying on the "G" exception to Section 11(a) may be entered only to hit the Book and may not rest in the Book.²⁴

FLEX Orders in the Book are ranked and matched based on price/time priority. However, if a FLEX Appointed Market-Maker is quoting at the best bid (offer) and a FLEX Appointed Market-Maker participation entitlement has been established, then priority at the same price is as follows: (1) Any FLEX Orders for the account of public customer ranked ahead of the FLEX Appointed Market-Maker; (2) any FLEX Orders subject to a FLEX Appointed Market-Maker entitlement; and (3) all other FLEX Orders, based on time priority.²⁵

A Submitting Member may not execute as principal against a FLEX Order on the Book that it represents as agent unless: (1) The Submitting Member has been bidding or offering for at least the Crossing Exposure Period before receiving the agency FLEX Order that is executable against such bid or offer;²⁶ or (2) the agency FLEX Order is first subject to an RFQ and the agency FLEX Order (or any remaining balance not executed during the RFQ Reaction Period) is exposed on the System for at least the Crossing Exposure Period.²⁷ A Submitting Member may not execute a solicited order against a FLEX Order that the Submitting Member is representing as agent unless the agency FLEX Order is first subject to any RFQ and the agency FLEX Order (or any remaining balance not executed during the RFQ Reaction Period) is exposed on the System for at least the Crossing Exposure Period.²⁸ The Crossing Exposure Period referenced in the above provisions will be established by the appropriate Procedure Committee on a class-by-class basis and will not be less than three seconds.²⁹

(d) *Creation of Binding Contracts*

Proposed Rule 24B.5(c) provides that acceptance of any bid or offer creates a binding contract under Rule 6.48. This provision is the same as in existing Rule 24A.5(d) and applies to both RFQ and Book transactions.

(e) *Guarantees*

For FLEX Equity Options, the Exchange's appropriate Procedure Committee may determine on a class-by-class basis to establish a crossing participation entitlement for facilitations and/or solicitations with respect to open-outcry and/or electronic trades. The entitlement percentage may not exceed 40% of the original order.³⁰ If the Submitting Member matches or improves the BBO or BBO clearing price, as applicable, the Submitting Member would have priority to execute the contra-side of the order up to the crossing participation entitlement percentage. The appropriate Procedure Committee similarly may determine on a class-by-class basis to establish a crossing participation entitlement for FLEX Index Options, which may not exceed 40% of the trade. With respect to FLEX Index Options, if the Submitting Member matches or improves the BBO or BBO clearing price, as applicable, the Submitting Member would have priority to execute the contra-side of the order up to the largest of: (1) The crossing entitlement percentage; (2) a proportional share of the trade; (3) \$1 million underlying equivalent value; or (4) the remaining underlying equivalent value on a closing transactions valued at less than \$1 million.³¹

In the past, the establishment of FLEX Appointed Market-Maker entitlements were the subject of separate rule filings.³² In lieu of submitting separate rule filings, the Exchange has now proposed to include specific parameters within the rule text, similar to its rules respecting crossing participation entitlements and market-maker participation entitlements for Non-FLEX Options.³³ Henceforth, the appropriate Procedure Committee may establish a participation entitlement for FLEX Appointed Market-Makers on a class-by-class basis with respect to open-outcry RFQs, electronic RFQs, and/or Book transactions. Any such entitlement shall: (1) Be divided equally by the number of FLEX Appointed Market-Makers quoting at the BBO or BBO

²⁰ If two or more best bids (offers) are submitted in open outcry at the same time and same price or if the Submitting Member cannot reasonably determine the sequence in which they were made, priority would be apportioned equally among those open-outcry bids (offers). See proposed Rule 24B.5(a)(2)(v)(A)(III) (as modified by Amendment No. 2).

²¹ 15 U.S.C. 78k(a)(1)(G).

²² Compare proposed Rules 24B.5(a)(2)(i)(B), (ii)(A), and (ii)(B) to existing Rule 24A.5(a)(ii), (b)(i), and (b)(iii).

²³ Compare proposed Rules 24B.5(a)(2)(v) and (d) to existing Rules 24A.5(e) and (f).

²⁴ See proposed Rule 24B.5(b)(2)(ii).

²⁵ See proposed Rule 24B.5(b)(2)(iii).

²⁶ See proposed Rule 24B.5(b)(3)(i)(B).

²⁷ See proposed Rule 24B.5(b)(3)(i)(A) (as modified by Amendment No. 2).

²⁸ See proposed Rule 24B.5(b)(3)(ii) (as modified by Amendment No. 2).

²⁹ See proposed Rule 24B.5(b)(3)(iii) (added by Amendment No. 2).

³⁰ See proposed Rule 24B.5(d)(2)(i)(A).

³¹ See proposed Rule 24B.5(d)(2)(i)(B). In the FLEX RFQ System rules, the crossing participation entitlement for transactions in FLEX Index Options is currently 20%, and there are similar provisions for FLEX Index Options that could permit an entitlement of greater than 40% in certain cases. See existing Rule 24A.5(e)(iii)(B).

³² See Rule 24A.5(e)(iv); Securities Exchange Act Release No. 45934 (May 15, 2002), 67 FR 36276 (May 23, 2002) (SR-CBOE-2002-09).

³³ See, e.g., Rule 8.87, *Participation Entitlement of DPMs and e-DPMs* (providing for a DPM/e-DPM participation entitlement after all public customer orders are satisfied).

clearing price, as applicable; (2) collectively be no more than: (a) 50% of the remaining order when one other FLEX Market-Maker is quoting at the same price, (b) 40% when two other FLEX Market-Makers are quoting at the same price, and (c) 30% when three or more FLEX Market-Makers are quoting at the same price; and (3) when combined with any Submitting Member's crossing participation entitlement, shall not exceed 40% of the size of the original order.³⁴ Pronouncements regarding the applicable participation entitlements must be announced to the membership via regulatory circular.

(f) Solicited Orders

A Submitting Member trading in open outcry may not cross an order that he or she is holding with an order that he or she solicited from a FLEX Market-Maker who is then in the trading crowd, except in accordance with CBOE Rule 6.55, *Multiple Representation Prohibited*. A Submitting Member utilizing the electronic System may not cross an order that he or she is holding with: (1) a solicited order for a FLEX Market-Maker's individual or joint account; or (2) a solicited order initiated by the FLEX Market-Maker for an account in which the FLEX Market-Maker has an interest, unless the FLEX Market-Maker refrains from participating on the same trade.³⁵

(g) FLEX Standard Minimum Increments

The applicable increments for FLEX Index Options will be identical to the increments in the existing FLEX rules, which permit decimal bids and offers in the designated currency that meet or exceed certain minimum parameters.³⁶ For example, the minimum increment in U.S. dollars is \$0.01 (or such other minimum as the appropriate Procedure Committee may set from time to time to ensure fair and orderly markets). The applicable increments for FLEX Equity Options will be determined by the appropriate Procedure Committee on a class-by-class basis, but may not be smaller than \$0.01. This represents a change from the existing FLEX rules, under which the trading increments applicable to FLEX Equity Options are the same as those applicable to Non-FLEX Equity Options (*i.e.*, \$0.10 for simple bids and offers in series quoted at or above \$3 a contract, \$0.05 for simple bids and offers in series quoted

below \$3 a contract, and \$0.01 for series quoted in the penny pilot program³⁷).

4. FLEX Market-Maker Appointments and Obligations (Proposed Rule 24B.9)

Under the rules for the new System, the Exchange will appoint two or more FLEX Qualified Market-Makers to each FLEX Index Option class and settlement currency, and two or more FLEX Qualified Market-Makers to each FLEX Equity Option class. In making such appointments and in taking other action with respect to FLEX Qualified Market-Makers, the Exchange shall take into account the factors enumerated in, and shall refer to the requirements of, existing CBOE Rule 8.3, Appointment of Market-Makers. As a condition to receiving and maintaining a FLEX Qualified Market-Maker appointment in a FLEX Index Option (FLEX Equity Option), the FLEX Qualified Market-Maker must maintain an appointment in one or more Non-FLEX Index Option classes (Non-FLEX Equity Option classes). The Non-FLEX Option class need not include the FLEX Option class's underlying index or security.

Notwithstanding the above, the appropriate Market Performance Committee may determine to solicit applications and appoint: (1) One or more FLEX Appointed Market-Makers in addition to appointing FLEX Qualified Market-Makers to such classes; or (2) two or more FLEX Appointed Market-Makers in lieu of appointed FLEX Qualified Market-Makers. Thus, under this revised structure applicable to both platforms, a FLEX Option class could be structured as a FLEX Qualified Market-Maker-only crowd with at least two participants, a mixed FLEX Qualified/Appointed Market-Maker crowd with at least three participants, or a FLEX Appointed Market-Maker-only crowd with at least two participants.

A FLEX Appointed Market-Maker must provide a FLEX Quote in response to any open-outcry RFQ in a class of FLEX Options to which it is appointed and trades in open outcry.³⁸ In addition, a FLEX Appointed Market-Maker must provide FLEX Quotes in response to a designated percentage of electronic RFQs, such percentage to be determined by the appropriate Procedure Committee and not less than 80%.³⁹ Although a FLEX Qualified Market-Maker need not enter a FLEX Quote in response to an RFQ in a class of FLEX Options to which it is appointed,⁴⁰ the FLEX

Qualified Market-Maker (like the FLEX Appointed Market-Maker) must submit a FLEX Quote if called upon by a FLEX Official, including when no FLEX Quotes are submitted in response to a specific RFQ.⁴¹

5. FLEX Officials (Proposed Rule 24B.14)

Existing FLEX Rule 24A.12 provides that a FLEX Post Official is responsible for: (1) Reviewing the conformity of RFQs and FLEX Quotes to the terms and specifications contained in Rule 24A.4; (2) posting RFQs for dissemination; (3) determining the BBO; (4) ensuring that contracts are executed in conformance with the priority principles set forth in Rule 24A.5(e); (5) calling for Indicative FLEX Quotes in accordance with the requirements of Rule 24A.12(c); and (6) calling upon FLEX Qualified Market-Makers to provide FLEX Quotes in specific classes of FLEX Equity Options as provided in Rule 24A.9(c).⁴²

Proposed Rule 24B.14, *FLEX Official*, corresponds with existing Rule 24A.12 and describes the functions of a FLEX Official for the new System. The FLEX Official would continue to be responsible for reviewing the conformity of open-outcry RFQs to the applicable terms and specifications in proposed Rule 24B.4. However, because open-outcry FLEX Quotes will now be provided to the Submitting Member, the FLEX Official is no longer responsible for reviewing them for conformity to the applicable terms and specifications or for determining the BBO. In addition, a FLEX Official may nullify a FLEX transaction, whether electronic or open-outcry, if he or she determines that it does not conform to the terms of proposed Rules 24B.4 or 24B.5. As noted above, a FLEX Official may call upon FLEX Market-Makers, whether Qualified or Appointed to a given class, to provide FLEX Quotes in certain circumstances, as provided in proposed Rule 24B.9.

A FLEX Official may be an employee of the Exchange or an independent contractor. The Exchange may designate other qualified employees or independent contractors to assist the FLEX Official as the need arises.⁴³

6. Position and Exercise Limits

Proposed Rules 24B.7, *Position Limits and Reporting Requirements*, and 24B.8, *Exercise Limits*, are modeled after existing Rules 24A.7 and 24A.8. However, the Exchange is proposing to make certain revisions to existing Rules

³⁴ See proposed Rule 24B.5(d)(2)(ii).

³⁵ See proposed Rule 24B.5(d)(2)(i)(C).

³⁶ See existing Rule 24A.5(g) (which is proposed to be renumbered as Rule 24A.5(f)); proposed Rule 24B.5(e).

³⁷ See CBOE Rule 6.42.

³⁸ See proposed Rule 24B.9(c)(i).

³⁹ See proposed Rule 24B.4(a)(5)(iv).

⁴⁰ See proposed Rule 24B.9(c).

⁴¹ See proposed Rule 24B.9(d).

⁴² See existing Rule 24A.12(b).

⁴³ See proposed Rule 24B.14(a).

24A.7 and 24A.8, and to include the same language in proposed Rules 24B.7 and 24B.8, relating to the applicable position and exercise limits for FLEX Index Options and the aggregation of certain FLEX and non-FLEX positions. The Exchange has proposed changes to Rule 24A.7 to conform the language of that rule to reflect changes that were recently approved by the Commission in a separate proposed rule change.⁴⁴

In addition, the proposal would amend Rule 24A.7 to establish new position limits for certain industry-based FLEX Index Option classes:

1. No more than four times the applicable position limits established pursuant to Rule 24.4A for FLEX Options on: (a) The Dow Jones Transportation Average or the Dow Jones Utility Average; or (b) an industry-based index that is not a "narrow-based security index," as defined under Section 3(a)(55)(B) of the Act.⁴⁵

2. For all other industry-based FLEX Index Option classes, no more than one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the put class and the call class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 24.4A, *Position Limits for Industry Index Options*.

The proposal also would amend Rule 24A.7 to provide that position limits for a micro narrow-based FLEX Index Option class shall not exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the put class and the call class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 24.4B, *Position Limits for Options on Micro Narrow-Based Indexes As Defined Under Rule 24.2(d)*. Finally, new language to Rule 24A.7 would provide that, except as otherwise provided, the position limit for a broad-based FLEX Index Option class may not exceed 200,000 contracts on the same side of the market. Proposed Rule 24B.7 replicates amended Rule 24A.7 in the rules applying to the new System.

Both rules would contain new language requiring that positions in FLEX Options must be aggregated with positions in Non-FLEX Options in certain circumstances:

• *QIX Options*: Commencing at the close of trading two business days prior to the last trading day of the calendar, positions in FLEX Index Options having

an exercise settlement value determined by the level of the index at the close of trading on the last trading day before expiration shall be aggregated with positions in Quarterly Index (QIX) Options on the same index with the same expiration and shall be subject to the position limits set forth in Rule 24.4, 24.4A, or 24.4B, as applicable.

• *Weekly Options*: Commencing at the close of trading two business days prior to the last trading day of the week, positions in FLEX Options that are cash-settled⁴⁶ shall be aggregated with positions in Short Term Option Series on the same underlying index with the same means for determining exercise settlement value (e.g., opening or closing prices of the underlying index) with the same expiration and shall be subject to the position limits set forth in Rule 24.4, 24.4A, 24.4B or 29.5, as applicable.

Proposed Rule 24B.8 replicates existing Rule 24A.8 regarding exercise limits. Both rules generally provide that the exercise limit for a FLEX Index Option is equivalent to the position limit. Both rules also set forth certain minimum value size requirements for exercises of FLEX Equity Options and FLEX Index Options.

In an earlier proposed rule change, CBOE represented that, when it files a proposed rule change to list and trade a new Non-FLEX Index Option, it also would propose to list and trade the FLEX Index Options in the same filing and include proposed position and exercise limits.⁴⁷ Because the maximum FLEX Index Option position and exercise limits will now be explicitly set out in Rules 24A.7, 24A.8, 24B.7, and 24B.8, the Exchange seeks to eliminate this earlier commitment.

7. Financial Requirements

Under the proposal, a FLEX Index Market-Maker may not effect a FLEX Index Option transaction unless it has demonstrated to the satisfaction of the Exchange that the net liquidating equity maintained in the FLEX Appointed Market-Maker's individual or joint accounts with any one clearing member in which transactions in FLEX Index Options will be conducted is at least \$100,000.⁴⁸ In addition, a FLEX Index

Appointed Market-Maker is required to maintain at least \$1 million net liquidating equity and/or \$1 million net capital, as applicable.⁴⁹ A FLEX Index Appointed Market-Maker or its clearing member must immediately inform the Exchange whenever the FLEX Index Appointed Market-Maker fails to be in compliance with any of the above requirements. FLEX Market-Makers and floor brokers must file letters of guarantee accepting financial responsibility for all FLEX transactions they make.⁵⁰ These provisions parallel existing Rules 24A.13, 24A.14, and 24A.15 that apply to the FLEX RFQ System.

8. Other Rules for New System

Other rules in proposed Chapter XXIVB are the same as, or closely modeled after, the existing rules of the FLEX RFQ System. Proposed Rules 24B.2, *Hours of Trading*; 24B.3, *Trading Rotations*; 24B.10, *Related Securities*; 24B.15, *Nonavailability of RAES*; and 24B.16, *Inapplicability of Split Price and Accommodation Liquidation Rules*, are identical to Rules 24A.2, 24A.3, 24A.11, 24A.16, and 24A.17, respectively. Proposed Rules 24B.6, *Discretionary Transactions*, and 24B.13, *Letter of Guarantee or Authorization* are virtually identical to Rules 24A.6 and 24A.15, respectively, except for non-substantive grammatical changes. Proposed Rules 24B.11, *FLEX Index Appointed Market-Maker Account Equity*, and 24B.12, *FLEX Index Appointed Market-Maker Financial Requirements*, are virtually identical to Rules 24A.13 and 24A.14, respectively, except that revisions are being made to clarify that these rules apply only to FLEX Appointed Market-Makers in FLEX Index Options.⁵¹

⁴⁹ See proposed Rule 24B.12.

⁵⁰ See proposed Rule 24B.13.

⁵¹ The special account equity and financial requirements under existing Rules 24A.13 and 24A.14 apply only to FLEX Appointed Market-Makers, who currently are appointed only to FLEX Index Option classes and currently are subject to certain heightened minimum value size requirements under Rule 24A.4(a)(4)(iv). Given the proposed changes to the FLEX Market-Maker appointments discussed above, which would allow for the appointment of a FLEX Equity Appointed Market-Maker, proposed Rules 24B.11 and 24B.12 make clear that these special account equity and financial requirements would apply only to FLEX Appointed Market-Makers in FLEX Index Options (who would continue to be subject to the heightened minimum value size requirements under proposed Rule 24B.4(a)(5)(iv)) and not FLEX Appointed Market-Makers in FLEX Equity Options (who would not be subject to heightened minimum value size requirements). The Exchange has proposed corresponding changes to existing Rules 24A.13 and 24A.14.

⁴⁴ See Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR-CBOE-2007-79).

⁴⁵ 15 U.S.C. 78c(a)(55)(B).

⁴⁶ FLEX Index Options and FLEX Credit Default Options are cash settled. FLEX Equity Options are settled by physical delivery. See existing Rules 24A.4(b)(4) and (c)(3) and 29.19; see also proposed Rules 24B.4(b)(4) and (c)(3).

⁴⁷ See Securities Exchange Act Release No. 43108 (August 2, 2000), 65 FR 48770 (August 9, 2000) (SR-CBOE-00-26) (immediately effective proposal providing for the listing and trading of FLEX Options on all indices that underlie Non-FLEX Options listed and traded by the Exchange).

⁴⁸ See proposed Rule 24B.11.

B. Changes to Existing FLEX Rules

The Exchange is proposing various changes to the existing FLEX rules to conform them to the corresponding new System rules. In addition, the term "Indicative FLEX Quote" in Rule 24A.1 and a related reference in Rule 24A.12 are being deleted. Indicative FLEX Quotes are non-binding indications of the market that were periodically supplied by FLEX Market-Makers and displayed on the FLEX communication network. This functionality is no longer utilized, so these references in Rules 24A.1 and 24A.12 are being deleted.

The Exchange is also proposing to increase the crossing participation entitlement percentage available on the FLEX RFQ System. Currently, the Submitting Member may obtain a crossing participation entitlement of 25% of the incoming order for a FLEX Equity Option or 20% of the incoming order for a FLEX Index Option.⁵² Under the proposal, the appropriate Procedure Committee could determine on a class-by-class basis whether to establish a crossing participation entitlement for facilitations and/or solicitations and the applicable crossing participation entitlement percentage, which may not exceed 40% of the incoming order.⁵³ These revisions would make the crossing participation entitlements equivalent on the FLEX RFQ System and the FLEX Hybrid Trading System.

C. Other Changes to CBOE Rules

The Exchange is proposing to allow sponsored access to the new System. Under proposed Rule 6.20A, a CBOE member ("Sponsoring Member") may provide a non-member ("Sponsored User") with electronic access to the System. The proposed rule outlines the requirements that Sponsored Users and Sponsoring Members are required to meet prior to engaging in a sponsorship arrangement. A Sponsored User may be a person, such as an institutional investor, who has entered into a sponsorship arrangement with a Sponsoring Member for purposes of entering orders on the System. This would include entering and responding to electronic RFQs and entering FLEX Orders into the Book. A Sponsored User may utilize the System only if authorized in advance by one or more Sponsoring Members in accordance with the provisions of proposed Rule 6.20A.

⁵² See Rule 24A.5(e)(iii)(A)–(B). Other existing provisions could allow the Submitting Member to receive in excess of 20% of an incoming order for a FLEX Index Option. See Rule 24A.5(e)(iii)(B).

⁵³ See proposed Rule 24A.5(e)(iii)(A)–(B).

D. Amendment Nos. 2 and 3

In Amendment No. 2, the Exchange made the following changes to the proposal:

- In proposed Rule 24B.5(a)(1), modifying the procedures that apply during the electronic RFQ Reaction Period to: (i) Permit FLEX Quotes and FLEX Orders to be entered, modified, or canceled during the RFQ Reaction Period; (ii) increase the maximum RFQ Reaction Period from the proposed 30 seconds to five minutes; (iii) provide that, if the Submitting Member enters a FLEX Quote during the RFQ Reaction Period, the Submitting Member must be bidding (offering) for at least the Crossing Exposure Period prior to entering an RFQ Order; and (iv) provide that the RFQ Market is dynamically updated during both the RFQ Response and RFQ Reaction Periods;

- Also in proposed Rule 24B.5(a)(2), modifying the open-outcry priority provisions to clarify the Exchange's original intent that, after the application of any participation entitlements, all other FLEX Quotes submitted in response to an open-outcry RFQ have priority based on the sequence in which those FLEX Quotes are made in open outcry and, to the extent two or more best bid (offer) FLEX Quotes are submitted in open outcry at the same time and same price (or the Submitting Member cannot reasonably determine the sequence), priority will be apportioned equally;

- In proposed Rule 24B.5(b), modifying the Book crossing provisions to clarify the Exchange's original intent that an agency FLEX Order must first be subject to an RFQ and the agency FLEX Order (or any remaining balance not executed during the RFQ Reaction Period) must also be exposed on the System for at least the Crossing Exposure Period prior to entering a contra-side principal or solicitation order that is executable against the agency FLEX Order. Previously, the proposed rule text had simply indicated that the agency FLEX Order must first be subject to an RFQ;

- Updating the text of Rules 24A.7 and 24A.8, as well as proposed Rules 24B.7 and 24B.8, to reflect unrelated changes that have been approved in a separate rule filing⁵⁴ and to make certain non-substantive corrections;

- Inserting corresponding changes to the discussion sections of the Form 19b–4 and the Exhibit 1 **Federal Register** notice to reflect the above-noted changes;

⁵⁴ See Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR–CBOE–2007–79).

- Providing information regarding its plans respecting dissemination of FLEX data via the Options Price Reporting Authority ("OPRA"). Specifically, with respect to price reporting, the Exchange currently plans to continue disseminating via OPRA information regarding executed FLEX transactions. However, the Exchange currently does not plan to disseminate via OPRA information respecting pending electronic and open-outcry RFQs or information on resting orders in the Book; and

- Submitting as part of Exhibit 5 the text of the Sponsored User Agreement form that the Exchange proposes to use in connection with proposed Rule 6.20A.

In Amendment No. 3, the Exchange made the following changes to the proposal:

- Revising the text of Rule 24B.1(u), RFQ Reaction Period, to reflect that during this time a Submitting Member determines whether to accept or reject the RFQ Market, which consists of both FLEX Quotes and FLEX Orders; and

- Correcting the text of proposed Rule 24B.5(a)(2)(iii) that was submitted as part of Amendment No. 2.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵⁵ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,⁵⁶ which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 11A(a)(1)(C) of the Act,⁵⁷ which sets forth Congress's findings that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions; fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and the

⁵⁵ 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).

⁵⁶ 15 U.S.C. 78b(b)(5).

⁵⁷ 15 U.S.C. 78k–1(a)(1)(C).

practicability of brokers executing investors' orders in the best market. The Commission generally believes that an exchange furthers these principles when developing products and trading functionality that compete with the over-the-counter markets. This order approves the amended proposal in its entirety, although only certain aspects of the proposed rule change are discussed below.

A. Execution Algorithm and Priority and Allocation Rules

1. Electronic Trading

The Commission believes that the priority and allocation rules for electronic trading on the new System are reasonable and consistent with the Act. These rules generally provide for allocation pursuant to price/time priority, with some allowance for market-maker and crossing participation guarantees. The proposed guarantees appear reasonably designed to balance incentives for providing liquidity in the FLEX market (in the case of the market-maker entitlement) and for bringing trades to the Exchange (in the case of the crossing participation entitlement) with incentives for all other market participants to quote competitively.

The Commission also believes that the priority and allocation rules for electronic FLEX trading are consistent with section 11(a) of the Act.⁵⁸ The Commission believes, however, that neither a Submitting Member who trades against an electronic RFQ Market nor any other FLEX Trader who itself submits an RFQ Quote electronically qualifies for the "effect-versus-execute" exception to section 11(a).⁵⁹ Nevertheless, the Commission believes that other exceptions may apply. FLEX Market-Makers qualify for the market-maker exception. With respect to non-market-maker members, the new System appears reasonably designed to cause RFQ Quotes constituting the RFQ Market and the RFQ Order that trades against the RFQ Market to yield to non-member interest, consistent with the "G" exception.⁶⁰

2. Open-Outcry Trading on New System

The Commission believes that the priority and allocation rules for open-outcry trading on the new System are reasonable and consistent with the Act.

These provisions are generally modeled on the priority and allocation rules of the existing FLEX RFQ System, which were previously found by the Commission to be consistent with the Act.⁶¹ There is one significant difference, however, the addition of an electronic Book. Generally, an order resting on the Book will be filled only after all FLEX Quotes submitted in open outcry, even if the order was booked before the RFQ began and any oral responses to the RFQ were submitted.⁶² The Commission generally believes that displayed limit orders of public customers must be able to compete freely and openly for executions on an equitable basis. However, with a highly customized product such as FLEX Options, there are likely to be few booked orders. Therefore, solely with respect to the FLEX Hybrid Trading System, the Commission believes at the present time that it is appropriate to approve CBOE's proposal to allow FLEX Quotes submitted in response to an open-outcry RFQ to have priority over same priced bids (offers) on the Book.⁶³ The Commission also notes that an open-outcry FLEX Quote must yield to the Book and all other bids (offers) that have priority over the Book if the member entering the FLEX Quote is relying on the "G" exception to Section 11(a) of the Act.⁶⁴

3. Orders on the Book

If the Exchange enables an electronic Book in a FLEX Option class, any transaction involving a booked order must comply with section 11(a) of the Act. If a FLEX Trader cannot avail itself of any other exception, it must rely on the "G" exception, which requires, among other things, that a member order yield to a non-member order at the same price, even if the member order has time priority. The new System has not been programmed to cause a member order on the Book to yield to a later-arriving non-member order at the same price, although proposed Rule 24B.5(b)(2)(ii) prohibits a member order that is relying on the "G" exemption from resting on the Book. The Commission believes that a member may rely on the "G" exception if it sends an order to the Book and then cancels it immediately if it is not executed in full.

4. Changes to Allocation Rules of FLEX RFQ System

CBOE has proposed certain changes to its allocation rules under the existing FLEX RFQ System. Under the proposal, a FLEX Appointed Market-Maker will have priority over a FLEX Qualified Market-Maker when the two submit orders at the same time and same price. The Commission believes that this is consistent with the Act in light of the greater quoting obligations of the FLEX Appointed Market-Maker. CBOE also is proposing to increase the percentages of an incoming order that can be reserved for a crossing guarantee or FLEX Appointed Market-Maker participation entitlement.⁶⁵ These percentages appear reasonably designed to balance incentives for providing liquidity with incentives for all other market participants to quote competitively.

5. Best Execution

The proposed rules do not explicitly require an RFQ Trader to trade against an RFQ Market. The Commission reminds RFQ Traders that the duty of best execution requires them to assess the quality of competing markets to ensure that a customer order is directed to the market providing the most advantageous terms for the customer. If a Submitting Member declines to trade a customer order against an RFQ Market and subsequently facilitates the customer order at a price inferior to the RFQ Market, there would be a presumption that the Submitting Member did not fulfill its best execution obligation.

B. Market-Maker Benefits and Obligations

The Commission believes that the balance of benefits and obligations of FLEX Market-Makers under the rules for the new System is consistent with the Act. A FLEX Appointed Market-Maker must provide a FLEX Quote in response to any open-outcry RFQ in a class of FLEX Options to which it is appointed and trading in open outcry.⁶⁶ In addition, the FLEX Appointed Market-Maker must provide FLEX Quotes in response to a designated percentage of electronic RFQs, such percentage to be determined by the appropriate Procedure Committee and not less than 80%.⁶⁷ Although a FLEX Qualified Market-Maker need not enter a FLEX Quote in response to an RFQ in its assigned class,⁶⁸ the FLEX Qualified

⁵⁸ 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

⁵⁹ 17 CFR 240.11a2-2(T).

⁶⁰ See 15 U.S.C. 78k(a)(1)(G) (setting forth all requirements for the "G" exception).

⁶¹ See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) SR-CBOE-92-17).

⁶² See proposed Rule 24B.5(a)(2)(v)(A).

⁶³ If circumstances change and the FLEX Book becomes frequently used, the Commission may revisit this issue.

⁶⁴ See proposed Rule 24B.5(a)(2)(v)(B).

⁶⁵ See proposed Rule 24A.5(e)(iii)-(iv).

⁶⁶ See proposed Rule 24B.9(c)(i).

⁶⁷ See proposed Rule 24B.4(a)(5)(iv).

⁶⁸ See proposed Rule 24B.9(c).

Market-Maker (like the FLEX Appointed Market-Maker) must submit a FLEX Quote if called upon by a FLEX Official, including when no FLEX Quotes are submitted in response to a specific RFQ.⁶⁹ FLEX Appointed Market-Makers may be awarded a participation entitlement, noted above. Both FLEX Market-Makers qualify for the market-maker exception to section 11(a) of the Act.

C. Position and Exercise Limits

The Commission believes that the proposed position and exercise limits in FLEX Options are reasonable and consistent with the Act. They appear reasonably designed to prevent a member from establishing an imprudent position in FLEX Options. Moreover, the Commission believes that these rules are reasonably designed to prevent a FLEX Trader from using FLEX Options to evade the position limits applicable to comparable Non-FLEX Options. In view of the explicit standards for position and exercise limits set forth in Rules 24A.7, 24A.8, 24B.7, and 24B.8, the Commission believes it is reasonable to relieve the Exchange of the obligation to propose new position and exercise limits for FLEX Options whenever it lists and trades a comparable non-FLEX product.

D. Sponsored Access

The Commission believes that the proposed sponsored access provisions are reasonable and consistent with the Act. The Commission notes that these provisions are substantially similar to those of another exchange, which previously were approved by the Commission.⁷⁰ The Exchange has proposed to offer sponsored access only to the new FLEX Hybrid Trading System, not to open-outcry FLEX trading or to other Exchange trading facilities. If the Exchange in the future would seek to offer sponsored access to its other trading facilities, it would have to file a proposed rule change pursuant to section 19(b) of the Act.

E. Acceleration

The Commission finds good cause for approving the proposal, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. Amendment Nos. 2 and 3 made only

minor changes to the overall proposal, which was subject to a notice-and-comment period. Because no comments were received, the Commission believes that good cause exists to grant accelerated approval and thereby allow the Exchange to implement the proposal without further delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2006-99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-CBOE-2006-99 and should be submitted on or before December 14, 2007.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷¹ that the proposed rule change (SR-CBOE-2006-99), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22779 Filed 11-21-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56801; File No. SR-CBOE-2007-125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the \$1 Strike Pilot Program

November 16, 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 October 31, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On November 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange subsequently withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change on November 15, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to the \$1 Strike Pilot Program ("Pilot Program").³ The text of the

⁷¹ 15 U.S.C. 78s(b)(2).

⁷² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved the Pilot Program on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (SR-CBOE-2001-60). The Pilot Program has been subsequently extended through June 5, 2008.

⁶⁹ See proposed Rule 24B.9(d).

⁷⁰ See NYSE Arca Equities Rule 7.29; Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving proposal to establish Archipelago Exchange as the equities trading facility of the Pacific Exchange).

proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.cboe.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the Pilot Program and to request permanent approval of the Pilot Program. The Pilot Program currently allows CBOE to select a total of 5 individual stocks on which option series may be listed at \$1 strike price intervals.⁴ In order to be eligible for selection into the Pilot Program, the underlying stock must close below \$20 in its primary market on the previous trading day. If selected for the Pilot Program, the Exchange may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying

stock's closing price in its primary market on the previous day. The Exchange also may list \$1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. The Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any class selected for the Pilot Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange proposes to amend Interpretation and Policy .01 to CBOE Rule 5.5 to expand the Pilot Program and allow it to select a total of 10 individual stocks on which option series may be listed at \$1 strike price intervals. Additionally, CBOE proposes to expand the price range on which it may list \$1 strikes from \$3 to \$50. The existing restrictions on listing \$1 strikes would continue, *i.e.*, no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and CBOE is restricted from listing any series that would result in strike prices being \$0.50 apart. In addition, because the Pilot Program has been very successful by allowing investors to establish equity options positions that are better tailored to meet their investment objectives, CBOE requests that the Pilot Program be approved on a permanent basis.

As stated in the Commission order approving CBOE's Pilot Program and in the subsequent extensions of the Pilot Program,⁵ CBOE believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, member firms representing customers have repeatedly requested that CBOE seek to expand the Pilot Program, both in terms of the number of classes which can be selected and the range in which \$1 strikes may be listed.

With regard to the impact on systems capacities, CBOE's analysis of the Pilot Program shows that the impact on CBOE's, OPRA's, and market data vendors' respective automated systems has been minimal. Specifically, in March 2007, CBOE states that the 21 classes participating in the Pilot Program industry-wide accounted for 12,950,404 average quotes per day or 1.20% of the industry's 337,744,725 average quotes per day. The 21 classes averaged 412,007 contracts per day or

3.96% of the industry's 10,412,091 average contracts per day. The 21 classes involved totaled 2,754 series or 1.80% of all series listed.⁶ CBOE notes that these quoting statistics may overstate the contribution of \$1 strike prices because these figures also include quotes for series listed in intervals higher than \$1 (*i.e.*, \$2.50 strikes) in the same option classes. Even with the non-\$1 strike series quotes included in these figures, CBOE believes that the overall impact on capacity is still minimal. CBOE represents that it has sufficient capacity to handle an expansion of the Pilot Program, as proposed.

Finally, the Exchange proposes to make a corresponding change to Interpretation and Policy .11(e) to CBOE Rule 24.9, which pertains to the expansion of the Pilot Program. In addition, CBOE proposes to make a technical correction to paragraph (a) of Interpretation and Policy .01 to CBOE Rule 5.5 where it references "Interpretation and Policy .14 to Rule 24.9." Paragraph (a) of Interpretation .01 should reference Interpretation .11 to Rule 24.9.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

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)

See Securities Exchange Act Release Nos. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (SR-CBOE-2004-34) (extending the Pilot Program through June 5, 2005); 51771 (May 31, 2005), 70 FR 33228 (June 7, 2005) (SR-CBOE-2005-37) (extending the Pilot Program through June 5, 2006); 53805 (May 15, 2006), 71 FR 29690 (May 23, 2006) (SR-CBOE-2006-31) (extending the Pilot Program through June 5, 2007); and 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38) (extending the Pilot Program through June 5, 2008).

⁴ Although the Pilot Program generally allows CBOE to select a total of 5 individual stocks on which option series may be listed at \$1 strike price interval, the Pilot Program was amended to provide that CBOE can designate no more than 4 individual stocks for inclusion in the Pilot Program at the same time there are strike prices listed for \$1 intervals on Mini-SPX options in accordance with Interpretation and Policy .11 to CBOE Rule 24.9. If CBOE decides to discontinue listing Mini-SPX option series at \$1 strike price intervals, CBOE would again be free to select up to 5 option classes for inclusion in the Pilot Program. See Securities Exchange Act Release No. 52625 (October 18, 2005), 70 FR 61479 (October 24, 2005) (SR-CBOE-2005-81) (providing that as long as there are open Mini-SPX option series listed at \$1 strike price intervals, the Exchange would be required to surrender one of its five selections under the Pilot Program).

⁵ See *supra* note 3.

⁶ See Securities Exchange Act Release No. 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38) (Pilot Program report).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 CBOE consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-125 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-125 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-22841 Filed 11-21-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56796; File No. SR-MSRB-2007-05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule G-27, on Supervision

November 15, 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 November 8, 2007, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G-27 to clarify that the requirements of the rule apply solely in connection with the municipal securities activities of brokers, dealers and municipal securities dealers ("dealers") and their associated persons. The text of the proposed rule change is available on the

MSRB's Web site (<http://www.msrb.org>), at the MSRB, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will amend Rule G-27, on supervision, to clarify that the requirements of the rule apply solely in connection with the municipal securities activities of dealers and their associated persons. Rule G-27 has previously been amended, with an effective date of February 29, 2008, to strengthen the supervisory procedures and controls of dealers effecting transactions in municipal securities, as well as to ensure a coordinated regulatory approach with, and to facilitate inspection and enforcement in this area by, the Financial Industry Regulatory Authority (the "new supervisory requirements").⁵ In its filing with the SEC of the new supervisory requirements, the MSRB had stated that, as a general principle, the requirements of Rule G-27 apply only with respect to those registered persons who engage in municipal securities activities and those offices in which municipal securities activities are undertaken.⁶ The proposed rule change will explicitly incorporate this limitation on the applicability of Rule G-27 throughout the language of the rule, in addition to correcting certain cross-references and making certain formatting changes to improve clarity.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 55830 (May 30, 2007), 72 FR 31122 (June 5, 2007) (SR-MSRB-2006-09). See also Securities Exchange Act Release No. 56478 (September 20, 2007), 72 FR 54702 (September 26, 2007) (SR-MSRB-2007-03).

⁶ See Securities Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400 (December 20, 2006) (SR-MSRB-2006-10).

15B(b)(2)(C) of the Act,⁷ which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will facilitate transactions in municipal securities and protect investors and the public interest by clarifying that the requirements of Rule G-27 apply solely in connection with the municipal securities activities of dealers and their associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act since it does not modify existing rule obligations and applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The MSRB has received four letters requesting guidance on or amendments to the new supervisory requirements in Rule G-27, as well as a delay in the effectiveness of the new supervisory requirements. In summary, these commentators sought to understand the circumstances under which individuals must be qualified as either municipal securities principals or municipal fund securities limited principals in dealers' offices in which supervisory responsibilities are undertaken. The clarification provided by the proposed rule change that the new supervisory requirements of the rule apply solely in connection with the municipal securities activities of dealers and their associated persons, as the MSRB had previously enunciated in the original filing of the new supervisory requirements, should resolve these and other ambiguities regarding the operation of these new provisions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from November 8, 2007, the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2007-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2007-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2007-05 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56798; File No. SR-NYSE-2007-102]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Rule 1500 (NYSE MatchPointSM)

November 15, 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 November 8, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to adopt NYSE Rule 1500 to establish NYSE MatchPointSM ("MatchPoint"), an electronic facility

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78o-4(b)(2)(C).

that matches aggregated orders at predetermined, one-minute sessions throughout regular hours and after hours of the Exchange. MatchPoint will trade securities listed on all major exchanges.³ The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to establish the MatchPoint matching system to provide its customers with an ability to execute securities at a predetermined, externally derived, single trading price in accordance with algorithmic calculations during one-minute matching sessions at predetermined times during the regular hours (9:30 a.m. Eastern Time ("ET") to 4 p.m. ET) and after hours of the Exchange.⁴ MatchPoint participants ("users") transmit their market and limit orders,

which are undisplayed, by means of an electronic interface. MatchPoint matches aggregated, anonymous orders of securities listed on the primary exchanges such as the NYSE, as well as securities admitted to trading on the NYSE pursuant to the UTP Plan that are listed on NYSE Arca, Nasdaq, Amex and regional stock exchanges.

The Exchange believes that MatchPoint will provide its customers a greater ability to execute single, block and portfolio (*i.e.*, basket, list, etc.) orders efficiently and reduce the trading risks and costs associated with market volatility. MatchPoint customers who enter single orders, block orders and portfolio orders will reap the benefits of this centralized, neutral matching environment.⁵ Additionally, the Exchange believes that customers that rely on index-based or model-driven trading and investment strategies will find MatchPoint to be a very effective trading tool.

Because MatchPoint is an anonymous trading platform, no order information will be displayed and clearance and settlement of executions will be anonymous. Trade reports will be disseminated after each matching session.

All NYSE Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations are automatically eligible for access to MatchPoint. Before access is granted to MatchPoint users, all users must go through a connectivity authorization process.⁶ After NYSE Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations obtain connectivity authorization they may access MatchPoint.

NYSE MatchPoint Matching Sessions

The first MatchPoint matching session of the trading day will commence at 9:45 a.m. Thereafter, during the trading day of the Exchange, there will be a matching session at 10 a.m., 11 a.m., 12 p.m., 1 p.m., 2 p.m. and 3 p.m. A

MatchPoint after hours matching session will occur at 4:45 p.m.⁷

MatchPoint matching sessions are predetermined one-minute trading periods that occur through an automated matching mechanism. During the matching sessions, the Matchpoint Reference Price ("Reference Price") is determined and eligible orders are executed at the designated hour, as stated in the rule, at the randomly selected time during the predetermined one-minute trading session. The matching and execution of orders occurs immediately after the algorithm selects a Reference Price. No user can be assured of a match unless they enter an eligible portfolio or single order with an internal match designation that corresponds with contra side eligible portfolio or single orders with internal match designations from the same user. No user knows precisely when the match will occur. If an order is not executed in a particular matching session it will be immediately cancelled back to the user upon completion of the matching session. The user may resubmit the order in any one of the subsequent matching sessions.

NYSE MatchPoint Reference Prices

The Reference Price is the single trading price at which MatchPoint orders will execute during a predetermined one-minute "matching session." MatchPoint employs a passive pricing system. The Reference Price is derived from external market data of the Exchange and other primary securities markets. There is no price discovery as orders are not displayed and all trades occur in accordance with a predetermined algorithm.

The Reference Price is calculated differently for regular hour matching sessions and the after hours matching session. During the regular hours of the Exchange, the Reference Price shall be the midpoint of the national best bid and offer ("NBBO") which is randomly selected during a predetermined one-minute pricing period. For the after hours MatchPoint matching session, the Reference Price is the official closing price of the primary market (*i.e.*, the listing market) for securities listed on the NYSE, NYSE Arca, Amex, Nasdaq and regional stock exchanges. If, however, there is no official closing price for a particular security, the Reference Price will be the last sale

³ The major exchanges include the NYSE (including securities otherwise admitted to dealing on the NYSE pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on an Unlisted Trading Privilege Basis ("UTP Plan")), the NYSE Arca, Inc. Stock Exchange LLC ("NYSE Arca"), the NASDAQ Stock Market, Inc. ("Nasdaq"), the American Stock Exchange ("Amex") and regional stock exchanges. The Exchange is a participant in the UTP Plan, a National Market System Plan that accommodates trading on participant exchanges of non-NYSE-listed securities on an unlisted trading privileges ("UTP") basis. See Securities Exchange Act Release No. 55192 (January 29, 2007), 72 FR 5456 (February 6, 2007) (File No. S7-24-89) (Plan amendment admitting the Exchange as a Plan Participant). The Exchange is proposing to permit UTP trading of non-NYSE-listed securities in MatchPoint matching sessions during the regular hours and after hours of the Exchange.

⁴ NYSE MatchPoint will operate on an Eastern Time basis. All references to time herein and in the MatchPoint rules will mean Eastern Time.

⁵ The Exchange notes that portfolio matches have been in existence for over twenty years. Instinet's crossing network has been matching portfolios since December 1986 and Investment Technology Group Inc.'s Portfolio System for Institutional Trading (POSIT) has been matching portfolios since July 1987.

⁶ MatchPoint can only be accessed through an electronic Financial Information eXchange ("FIX") application and/or an internet based password-protected order entry application. Users must fill out an application for connectivity through either of these two electronic connectivity capabilities. Once granted connectivity through the authorization process, eligible users may access MatchPoint.

⁷ Because transactions from the MatchPoint after hours matching session, which occurs at 4:45 p.m., occur outside of regular trading hours, they cannot fall within the definition of trade-throughs and will not be subject to the provisions of Rule 611 of Regulation NMS. See 17 CFR 242.600(b)(64) and (77).

price of the primary market for a particular security.

Half Penny Increments

The MatchPoint Reference Price for the matching sessions that occur during the regular hours (*i.e.*, the midpoint of the NBBO), may be calculated to three (3) decimal places when the NBBO is an odd penny spread (*i.e.*, one (1) penny, three (3) pennies, five (5) pennies, etc.). For example, if the NBBO of Stock XYZ is \$23.01 to \$23.02, the Reference Price is \$23.015. As a consequence, executions at the midpoint of the NBBO may be in half penny increments, requiring the use of three decimal places, as demonstrated in the example.⁸

Securities Priced Below One Dollar

As discussed above, MatchPoint orders in securities are not subject to auction-market price discovery procedures, as Reference Prices of securities are not determined until a matching session commences and the algorithm calculates the price of the securities. If the MatchPoint algorithm prices a security (*i.e.*, the Reference Price) below one dollar (\$1.00), MatchPoint will not execute orders in these securities but will cancel these orders back to the user immediately upon completion of the matching session.

Entry and Processing of NYSE MatchPoint Orders

MatchPoint Orders

MatchPoint users may enter, correct or cancel orders beginning at 3:30 a.m. until 4:45 p.m. The MatchPoint system will not accept any orders before 3:30 a.m. or after 4:45 p.m. MatchPoint will accept and execute single orders and NYSE MatchPoint Portfolios ("portfolios"). Orders may be either market or limit orders and must have a minimum size of one round lot. As discussed in more detail below, MatchPoint will permit odd lot and partial round lot orders to be entered into the system. Odd lot orders and the

odd lot portion of partial round lot orders will be reported as unexecuted.

Orders may not be cancelled or replaced while a matching session is in progress or when trading in the applicable security is halted in the MatchPoint system. MatchPoint orders shall not be available for execution until the next eligible matching session. All orders must be available for automatic execution. MatchPoint has no order delivery capability and will not route to other market centers. Users, however, would be able to enter eligible orders into MatchPoint through a FIX⁹ application and/or an internet based order entry system provided the orders are available for automatic execution. MatchPoint orders will not trade-through a Protected Bid or Protected Offer as defined in Regulation NMS.¹⁰

MatchPoint Order Parameters

All MatchPoint orders, single and portfolio, must have the following parameters: (1) List name;¹¹ (2) matching session (if a user fails to designate a specific matching session, the system will provide a default function and direct the order to the next eligible matching session); (3) side of the market (*i.e.*, buy, sell or short side); (4) symbol; and (5) minimum and maximum amount of shares available for execution. Additionally, a user may include an optional constraint (*i.e.*, net cash and internal match constraints) for a MatchPoint order.

MatchPoint Order Designation

MatchPoint orders must be designated for only one of the matching sessions during regular hours of the Exchange or for the single after hours matching session. If a MatchPoint order does not execute in the designated matching session, it will be cancelled back to the user immediately upon completion of the matching session. If a user fails to designate a particular matching session for a MatchPoint order, the order, by default, shall be available for execution in the next scheduled matching session. If an undesignated order does not execute in the next scheduled regular hours matching session it will be cancelled back to the user immediately upon completion of such matching

session. If a user fails to designate an order and enters the order after 3 p.m., which is the last regular hours matching session, the order will participate in the after hours matching session at 4:45 p.m. If the order does not execute in the after hours matching session it will be cancelled back to the user immediately upon completion of the after hours matching session.

As discussed above, a user must designate an order for only one matching session at a time. For example, if a user wishes to have an order available for execution in the 11 a.m. matching session, the user must designate the order for the 11 a.m. matching session and must enter the order into the MatchPoint system anytime between 3:30 a.m., when the system opens to receive orders, and 11 a.m., when the designated matching session commences. If the order does not execute in the 11 a.m. matching session, such order will be immediately cancelled back to the User upon completion of the matching session. Thereafter, the user must submit a new order for execution in another matching session, *e.g.*, the 12 p.m. matching session. The user must submit the subsequent order with a designation for the 12 p.m. matching session. Such order must then be entered into the system before commencement of the 12 p.m. matching session. Again, if the order does not execute in the 12 p.m. matching session, such order will be immediately cancelled back to the user upon completion of the 12 p.m. matching session.

Round Lot Orders

MatchPoint will execute orders only in round lots. The MatchPoint system will accept odd lot orders but not execute them. Odd lot orders entered into the MatchPoint system will be reported to the user as unexecuted. Similarly, orders containing partial round lots (*i.e.*, "mixed lots") may be entered into MatchPoint in the form of a portfolio but the odd lot portion of the order will not be executed and will be reported to the user as unexecuted. The system will permit the entry of odd lot and partial round lot orders to accommodate portfolio orders. The Exchange believes that to require the portfolio-based users to first strip their orders of odd lots and partial round lots before entering their orders into MatchPoint would introduce operational risk into the administration of the portfolios and, for example, disturb the tracking of the portfolios that follow the underlying index. Additionally, the Exchange believes that excluding odd lot and partial round lot

⁸ MatchPoint will not display, rank or execute orders in any NMS stock priced below one dollar (\$1.00). In addition, MatchPoint will not display, rank or execute orders in increments smaller than a penny. However, when there is an odd penny spread, as described above, MatchPoint will execute it in a half penny increment. The Exchange notes that, in response to public comments to the Regulation NMS Proposing Release, the Commission wrote, "Executions occurring at a sub-penny price resulting from a midpoint, VWAP, or similar volume-weighted pricing algorithm are not prohibited by Rule 612 [of Regulation NMS]." See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Release") at note 831.

⁹ FIX Protocol is a messaging standard developed specifically for the real-time electronic exchange of securities transactions.

¹⁰ See Regulation NMS Release, *supra* note 8. Because the MatchPoint Reference Price during the regular hours of the Exchange is calculated to be the midpoint of the NBBO, no trade-through executions will occur and, therefore, Rule 611 of Regulation NMS ("Order Protection Rule") will not be violated.

¹¹ A portfolio must have a unique portfolio name that is distinct from the names of other portfolios of the same user.

orders from MatchPoint will discourage portfolio trading and significantly reduce liquidity in the MatchPoint market.

The following example demonstrates how odd lot and partial round lot orders are processed through MatchPoint:

A portfolio of buy orders is entered into MatchPoint:

Stock A: 12,300 shares.

Stock B: 5,650 shares.

Stock C: 35 shares.

Stock D: 17,099 shares.

Depending upon available contra side interest, the following portfolio executions could occur: Order A could execute up to 12,300 shares. Order B could execute up to 5,600 shares with at least 50 shares immediately cancelled

back to the user upon completion of the matching session. Order C will result in all 35 shares being immediately cancelled back to the user upon completion of the matching session. Order D will execute up to 17,000 shares and at least 99 shares will be immediately cancelled back to the user upon completion of the matching session.

NYSE MatchPoint Order Allocation

MatchPoint orders will be allocated on a *pro rata* basis, such that shares will be allocated *pro rata* in round lots (rounded down to the nearest 100 shares) to eligible orders based on the original size of the order. In this process MatchPoint will honor all user-directed

constraints. If the allocation to an eligible order is less than the minimum acceptable execution quantity for that order, the order shall not be eligible for execution in that matching session. If additional shares remain after the initial *pro rata* allocation, those shares will continue to be allocated *pro rata* to eligible orders. If additional shares remain thereafter that are the same size or are unexecuted because of rounding or minimum trade size constraints, the remaining shares will be allocated in 100 share lots to the oldest eligible orders.

The example below demonstrates how MatchPoint will allocate shares on a *pro rata* basis:

User	Side	Shares entered	Price	Shares executed
User A	Buy	100,000	MKT	100,000
User B	Buy	100,000	MKT	100,000
User C	Sell	100,000	MKT	*74,100
User D	Sell	75,000	MKT	*55,600
User E	Sell	50,000	MKT	37,000
User F	Sell	25,000	MKT	18,500
User G	Sell	10,000	MKT	7,400
User H	Sell	5,000	MKT	3,700
User I	Sell	5,000	MKT	3,700

In this example the total amount of buy orders is 200,000 shares. The total amount of sell orders is 270,000 shares. There are 70,000 more shares to sell than to buy. The greatest number of shares that may execute in the MatchPoint system is 200,000 shares. 200,000 shares is 74.074% (rounded percentage) of 270,000. Therefore, the *pro rata* percentage that will be allocated to each of the seven sell orders is 74.074%. Based on the order size of each order, MatchPoint will prorate the available liquidity (200,000 shares) accordingly (see "Shares Executed" in the example above). (* Users C and D each receive an additional 100 shares because C and D are the oldest eligible orders after the *pro rata* share allocations.)

The second example (below) will illustrate the allocation of MatchPoint shares when all orders are equal in size. Under these circumstances, MatchPoint will allocate shares based on order entry sequence. The oldest order will get the larger fill if residual shares remain after the initial *pro rata* allocation. In the example below, assume the following orders are received in the following sequence:

MatchPoint Orders:

1. Broker-dealer A: Buy 10,000 @ mkt
2. Broker-dealer B: Sell 10,000 @ mkt
3. Broker-dealer C: Sell 10,000 @ mkt
4. Broker-dealer D: Sell 10,000 @ mkt

MatchPoint Executions:

1. 10,000 fully allocated order
2. 3,300 shares + 100 residual shares = 3,400 (oldest sell order)
3. 3,300 shares executed
4. 3,300 shares executed

The results of the matching session are as follows: Broker-dealer A's order is allocated 9,900 shares from a *pro rata* fill from each of the three sell orders from broker-dealers B, C and D in the amount of 3,300 shares. Each sell order has an equal residual of 6,700 shares, but because broker-dealer B has the oldest order of the three sell orders, B's residual 100 shares of stock will be allocated to A's buy order resulting in a fully allocated order of 10,000 shares.

Portfolio Trading

A MatchPoint user may submit NYSE MatchPoint Portfolios into the MatchPoint system for execution. An NYSE MatchPoint Portfolio is a group of linked orders with user-directed parameters and a unique, user-defined portfolio name. The portfolio orders may represent separate and distinct broker dealer-customer orders and separate and distinct proprietary broker dealer orders. A user may enter one portfolio of buy and sell/short orders or many portfolios of buy and sell/short orders.

Internal Match Constraints

MatchPoint portfolio users may effectuate internal matches and simultaneously match residual shares against orders from other users within a single matching session when using an optional internal match constraint. This type of constraint enables the user to execute trades between the same user's portfolios first before trading with other available orders in a particular matching session. If, after an internal match occurs and residual orders remain, the residual portfolios will trade with all other orders. Single orders may be designated for internal matches as well.

Internal matches have priority over other executions. MatchPoint will first process internal matches and then process all other orders in the matching session. All user-directed constraints will be honored in the internal match. An internal match constraint, like a MatchPoint order, is active only for a single matching session. A user may resubmit a new internal match constraint when resubmitting an order for a different matching session.

All orders that are designated with an internal match designation, single or portfolio orders, and entered by the same user are eligible for matching with all such orders. For example, single orders that have internal match designation are capable of matching

with all other orders that have internal match designations entered by the same user. Portfolio orders within a portfolio that are designated for internal matches are also capable of matching with one another when entered by the same user. Such orders are allocated on a *pro rata* basis as described above.

An internal match is illustrated in the following example:

Broker-dealer A enters one order in a portfolio to buy 20,000 shares of XYZ stock and in another portfolio Broker-dealer A enters an order to sell 10,000 shares of XYZ stock. Broker-dealer B enters an order to sell 10,000 shares of XYZ stock, and broker-dealer C enters an order to sell 10,000 shares of XYZ stock. The internal match will result in the following executions: Broker-dealer A's buy order for 20,000 shares of XYZ stock will trade with broker-dealer A's sell order of 10,000 and 5,000 shares of XYZ stock from broker dealer B and 5,000 shares of XYZ stock from broker dealer C respectively, leaving broker-dealers B and C with residual amounts of 5,000 shares each of XYZ stock. The unexecuted shares of XYZ stock for broker-dealers B and C (5,000 shares each) will be immediately cancelled back to broker-dealers B and C upon completion of the matching session.

Net Cash Constraints

An optional "net cash" constraint provides valuable risk and cash management tools for portfolio users. A

user entering a single order may also place a net cash constraint on that order. To execute a net cash constraint, a user must enter a specific net buy dollar amount and a specific net sell dollar amount for a portfolio. A net cash constraint is active only for a single matching session. A user may resubmit a new net cash constraint when resubmitting an order for a different matching session. MatchPoint users may utilize such net cash constraints as the primary vehicle for controlling how much a user may spend or raise in an individual portfolio. This functionality enables users to keep their purchases and sales in line with each other and to fund additional purchases.

When calculating a customer's net cash constraint position, the matching algorithm takes into account the eligible portfolio order shares in a specific security, the reference price of the security and the customer's net cash constraint. MatchPoint first processes the stock with the largest orders in the largest portfolios. In order to honor all cash constraints, the matching algorithm processes all single and portfolio orders in a particular security that have net cash constraints and calculates share allocation by applying a percentage of the original order size to contra side shares that are available to fill the order. The algorithm takes this percentage calculation and multiplies it by the Reference Price. This calculation is then compared to the order's net cash

constraint and determines if the allocation of the available contra side shares will violate the order's net cash constraint. If the calculation violates the net cash constraint, these shares will not be allocated to the contra side order but may be allocated to other eligible orders. This algorithmic process continues until all eligible orders are executed. There is no priority given to orders with a net cash constraint.

The example below demonstrates how portfolios, with and without a net cash constraint, execute in MatchPoint. Specifically, the example illustrates the portfolios of users A, B and C in three different scenarios: The pre-match scenario, the post-match scenario with no net cash constraint and a post match scenario with a net cash constraint. In that third scenario, user B has a net cash constraint of plus or minus \$1,000,000 (+/- \$1,000,000). In the matching session, user B's portfolio cannot sell (raise) \$1 million more than it buys (spends) and it cannot buy (spend) \$1 million more than it sells (raises). Users A and C have no net cash constraints on their portfolios. Users A and B are on the same side of the market and user C represents the contra side interest in the matching session. User B entered orders first and would therefore receive any residual shares to be allocated. As previously mentioned, allocated shares are rounded down to the nearest 100 shares.

Side	Symbol	Shares entered	Price
PRE-MATCH			
User A Portfolio:			
Buy	ABC	67,600	MKT
Buy	QRS	82,500	MKT
Sell	XYZ	86,300	MKT
Sell	DEF	41,200	MKT
User B Portfolio:			
Buy	ABC	47,600	MKT
Buy	QRS	98,600	MKT
Sell	XYZ	61,800	MKT
Sell	DEF	62,200	MKT
User C Portfolio:			
Buy	XYZ	139,200	MKT
Buy	DEF	88,800	MKT
Sell	ABC	146,400	MKT
Sell	QRS	258,300	MKT
POST MATCH WITH NO NET CASH CONSTRAINTS			
User A Portfolio:			
Buy	ABC	67,600	32.66
Buy	QRS	82,500	23.55
Sell	XYZ	81,100	38.71
Sell	DEF	35,300	72.03
User B Portfolio:			
Buy	ABC	47,600	32.66
Buy	QRS	98,600	23.55
Sell	XYZ	58,100	38.71
Sell	DEF	53,500	72.03
User C Portfolio:			

Side	Symbol	Shares entered	Price
Buy	XYZ	139,200	38.71
Buy	DEF	88,800	72.03
Sell	ABC	115,200	32.66
Sell	QRS	181,100	23.55

POST MATCH WITH NET CASH CONSTRAINT

User A Portfolio:			
Buy	ABC	67,600	32.66
Buy	QRS	82,500	23.55
Sell	XYZ	86,300	38.71
Sell	DEF	41,200	72.03
User B Portfolio:			
+/- \$1 Million Cash Constraint			
Buy	ABC	47,600	32.66
Buy	QRS	98,600	23.55
Sell	XYZ	45,500	38.71
Sell	DEF	43,100	72.03
User C Portfolio:			
Buy	XYZ	131,800	38.71
Buy	DEF	84,300	72.03
Sell	ABC	115,200	32.66
Sell	QRS	181,100	23.55

As the example shows, the allocation of shares may vary significantly with and without the net cash constraint. User B's portfolio executes fewer shares with a net cash constraint than without

the constraint. Users A and C, with no net cash constraints, are able to obtain more executions and have a more competitive position than user B when user B has a net cash constraint in place.

Below is a chart comparing the post match customer net cash position results (*i.e.*, total dollars raised and total dollars spent) from the example above.

	Post match 1 Net cash position	Post match 2 Net cash position	Post match 1 and 2 Cash difference
Customer A	\$1,535,220	\$2,157,618	\$622,398
Customer B	\$2,222,139	\$989,152	¹² (\$1,232,987)
Customer C	(\$3,757,359)	(\$3,146,770)	(\$610,589)

Post Match 1 reflects the net cash position for Customers A, B and C when their portfolios match with one another and when Customer B has no net cash constraint. Customer A raised \$1,535,220 more than he spent; Customer B raised \$2,222,139 more than he spent and Customer C spent \$3,757,359 more than she raised.

Post Match 2 reflects the net cash position for Customers A, B and C when they match with one another and Customer B has a net cash constraint of plus or minus \$1,000,000 (+/- \$1,000,000). Customer B raised \$989,152 more than he spent, which is within his net cash constraint of \$1,000,000, but is \$1,232,987 less than what he raised in Post Match 1 (when he had no net cash constraint). This shows the effect of Customer B's net cash constraint on his eligible portfolio orders, which limits the dollar amount that he can raise (or spend). The matching algorithm honors Customer

B's net cash constraint before allocating shares.

Customer B has an additional \$10,848 that he could raise up to the \$1 million constraint, but because the algorithmically calculated percentage of the available shares would violate his constraint if allocated, the available shares are not allocated to Customer B and he stops raising cash. The example demonstrates how the matching algorithm honors Customer B's net cash constraint before allocating shares.

Further, in Post Match 2, Customer A raised \$2,157,618 more than he spent and \$622,398 more than he raised in Post Match 1. Customer A was able to match more shares because of Customer B's net cash constraint, which restricted Customer B's ability to raise or spend more than \$1,000,000. Customer C spent \$3,146,770 more than she raised and spent \$610,589 less than she spent in Post Match 1. This reflects Customer A's ability to increase the number of his executions and Customer B's ability to limit the number of his executions through his net cash constraint.

The above example also illustrates the following MatchPoint principles for net cash constraints: (1) A net cash constraint placed on a portfolio may affect the execution of other orders in the matching session by generally allowing additional shares for such other orders to be executed, and (2) net cash constraints will generally result in fewer executions of a portfolio and may inhibit the maximum order execution potential of a particular security in a particular matching session.

Price Collar Threshold in the After Hours Matching Session

In the after hours matching session, the Exchange will place parameters on the prices of all MatchPoint eligible securities in order to dampen volatility and provide accurate pricing for executions. Such parameters will be referred to as a "Price Collar Threshold." A Price Collar Threshold is an after hours market price beyond which a MatchPoint order will not be executed. The Price Collar Threshold will protect against unusual occurrences when the market has moved

¹² Numbers that appear in parentheses represent expenditures.

significantly from the official closing price of the primary market based on information that becomes available after the market close. In this situation, the Exchange will cancel the after hours MatchPoint matching session rather than execute the matching session at a price that no longer reflects the market accurately. All unexecuted orders will be immediately cancelled back to the user upon completion of the matching session.

The Price Collar Threshold will be set at a predetermined percentage of the MatchPoint after hours Reference Price. Initially, the Price Collar Threshold will be set at two percent (2%). Therefore, if the difference between the Price Collar Threshold and the consolidated last sale price of the security is two percent or more, the matching session in that particular security will not occur. All unexecuted orders will be cancelled back to the user upon completion of the scheduled matching session. For example, if the Reference Price of XYZ stock is \$100, and at 4:45 p.m. the consolidated last sale price for XYZ stock is either \$98 or less or \$102 or more, the Price Collar Threshold will cause the stock to be halted in the after hours matching session.

In the future, if the Exchange determines that the Price Collar Threshold should be adjusted in order to protect users and provide more accurate trades, the Exchange may make such adjustments, up to and including five percent (5%) of the MatchPoint after hours Reference Price. The Exchange will inform its users of such an adjustment via the NYSE MatchPoint Web site at <http://www.nyse.com/MatchPoint> and the Member Firm Notice, and notice of such adjustments will be provided to all users reasonably in advance of any such adjustments.

Locked and Crossed Markets

If the NBBO for a particular security is locked at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session shall execute orders at the locked price. Unexecuted MatchPoint orders in that security shall be cancelled back to the user immediately upon completion of the matching session.

If the NBBO for a particular security is crossed at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session in that particular security shall not occur. Unexecuted MatchPoint orders in that security shall be cancelled back to the user immediately upon completion of the matching session.

Trading Ahead of Customer Orders

In the event a MatchPoint Order executes at the midpoint of the NBBO resulting in a Member or Member Organization's trading ahead of a held customer order at the same price, the Exchange believes that NYSE Rule 92 (Limitations on Member's Trading Because of Customers' Orders) may be implicated. NYSE Rule 92(a) generally restricts a Member or Member Organization from entering a proprietary order while in possession of a customer order. NYSE Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a). When trading on the MatchPoint system, all users will be expected to comply with Rule 92(a) unless such trading falls within an applicable exception in NYSE Rule 92(b) through (d).

Halting, Suspending and Closing of NYSE MatchPoint Trading on the Exchange

Trading on MatchPoint will be halted, suspended or closed¹³ when necessary in order to maintain a fair and orderly market, and in certain other conditions, as described below. If trading in a particular security is halted, suspended or closed due to regulatory or unusual market conditions at the time a matching session commences, the matching session will not occur in that security and all unexecuted orders will be immediately cancelled back to the user upon completion of the matching session.

MatchPoint trading may be halted, suspended or closed when: (1) In the exercise of its regulatory capacity, the Exchange determines such action is necessary or appropriate to maintain a fair and orderly market, to protect investors, or otherwise is in the public interest due to extraordinary circumstances or unusual market conditions; (2) in the case of a particular security whenever, for regulatory purposes, trading in the related security has been halted, suspended or closed on the Exchange or the primary listing exchange; (3) in the case of a particular security trading on the Exchange pursuant to unlisted trading privileges, whenever, for regulatory purposes, trading in that security has been halted, suspended or closed on the primary listing exchange; (4) with respect to a particular security trading on the Exchange pursuant to unlisted trading

privileges, if the authority under which a security trades on the Exchange or its primary market is revoked (*i.e.*, because it is delisted); or (5) in the after hours matching session, news reports and/or corporate actions are disclosed after the close of the regular hours of the market that have a material impact on a particular security, which may include the following situations: (a) New corporate earnings; (b) major market index company deletions or additions; (c) corporate takeovers; (d) other significant corporate actions; (e) court decisions and injunctions; and (f) governmental announcements. No terms or conditions specified in this rule shall be interpreted to be inconsistent with any other rules of the Exchange.

Clearance and Settlement of MatchPoint Executions

Details of each MatchPoint trade will be automatically matched and compared by the Exchange and will be submitted to a registered clearing agency for clearing and settlement on a locked-in basis.¹⁴ All executions effected by a Member or Member Organization will be cleared and settled using the Member's and Member Organization's account, and all executions effected by a Sponsored Participant will be cleared and settled using the relevant Sponsoring Member Organization's account.

Because MatchPoint is an anonymous trading facility, the proposed rule will require MatchPoint transaction reports to indicate the details of the transaction, but not to reveal contra party and clearing firm identities,¹⁵ except under the following circumstances: (1) In the event the National Securities Clearing Corporation ("NSCC")¹⁶ ceases to act for a Member or Member Organization, which is the unidentified contra side of any such trade processing, and/or the relevant clearing firm, the NYSE shall have the responsibility to identify to

¹⁴ MatchPoint executions will be compared through the Regional Interface Organization Online process ("RIO Online"). RIO Online is NYSE Arca's internal processing interface that sends order execution information to the Depository Trust & Clearing Corporation (DTCC). RIO Online gathers the trades that are executed on any given day, places the trades into the appropriate message format and sends them to DTCC. RIO Online provides a record of all trades that were sent to DTCC. RIO Online is also used to manage any approved trade corrections.

¹⁵ Post-trade anonymity described herein has been previously approved by the Commission for other exchanges. See, *e.g.*, Securities Exchange Act Release Nos. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003) (SR-NASD-2003-85); and 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004) (SR-PCX-2004-40).

¹⁶ The Exchange will submit completed MatchPoint trades for clearance and settlement to NSCC, which is a subsidiary of DTCC.

¹³ The use of the word "close" in the context of this rule refers to the intentional closing of the market due to regulatory or other unusual circumstances as described above, and does not refer to the predetermined "close" or end of the regular trading day at 4 p.m.

Members or Member Organizations the trades included in reports produced by the NSCC which are with the affected Member or Member Organization, and (2) for regulatory purposes or to comply with an order of a court or arbitrator.

The trade reports that the NSCC will receive from MatchPoint for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute "ANON" for the acronym of the contra-party. The purpose of this masking is to preserve anonymity through settlement.

The Exchange states that it will be able to maintain anonymity with respect to disputed or erroneous trades because the Exchange resolves disputes through a centralized process and conducts the process on behalf of its Members and Member Organizations.

Dissemination of Trading Information

The MatchPoint system will report trade information to the Securities Information Processors for all MatchPoint eligible securities. Trades will be reported as one print for each security with the total volume of the transaction reported with the price. Market data for NYSE-listed securities will be disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan ("CTA Plan"). Trade reports of securities that are governed by the UTP Plan will be disseminated pursuant to the UTP Plan. All trades will indicate the market of execution as the NYSE for CTA and UTP purposes.

Member Organization and Non-Member Access to the NYSE MatchPoint System

Members and Member Organizations of the Exchange are automatically eligible for access to MatchPoint by their membership on the Exchange. A non-member who wishes to trade securities on MatchPoint may do so as a "Sponsored Participant" of a Member Organization, *i.e.*, "Sponsoring Member Organization," and must enter into a written agreement with the Sponsoring Member Organization and with the Exchange. As previously explained, all Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations must first obtain connectivity authorization before they can access MatchPoint.

The proposed rule requires the Sponsoring Member Organization and

the Sponsored Participant to enter into a sponsorship arrangement and maintain a written "sponsorship agreement." The sponsorship agreement must be agreed to by both the Sponsoring Member Organization and the Sponsored Participant and include provisions for Authorized Traders. Such written agreement must include the Sponsoring Member's consent to sponsor the Sponsored Participant. The proposed sponsorship agreement must also include the following provisions:

Sponsorship Provisions

(A) Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained a written agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in its written agreement as such.

(B) Sponsoring Member Organization acknowledges and agrees that:

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member Organization and

(ii) Sponsoring Member Organization is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsoring Member Organization shall comply with the rules of the Exchange, the rules and procedures with regard to MatchPoint and Sponsored Participant shall comply with the rules of the Exchange and the rules and procedures with regard to MatchPoint, as if Sponsored Participant were a Sponsoring Member Organization.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of Authorized Traders who may obtain access to the MatchPoint on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to MatchPoint.

(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to MatchPoint.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to MatchPoint, including unauthorized entry of information into MatchPoint, or

the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to MatchPoint for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, MatchPoint or any other third parties that arise from the Sponsored Participants access to and use of MatchPoint. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(J) Sponsored Participant shall maintain and keep current all records and documents relating to its trading activities on MatchPoint, and shall provide all such records and documents to the Sponsoring Member Organization upon request.

Notice of Consent to the Exchange

(A) The Sponsoring Member Organization must provide the Exchange with a notice of consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue prior to providing the Sponsored Participant with authorized access to MatchPoint.

Authorized Traders

(A) Sponsoring Member Organization shall maintain a list of Authorized Traders who may obtain access to MatchPoint on behalf of the Sponsoring Member Organization or the Sponsoring Member Organization's Sponsored Participants. The Sponsoring Member Organization shall update the list of Authorized Traders as necessary. Sponsoring Member Organizations must provide the list of Authorized Traders to the Exchange upon request.

(B) A Sponsoring Member Organization must have reasonable procedures to ensure that all Authorized Traders comply with the trading rules and procedures related to MatchPoint and all other rules of the Exchange.

(C) A Sponsoring Member Organization must suspend or withdraw a person's status as an Authorized Trader if the Exchange has determined that the person has caused the

Sponsoring Member Organization to fail to comply with the rules of the Exchange and the Exchange has directed the Sponsoring Member Organization to suspend or withdraw the person's status as an Authorized Trader.

(D) A Sponsoring Member Organization must have reasonable procedures to ensure that an Authorized Trader maintain the physical security of the equipment for accessing the facilities of MatchPoint to prevent the improper use or access to the system, including unauthorized entry of information into the system.

Limitations on the Use of MatchPoint

(A) Specialists on the Floor of the Exchange are not authorized to access MatchPoint. The off-Floor operations of specialist firms may obtain authorized access to MatchPoint provided they have policies and procedures and barriers in place that preclude improper information sharing between the specialist firm and the firm's specialist on the Floor of the Exchange.¹⁷

(B) Members who have authorized access to MatchPoint are not permitted to enter orders into the MatchPoint system from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Similarly, Members on the Floor may not have such orders entered into MatchPoint by sending them to an off-Floor facility for entry. Members with authorized access to MatchPoint may only enter customer orders into MatchPoint from the Floor of the Exchange. Members that have authorized access to MatchPoint may enter proprietary and customer orders into MatchPoint from off the Floor of the Exchange.

Applicability of Section 11(a) and (b) of the Act

Section 11(a) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. The "Effect versus Execute Rule," as Rule 11a2-2(T) under the Act is known, permits an

exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on the exchange floor. The Rule requires that: (1) The order must be transmitted from off-floor; (2) once the order has been transmitted, the member may not participate in the execution; (3) the transmitting member may not be affiliated with the executing member; and (4) neither the member or associated person may retain any compensation in connection with effecting such transaction, respecting accounts over which either has investment discretion, without the express written consent of the person authorized to transact business for the account. The Exchange requests interpretation that MatchPoint orders entered from off-floor comply with the following provisions of the Rule:

1. *Off-Floor Transmissions:* Orders are electronically entered into the MatchPoint system from on and off the Floor of the Exchange; however, Members are not permitted to enter orders into the MatchPoint system from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Also, specialists on the Floor are not permitted to enter any orders into the MatchPoint system and they do not have access to the MatchPoint system from the Floor, as described in more detail below. However, "upstairs" specialist firms are permitted to be MatchPoint users and may enter orders from off the Floor provided such firms have adequate policies, procedures and "barriers" in place between the upstairs firm and the Floor specialists, which will preclude improper sharing of trading information.

2. *Non-Participation in Order Execution:* In accordance with Rule 11a2-2(T), once orders are entered into the MatchPoint system, a member may not participate in, guide or influence the execution of such orders. MatchPoint orders are sent by electronic means (i.e., FIX application or an internet-based application) to the MatchPoint trading platform. Users may enter, correct or cancel MatchPoint orders any time prior to the commencement of a matching session. However, once the matching session has commenced, the system will not permit a user to affect the order or its execution in any way. Thus, when the matching session commences, the member relinquishes all control of MatchPoint orders. Users have no special or unique order handling or

trading advantages when trading on MatchPoint.

3. *Affiliated Executing Members:* Rule 11a2-2(T) provides that the transmitting member may not be affiliated with the executing member. The Commission has previously recognized that this requirement may be satisfied when automated exchange facilities are used.¹⁸ MatchPoint is a fully automated, electronic trading facility. As described above, MatchPoint orders are sent by electronic means to the MatchPoint trading platform. Matching sessions commence automatically at a predetermined time. Matching, trading and pricing of orders is effectuated through an algorithm, which does not permit entry, correction or cancellation of orders during the matching session. At the completion of a matching session, transaction reports, including order cancellation reports for orders that were not executed, are sent back to the user. Reference Prices are derived from outside sources. The intra-day Reference price is the midpoint of the NBBO, and the after hours Reference Price is the official closing price or last sale price of a particular security.

The Exchange believes that MatchPoint complies with the "Affiliated Executing Member" provision of Rule 11a2-2(T) because the automatic execution function of MatchPoint ensures that all authorized MatchPoint users have the same abilities with respect to entering orders, and no users can effect an order once the matching session has commenced. The design of the MatchPoint system ensures that members do not possess any special or unique trading advantages in the handling of orders. Thus, the Rule's provision respecting the use of affiliated members to execute orders is not implicated by the MatchPoint system.

4. *Non-Retention of Compensation:* The Exchange represents that members that rely on Rule 11a2-2(T) for a managed account transaction must comply with the limitations on compensation set forth in the rule.

Section 11(b) of the Act and Rule 11b-1 thereunder, which pertains to

¹⁷ Currently, all specialist organizations on the Exchange utilize information barrier procedures pursuant to NYSE Rule 98 (Restrictions on Approved Person Associated with a Specialist's Member Organization). Information barrier procedures that would be utilized to block access by a specialist to any MatchPoint trading information generated by the off-Floor personnel of the specialist organization would be similar in design and utilization.

¹⁸ In considering the operation of automated execution systems by an exchange, the Commission has noted in the past that the execution of an order is automatic once it has been transmitted into a system, and therefore satisfies the independent execution requirement of rule 11a2-2(T). See, e.g., Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); and 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

specialists, are not applicable to the operation of the MatchPoint system for several reasons. First, as stated above, specialists on the Floor of the Exchange are not able to access MatchPoint. MatchPoint can only be accessed through an electronic FIX application and/or an internet based, password-protected order entry application, which are not available to individual specialists on the Floor. Although the upstairs firms that employ specialists are able to access MatchPoint through these two applications, such firms must be authorized to access MatchPoint, and the firms must have policies and procedures and information barriers in place to preclude the improper sharing of trading information between the specialists on the Floor and in the upstairs firm. Further, the specialist firms will be subject to examinations by the Financial Industry Regulatory Authority, Inc. ("FINRA") as agent for NYSE Group pursuant to a Regulatory Services Agreement dated July 30, 2007, to ensure that such policies and procedures and information barriers are in place and are adequate to preclude improper sharing of trading information.

Specifically, FINRA examiners will perform an on-site review of the combined specialist firm's written policies and procedures and determine if they are adequate in relation to trading on MatchPoint. In addition, FINRA will interview appropriate individuals both within the affected departments as well as other areas of the specialist firm to determine whether firm policies have been appropriately disseminated and appear to be followed in relation to MatchPoint trading. The examination will also determine whether there have been any apparent breaches of the information barriers.

Second, the MatchPoint system is independent of all other electronic trading platforms, including the specialists' API ("Application Programmed Interface") which is also known as the specialists' "algorithm." As a consequence, the specialists' algorithm cannot interface with the MatchPoint system and has no access to order entry information or MatchPoint market data. Similarly, the individual specialist on the Floor has no MatchPoint order entry information or MatchPoint market data. Without access to MatchPoint and without access to MatchPoint order entry information and market data, specialists will not be able to manipulate MatchPoint trading.

Third, the Exchange has an internal authorization process that authorizes MatchPoint users to access MatchPoint through the FIX application and internet by providing an authorized user name

and protected password. Individual specialists on the Floor will not be authorized through the internal process. Upstairs firms that employ specialists may be authorized to access MatchPoint through MatchPoint's internal authorization process, provided, as noted above, FINRA, as agent for NYSE Group, examines such firms to ensure that policies, procedures and barriers are in place and are adequate to preclude improper sharing of trading information.

Therefore, because specialists on the Floor do not have access to the MatchPoint system or MatchPoint order information, and because the specialist firms are subject to regulatory examinations to ensure the integrity of information barriers between the firms and their specialists on the Floor, the Exchange believes that section 11(b) of the Act and Rule 11b-1 thereunder, which pertains to specialists, is not applicable to the operation of the MatchPoint system.

Regulation of the MatchPoint System

The Exchange notes that NYSE Regulation represents that it has appropriate policies and procedures in place to adequately and effectively regulate the MatchPoint system. A surveillance plan describing the various surveillances that will be in place to monitor the operation of MatchPoint has been submitted to the Commission under separate cover, and will be implemented prior to any trading on the MatchPoint system. Also, FINRA, as agent for NYSE Group, will perform examinations of specialist firms that trade on MatchPoint as described above.

2. Statutory Basis

The Exchange states that the statutory basis for proposed rule change is the requirement under section 6(b)(5) ¹⁹ of the Act that an Exchange have rules that are 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2007-102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

¹⁹ 15 U.S.C. 78f(b)(5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-102 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22782 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56790; File No. SR-NYSEArca-2007-113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Mid-Point Passive Liquidity Order

November 15, 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 November 5, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 7.31(h)(5) in order to reduce the Mid-Point Passive Liquidity Order's ("MPL Order") minimum order entry size and minimum executable size from 1000 to 100.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to provide additional flexibility and increased functionality to its system and its Users,⁵ the Exchange proposes to amend Rule 7.31(h)(5) in order to reduce the MPL Order's minimum order entry size and minimum executable size from 1000 to 100. The MPL Order⁶ is a version of the NYSE Arca Passive Liquidity Order,⁷ except that it is executable only at the midpoint of the Protected Best Bid and Offer ("PBBO").

Presently, the MPL Order's minimum order entry and execution size is 1000. The Exchange represents that this MPL Order type was initially designed to accommodate larger customer transactions. However, since its inception, it has become clear that Users with a typical order flow less than this threshold are frequently unable to use it. This proposed reduction of the order entry and execution size from 1000 to 100 will allow all Users the same flexibility in using this order type.

The Exchange is not proposing any other changes or amendments to the

MPL order. The Exchange intends to offer this functionality in concert with other planned technological upgrades presently scheduled to be implemented on November 19, 2007, or such later date as communicated to its Users through a customer notice.

The Exchange believes that reducing the minimum order entry size and the minimum execution size will further enhance order entry and execution opportunities on the Exchange. Retail customers, whose orders are typically smaller than 1000, will particularly benefit from this reduction and thus the proposed rule change will allow those Users the same opportunities as larger institutional customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) the proposed rule change has become effective pursuant to

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See NYSE Arca Rule 1.1(yy) for the definition of "User."

⁶ See Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR-NYSEArca-2007-61).

⁷ See NYSE Arca Rule 7.31(h)(4).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹² However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day pre-filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because reducing the MPL Order's minimum size from 1000 to 100 will provide greater potential for all Users to be able to use this MPL Order type without delay. Further, the Commission believes that this change to an existing order type does not impose any burden on competition or significantly affect the protection of investors. Therefore, the Commission designates the proposal to become operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2007-113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-113 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22778 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56797; File No. SR-NYSEArca-2007-106]

Self-Regulatory Organizations; NYSEArca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options Already Listed on Another National Securities Exchange

November 15, 2007.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on October 9, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 6, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order provides notice of the proposal, as amended, and approves the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to revise the options original listing guidelines so that as long as the continued listing standards set forth in NYSE Arca Rule 5.4 are met and the option is listed and traded on another national securities exchange, the Exchange would be able to list and trade the option. The text of the proposed rule change is available at on NYSE Arca's Web site (<http://www.nyse.com>), at NYSE's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, the Exchange corrected typographical errors in the rule text and the purpose section where NYSE Arca Rule 5.4 was incorrectly referenced as NYSE Arca Rule 5.6.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise the options original listing guidelines so that as long as the options maintenance listing standards set forth in NYSE Arca Rule 5.4 are met and the option is listed and traded on another national securities exchange, NYSE Arca would be able to list and trade the option. NYSE Arca Rule 5.3(a)–(c) sets forth the guidelines that an underlying individual equity security must meet before the Exchange may initially list options on that security. These guidelines or requirements are uniform among the options exchanges.

NYSE Arca Rule 5.3(a)(4) relates to the minimum market price at which an underlying security must trade for an option to be listed on it. NYSE Arca Rule 5.3(a)(4) permits the listing of individual equity options on both “covered” and “uncovered” underlying securities.⁵ In the case of an underlying security that is a “covered security” as defined under section 18(b)(1)(A) of the Securities Act of 1933 (“1933 Act”), the closing market price of the underlying security must be at least \$3 per share for the five (5) previous consecutive business days prior to the date on which the Exchange submits an option class certification to The Options Clearing Corporation (“OCC”). In connection with underlying securities deemed to be “uncovered,” Exchange rules require that such underlying security be at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for “uncovered” securities also permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued listing contained in NYSE Arca Rule 5.4;⁶ (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume

(“ADTV”) for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Paragraphs (1) through (3) of NYSE Arca Rule 5.3(a) further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

The Exchange submits that the alternative listing procedure has limited usefulness. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original listing standards but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition and the maintenance of a national market system. Under this proposal, an option may be multiply-listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets existing continued listing guidelines or requirements.

The Exchange notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because, in total, the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

NYSE Arca believes that although the continued listing requirements are uniform among the options exchanges, the application of both the original and continued listing standards in the current market environment has had an anti-competitive effect.

Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while NYSE Arca may not list any options on such underlying security. The Exchange believes that this is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new paragraph (6) to NYSE Arca Rule 5.3(a) and amend the alternative original listing requirement set forth in paragraph (4)(b) of NYSE Arca Rule 5.3(a). Specifically, paragraph (6) would be added to provide that notwithstanding that a particular underlying security may not meet the

requirements set forth in Paragraphs 1 through 4 of NYSE Arca Rule 5.3(a), the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets the guidelines for continued listing in NYSE Arca Rule 5.4 and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. Paragraph (4)(b) of NYSE Arca Rule 5.3(a) would be amended to delete the reference to the alternative original listing guideline for “uncovered” securities. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on NYSE Arca while at the same time, such option is trading on another options exchange(s). The Exchange notes that when an underlying security meets the maintenance listing guidelines and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the Exchange does not believe that the current proposal will introduce any inappropriate additional listed options classes. The Exchange submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ Section 18(b)(1)(A) of the 1933 Act provides that, “[a] security is a covered security if such security is listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *” See 15 U.S.C. 77r(b)(1)(A).

⁶ The rule text of NYSE Arca Rule 5.3 refers to NYSE Arca Rule 5.6 instead of NYSE Arca Rule 5.4, which contains NYSE Arca's continued listing standards.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2007-106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-NYSEArca-2007-106 and should be submitted on or before December 14, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁰ which requires 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. The proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing NYSE Arca to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

The Commission finds good cause, pursuant to section 19(b)(2)(B) of the Act,¹¹ for approving the proposed rule change prior to the 30th day after the publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is substantially identical to the proposed rule change submitted by American Stock Exchange LLC,¹² which

⁹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² See Securities Exchange Act Release No. 56598 (October 2, 2007), 72 FR 57615 (October 10, 2007) (SR-Amex-2007-48). See also Securities Exchange Act Release Nos. 56647 (October 11, 2007), 72 FR 58702 (October 16, 2007) (SR-ISE-2007-80) (substantially identical proposed rule change approved on an accelerated basis); 56717 (October 29, 2007), 72 FR 62508 (November 5, 2007) (SR-

was previously approved by the Commission after an opportunity for notice and comment, and therefore does not raise any new regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSEArca-2007-106), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-22781 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56799; File No. SR-Phlx-2007-60]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Structured Equity Products

November 15, 2007.

On August 14, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 update its rules and its fee schedule regarding the listing of equity securities. The proposed rule change was published for comment in the **Federal Register** on October 16, 2007.³ The Commission received no comments on the proposal.

According to the Exchange, currently, the vast majority of equity securities that trade on Phlx are listed on other exchanges and traded on the Phlx pursuant to unlisted trading privileges. Phlx has a series of rules (the "800 Series") that create standards governing both the issuer of the security and the security to be listed and traded on Phlx. To attract the listing of structured equity

Phlx-2007-73) (substantially identical proposed rule change approved on an accelerated basis); and 56774 (November 8, 2007) (SR-CBOE-2007-114) (substantially identical proposed rule change approved on an accelerated basis).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56626 (October 5, 2007), 72 FR 58711 ("Notice").

securities on the Exchange ("Structured Equity Products"),⁴ Phlx proposes modifications to the 800 Series that would accommodate the specific attributes of many of those types of securities.⁵

The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and with Section 6(b)(5) of the Act,⁷ which requires that the rules of a national securities exchange be designed to, among other things, 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.⁸ The Commission believes that the proposed rule change should promote competition among national securities exchanges and should benefit investors by removing impediments to the listing and trading of Structured Equity Products. The Commission also notes that the proposed amendments to Phlx Rules 807 and 837 would conform those rules with similar provisions of another national securities exchange.⁹

In addition, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(4) of the Act,¹⁰ which requires that the Exchange's rules provide for an equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities. The Exchange also proposes that, for the two Structured Equity Products that it currently lists (Pharmaceutical Basket Opportunity Exchangeable Securities and Biotechnology Basket Opportunity Exchangeable Securities), the \$500 per month continuing listing fee begin in January 2008 because the issuer of those securities was invoiced the current annual continuing listing fee (\$1,250 for the first product and \$250 for the second product) in January 2007. The

Commission believes that, with respect to the two Structured Equity Products currently listed on Phlx, it is appropriate for the Exchange to delay application of the proposed continuing listing fee until January 2008¹¹ because the issuer of those products may have reasonably expected that the current fee would cover its obligation for these two products through the end of 2007.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2007-60) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-22776 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Goodmail Systems, Inc., 2465 Latham Street, Mountain View, CA 94040. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Goodmail Systems, Inc., and therefore Goodmail Systems, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

¹¹ By contrast, new Structured Equity Products will begin to pay the proposed fee in the month subsequent to initial listing on Phlx.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: October 22, 2007.

A. Joseph Shepard,
Associate Administrator for Investment.
[FR Doc. E7-22870 Filed 11-21-07; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0456]

HorizonVentures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Venturi Wireless, Inc., 1320 Chesapeake Terrace, Sunnyvale, CA 94089. The financing is contemplated for working capital, research and development, and expansion of domestic workforce.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Venturi Wireless, Inc. Therefore, Venturi Wireless, Inc. is considered an Associate of Horizon Ventures Fund II, L.P., as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: October 24, 2007.

A. Joseph Shepard,
Associate Administrator for Investment.
[FR Doc. E7-22875 Filed 11-21-07; 8:45 am]
BILLING CODE 8025-01-P

⁴ For purposes of this proposed rule change, Structured Equity Products are securities listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).

⁵ The Exchange proposes to modify Phlx Rules 802, 806 (Initial Public Offerings), 807 (Registration Under the Exchange Act), 837 (Annual Reports) and the Phlx Fee Schedule as described in the Notice.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ See Sections 210 and 1101 of the American Stock Exchange Company Guide.

¹⁰ 15 U.S.C. 78f(b)(4).

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration # 11103 and # 11104]****Illinois Disaster # IL-00011****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ILLINOIS dated 11/16/2007.

Incident: Severe Storms and Flooding.
Incident Period: 08/20/2007 through 08/31/2007.

Effective Date: 11/16/2007.

Physical Loan Application Deadline Date: 01/15/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 08/18/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cook.

Contiguous Counties:

Illinois: Dupage, Kane, Lake.

Mchenry, Will,

Indiana, Lake.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	6.250
Homeowners Without Credit Available Elsewhere:	3.125
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11103 6 and for economic injury is 11104 0.

The States which received an EIDL Declaration # are Illinois and Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: November 16, 2007.

Steven C. Preston,
Administrator.

[FR Doc. E7-22857 Filed 11-21-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration # 11101 and # 11102]****Pennsylvania Disaster # PA-00015****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of PENNSYLVANIA dated 11/15/2007.

Incident: Fire.

Incident Period: 11/08/2007.

Effective Date: 11/15/2007.

Physical Loan Application Deadline Date: 01/15/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 08/15/2008.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Montgomery.

Contiguous Counties:

Pennsylvania: Berks, Bucks, Chester

Delaware, Lehigh, Philadelphia.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	5.875
Homeowners Without Credit Available Elsewhere:	2.937
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250

	Percent
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 11101 5 and for economic injury is 11102 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: November 15, 2007

Steven C. Preston,
Administrator.

[FR Doc. E7-22860 Filed 11-21-07; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

Notice of Opportunity for Public Comment on Surplus Property Release at George M. Bryan Field Airport, Starkville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Starkville to waive the requirement that a 1.87 acre parcel of surplus property, located at the George M. Bryan Field Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before December 24, 2007.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Lynn Sprull, Chief Administrative Officer, City of Starkville, Starkville, MS, at the following address: City Hall, 101 Lampkin Street, Starkville, MS 39759.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by City of Starkville, Starkville, MS to release 1.87 acres of surplus property at the George

M. Bryan Field Airport. The property, located on the West side of the airport, will be sold for fair market value.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the George M. Bryan Field Airport, Starkville, Mississippi.

Issued in Jackson, Mississippi, on November 8, 2007.

Rans Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 07-5776 Filed 11-21-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the update to the noise exposure maps submitted by the Allegheny County Airport Authority for the Pittsburgh International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the updated noise exposure maps in November 8, 2007.

FOR FURTHER INFORMATION CONTACT:

Edward S. Gabsewics, CEP, Environmental Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Telephone 717-730-2832.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for the Pittsburgh International Airport are in compliance with applicable requirements of Part 150, effective November 8, 2007.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses

as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, governmental agencies, and persons using the Airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the updated noise exposure maps and related documentation submitted by the Allegheny County Airport Authority. The documentation that constitutes the "Noise Exposure Maps" as defined in section 150.7 of Part 150 includes: Exhibit 4.3-1 "Existing (2005) Noise Exposure Contours", and Exhibit 5.3-1 "Future (2010) Noise Exposure Contours" as well as all supporting information. The FAA has determined that these maps for the Pittsburgh International Airport are in compliance with applicable requirements. This determination is effective on November 8, 2007.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part

150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and the FAA's evaluation of the updated maps for the Pittsburgh International Airport are available for examination at the following locations:

Allegheny County Airport Authority, Landside Terminal, 4th Floor Mezzanine, Pittsburgh, PA 15231-0370, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Camp Hill, Pennsylvania, November 8, 2007.

Susan L. McDonald,

Acting Manager, Harrisburg Airports District Office.

[FR Doc. 07-5777 Filed 11-21-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA-139(l) Notice]

Notice of Final Federal Agency Actions on United States Highway 281 in Comal County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, United States Highway 281 (US 281), beginning at Farm-to-Market Road 311 (FM 311) and heading north to FM 306 in Comal County in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency

actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 21, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 E. 8th Street, Rm. 826, Austin, Texas 78701; telephone: (512) 536-5950; e-mail salvador.deocampo@fhwa.dot.gov. The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. You may also contact Ms. Dianna Noble, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701; telephone: (512) 416-2734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: United States Highway 281 (US 281), beginning at Farm-to-Market Road 311 (FM 311) and heading north to FM 306 in Comal County in the State of Texas. The project will be an approximately 6.8 mile long, four-lane divided roadway with intersection improvements at four (4) major intersecting roadways and temporary crossovers at six (6) locations. The proposed highway will generally follow the existing US 281 alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, dated August 2007, in the FHWA Finding of No Significant Impact (FONSI) issued on October 30, 2007, and in other documents in the FHWA project records. The EA, FONSI, and other documents in the FHWA project records file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401-7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Migratory Bird Treaty Act [16 U.S.C. 703-712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251-1377 (Section 404, Section 401, Section 319).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Government; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 13, 2007.

Salvador Deocampo,
District Engineer, Austin, Texas.
[FR Doc. 07-5795 Filed 11-21-07; 8:45 am]
BILLING CODE 4910-RY-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA-2006-25344]

Consumer Information; Rating Program for Child Restraint Systems

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

ACTION: Notice, request for comments.

SUMMARY: In response to Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, the National Highway Traffic Safety Administration established a child restraint consumer information rating program. This

program conducts a yearly assessment on the ease of using add-on child restraints and provides these ratings to the public. The program has been successful in encouraging child restraint manufacturers to improve their harness designs, labels, and manuals such that most now receive the top rating. However, some recent research, as well as a February 2007 public meeting held by the agency on the Lower Anchors and Tethers for Children (LATCH) system has indicated that some features that make child restraints easier to use are not being captured by the current program. Additionally, the agency wants to make sure that the program continues to provide useful information to the public. In an effort to further enhance the program and provide consumers with updated information we are proposing some new features and new rating criteria, and to adjust the scoring system. The agency anticipates that these program changes will result in more child restraints being used correctly by continuing to encourage manufacturers to install more features that help make the restraints easier to use.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than December 24, 2007.

ADDRESSES: Comments should refer to the docket number and be submitted by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

- Fax: 1-202-493-0402
- Mail: Docket Management; U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12-140, Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues related to the Ease of Use rating program, you may call Nathaniel Beuse of the Office of Crash Avoidance Standards, at (202) 366-4931. For legal issues, call Deirdre Fujita of the Office of Chief Counsel, at

(202) 366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. The Unrestrained Child
- III. Child Restraint EOU Programs Worldwide
 - A. Australia
 - B. Consumers Union
 - C. EuroNCAP
 - D. Japan NCAP
- IV. Overview of the Current Ease of Use Rating Program
- V. Enhancing the Ease of Use Program
 - A. LATCH Misuse Survey
 - B. LATCH Public Meeting
 - 1. Labeling and Instructions
 - 2. Lower Attachment Design
 - 3. Other Comments
 - C. Comprehensive Study of the Ease of Use Program
 - D. Feedback from Current Ease of Use Raters
- VI. Analysis and Agency Decision on Suggested Program Changes
 - A. Rating Categories and Their Associated Features
 - 1. Assembly
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 - B. Rating System
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- VII. Rating Vehicles Based on Child Restraint Installation Features
- VIII. Conclusion, Star-System, and Effective Date
- IX. Public Comment
- Appendices
 - Appendix A: Ease of Use Rating Forms
 - Appendix B: Ease of Use Score Forms
 - Appendix C: Ease of Use Star Rating System

I. Introduction

Through the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Congress directed the National Highway Traffic Safety Administration (NHTSA) to establish a child restraint safety rating system that was practicable and understandable (Section 14 (g) of the TREAD Act, November 1, 2000, Pub. L. 106-414, 114 Stat. 1800) and that would help consumers to make informed decisions when purchasing child restraints. In response to the TREAD Act, the agency issued a final rule¹ on November 5, 2002 establishing a program to rate child restraint ease of use features.

NHTSA's Ease of Use (EOU) program is modeled after a program which, at that time, was being used by the Insurance Corporation of British Columbia (ICBC) to evaluate child restraints sold in Canada. NHTSA's program uses similar rating categories, features, and criteria as ICBC's did.

Shortly after NHTSA established its EOU program, ICBC chose to abandon their in-house program and instead began directing their consumers to the NHTSA ratings Web site. They continue to provide information specific to Canadian consumers by publishing the equivalent Canadian model numbers of U.S. child restraints that NHTSA rates.

To date, NHTSA's EOU program has been very successful in encouraging child restraint manufacturers to improve child restraint harness designs, labels, and manuals such that most now receive the top rating. However, some recent research, as well as the public hearing conducted by the agency on LATCH, has indicated that some features intended to make child restraints easier to use are not captured by the current program.

NHTSA held a public meeting on February 8, 2007² that brought together child restraint and vehicle manufacturers, retailers, technicians, researchers, and consumer groups to explore possible ways to improve the design and increase the use of the Lower Anchors and Tethers for Children (LATCH) system. At the meeting, four panels were held, which focused specifically on: Improving in-vehicle LATCH design, improving child restraint LATCH design, child side-impact safety, and educating the public about seat belts and LATCH. At the child restraint LATCH design panel session, NHTSA presented some approaches that the agency was considering in making improvements to its EOU program. NHTSA requested that all attendees and participants submit formal comments to the Docket³ highlighting concerns they may or may not have expressed during the session. The agency wanted to use this input to make sure that the program continues to provide valuable information to the public as well as continuing to encourage manufacturers to further improve their designs.

II. The Unrestrained Child

Child restraints are the most effective vehicle safety measure available for children. Research on the effectiveness of child restraints has found them to reduce fatal injury by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1-4 years old) in passenger cars.⁴ For infants and toddlers

in light trucks, the corresponding reductions are 58 and 59 percent, respectively.

The agency, along with manufacturers, local governments, and consumer groups, has established a consistent message for the public to put children in age-appropriate restraints in the rear seat of vehicles. This educational effort is working: Over the past decade the percentage of unrestrained child fatalities has decreased significantly. Among child fatalities for the 14 and under age group, 46 percent were unrestrained in 2005; in 1995 this percentage was 65 percent.⁵ In February of 2005, NHTSA conducted a National Occupant Protection Use Survey (NOPUS) to provide more detailed information about child restraint use. As a part of NOPUS, the Controlled Intersection Study found that 82 percent of children were properly restrained. Other findings were that 98 percent of children under 1 and 93 percent of children from 1 to 3 were restrained.⁶

Tragically, in 2005, there were 361 passenger vehicle occupant fatalities among children under 4 years of age.⁷ Restraint use was known for 344 of these 361 fatalities, and 110 (~30 percent) of those children were unrestrained. In contrast, in 2005, 420 lives are estimated to have been saved by child restraint use. Of these 420 lives saved, 382 were associated with the use of child restraints and 38 with the use of adult seat belts. At 100 percent child restraint use for children under 5, an estimated 98 additional lives, for a total of 518 children, could have been saved in 2005.

The agency and all its safety partners must continue their efforts to get more children in age-appropriate restraints and to educate the public about their proper use and installation. Our belief is that the EOU rating program helps provide much needed guidance to consumers about certain child restraint features. We believe this guidance helps caregivers choose appropriate restraints for their child. The agency believes that an easy-to-use child restraint can result in more children being properly restrained.

⁵ *Traffic Safety Facts 1995: Children*, DOT 95F2, National Center for Statistics and Analysis, 1200 New Jersey Ave., SE., Washington, DC 20590.

⁶ *Traffic Safety Facts 2005: Children*, DOT HS 810 618, National Center for Statistics and Analysis, 1200 New Jersey Ave., SE., Washington, DC 20590.

⁷ *Traffic Safety Facts 2005: Occupant Protection*, DOT HS 810 621, National Center for Statistics and Analysis, 1200 New Jersey Ave., SE., Washington, DC 20590.

² 72 FR 3103, January 24, 2007. Full transcript can be found in Docket Number NHTSA-2007-26833-23.

³ See Docket Number: NHTSA-2007-26833.

⁴ *Traffic Safety Facts 2005: Occupant Protection*, DOT HS 810 621, National Center for Statistics and Analysis, 1200 New Jersey Ave., SE., Washington, DC 20590.

¹ 67 FR 67448, Docket 2001-10053.

III. Child Restraint EOU Programs Worldwide

A. Australia

The New South Wales Roads and Traffic Authority joined with the National Roads and Motorists Association and the Royal Automobile Club of Victoria to establish a joint program to assess both the relative performance and the ease of using child restraints available in Australia. The resulting program is known as CREP, or the Child Restraints Evaluation Program. In addition to frontal and side impact sled testing, the program covers installation and compatibility with vehicles and features specific to the child restraint itself.

The Australian program uses child restraint evaluation criteria very similar to the program conducted by NHTSA under its EOU program. The CREP criteria assess how easily the child restraints can be installed as well as how easily a child can be secured. The criteria also include an evaluation of the information included in the instructions, the clarity and quality of labeling and packaging, and compatibility by securing the restraint in a vehicle.

The child restraints are classified into three groups: infant restraints, child seats, and booster seats. They are rated on a letter scale that ranges from the best, or "A," to the worst, which is a "D," for both the dynamic rating and the EOU ratings. The scores are presented to consumers separately; that is, the dynamic and EOU ratings are not combined. The highest scoring child restraint in each of the three classes is highlighted on the Web site and in CREP's annual brochure as the "best performer in class."

B. Consumers Union

Consumers Union (CU), publisher of *Consumer Reports* magazine, is a nonprofit membership organization that evaluates child restraints in dynamic tests, assesses their ease of use, and evaluates compatibility with vehicles. CU rates child restraints for EOU by evaluating installation features, harness features, placing the child in the restraint, and removing the child from the restraint. All of the items are evaluated on a five part scale using the following rankings: "Excellent," "Very good," "Good," "Fair," and "Poor." The crash protection, EOU, and installation ratings are all combined into an overall rating.

C. EuroNCAP

The European New Car Assessment Program, or EuroNCAP, provides

consumers with safety ratings for vehicles sold in Europe. The program is funded by European governments and private motoring clubs. Under EuroNCAP, vehicle manufacturers recommend child restraints suitable for installation in their vehicles for subsequent dynamic testing. Each vehicle's rear seat is fitted with two restraints: one suitable for a 3-year-old child and another suitable for an 18-month-old infant. Technicians provide an evaluation of the ease of installation in the vehicle when setting up the full-scale crash test. They also rate the quality of labeling information on the child restraint. This evaluation is included as a small part of an overall child protection rating that is determined by using points and then converted to a 5-star scale. This overall child protection rating is related more to the vehicle rather than the restraints themselves. For example, each restraint's ease of use and fitment assessment in the vehicle can contribute only 6 points out of 49 possible points to the child protection rating. The remaining points are calculated from each child restraint's dynamic results and specific vehicle features such as air bag warning labels.

D. Japan NCAP

The Japanese Ministry of Land, Infrastructure and Transport, in cooperation with the National Organization for Automotive Safety & Victims' Aid, tests and evaluates the safety of automobiles as part of its New Car Assessment Program (JNCAP). In 2002, the JNCAP began rating child restraints in both dynamic testing and child restraint usability. The results of these tests are released in print media and on the Internet.

JNCAP rates child restraints on their usability in five categories. These categories are very similar to NHTSA's: The instruction manual, product markings (labels), the ease of using the restraint's features, the ease of installation in the vehicle,⁸ and the ease of securing the child in the restraint are evaluated. Each category contains a number of features for evaluation; these are very similar to the structure used in NHTSA's EOU program.

The specialists in this program rate each feature on a scale of 1 to 5, with "3" representing an "average" feature. The ratings given by all five specialists are averaged, and then all the features

within each category are averaged as well. No overall rating is provided.

IV. Overview of the Current Ease of Use Rating Program

NHTSA rates each child restraint under every mode of its correct use. This requires the agency to use three separate forms: rear-facing (RF), forward-facing (FF), and booster. Each of these forms is tailored to the mode of use and organized according to five categories:⁹ Assembly, Evaluation of Labels, Evaluation of Instructions, Securing the Child, and Installing in Vehicle. In addition to an overall letter grade for the child restraint, a letter grade is also assigned to each of these five categories and displayed on NHTSA's Web site. The **Federal Register** notice of November 5, 2002 included, as its Appendix C,¹⁰ the EOU rating forms used by the agency to evaluate each child restraint in every applicable mode of use. For example, a convertible restraint that can accommodate a child in both the rear-facing (RF) and forward-facing (FF) modes would be evaluated using both the rear- and forward-facing forms; it would also be awarded two separate EOU ratings.

Each form contains features for rating the child restraint that are organized into five categories. Each feature is assessed on up to three criteria using an "A" ("good," worth 3 points), "B" ("acceptable," worth 2 points), or "C" ("poor," worth 1 point). In some cases, a feature may only be assessed on two criteria, "A" ("good," worth 3 points), or "C" ("poor," worth 1 point). If a feature does not pertain to the restraint in question, it is assigned a "not applicable," or "n/a," which essentially eliminates it from the overall calculation so that it does not affect the restraint negatively or positively. An example of a situation where this is used would be for the overhead shield criteria. These devices are not very common, but if a child restraint manufacturer chooses to employ one the agency feels it is important to rate how easy it is to adjust. On the other hand, restraints that do not have this feature should not be subject to a penalty for their absence.

Each feature also has an associated weighting value that corresponds to its potential risk of injury if misused. A feature with the highest weighting factor has a numerical value of "3," which

⁹ ICBC's ratings system was based on seven categories; NHTSA chose to adopt the same criteria for its ratings program but organized them into five categories.

¹⁰ 67 FR 214, page 67472. See Docket NHTSA-2001-10053-66.

⁸ It should be noted that vehicles and child restraints in Japan are not required to come LATCH-equipped, so their installation features are based on the ease of routing and using vehicle belts.

means that its gross misuse could lead to severe injury. Items whose gross misuse was determined less likely to lead to severe injury are assigned a numerical value of "2." Similarly, the features whose misuse was least likely to cause severe injury are assigned a weighting factor of 1. It should be noted that in the current rating system NHTSA does not have any features weighted "1."

NHTSA displays both the overall letter rating and letter ratings for each of the five categories. NHTSA calculates the category letter ratings by taking the numerical value of the feature and multiplying it by the fixed weighting value for that feature. Then, the sum of these weighted feature ratings is divided by the sum of the applicable fixed weighting factors. The numerical category weighted average that results is assigned a letter grade according to the following scale:

- "A" = Category Weighted Average $\geq$ 2.40.
- "B" = $1.70 \leq$ Category Weighted Average $<$ 2.40.
- "C" = Category Weighted Average $<$ 1.70.

Point ranges for assigning both the category and overall "A," "B," and "C" ratings were determined by dividing the range of possible overall scores into three sections. The minimum category or overall numerical score for any child restraint is 1.00; this is if all features were rated "C". The maximum category or overall numerical score for any child restraint is a 3.00; this is if all features are rated an "A".

To calculate the overall rating for the child restraint, the sum of the weighted feature ratings from all five categories is divided by the sum of all the possible weighted scores for that category. The score ranges for assigning a letter score to the overall rating are similar to those for the individual categories:

- "A" = Overall Weighted Average $\geq$ 2.40.
- "B" = $1.70 \leq$ Overall Weighted Average $<$ 2.40.
- "C" = Overall Weighted Average $<$ 1.70.

Consumers are presented EOU information on the NHTSA Web site in letter format only. However, the agency's practice has been to display the letter scores for each of the categories alongside the overall letter score.

V. Enhancing the Ease of Use Program

As previously stated, manufacturers have responded positively to the EOU program; currently, an overwhelming majority of child restraints are rated an "A". For model year (MY) 2007, approximately 81% of the child

restraints received an overall "A" rating.¹¹ This can be compared to approximately 57% when the program first began. This tremendous improvement in a short time has indeed led to improved child restraint designs. However, the homogeneity in scores makes it difficult for parents and caregivers to discern between products for purchase and more difficult for manufacturers to distinguish themselves thereby reducing the incentive to bring to market more innovative, easy to use child restraints and features.

The current forms, their features, and their criteria were designed prior to NHTSA's requirement of the LATCH hardware. As a result, the program does not fully discern between the different types of hardware that are now required equipment on child restraints and many of the rating criteria assume that LATCH is an optional piece of equipment on the child restraint. In addition, the criteria that are present were based only on the technology that was available at the time. Finally, the agency feels that some of the criteria need to be improved to reflect the ease of preparing and using different types of LATCH equipment that rear- and forward-facing child restraints must have.

In deciding what changes to propose for the EOU program, NHTSA evaluated a recent survey it conducted on LATCH, reviewed comments submitted in response to the public meeting held on LATCH, and conducted an additional study designed to specifically evaluate the EOU program. NHTSA also considered feedback provided by actual EOU raters.

A. LATCH Misuse Survey

The agency published a survey¹² on December 22, 2006 that served as its first major review of the LATCH system since it was required on vehicles and child restraints in 2002. The results were encouraging but it also proved that the system was not recognized by as many caregivers as we had anticipated. It is consequently not being used as often as we had hoped. In addition, it has not solved as many installation problems as we originally suspected.

The survey highlighted some misuses that could be addressed by the EOU program. For example, it showed that nearly 10% of the child restraints in the study were installed with the lower attachments upside down. Other statistics highlighted misuses such as

twisted upper tether and lower attachment straps, misrouted lower anchor straps, and loose installation. The survey also showed that a number of rear-facing child restraints (over 20%) were installed at an incorrect angle. Additionally, one of the findings found that approximately 45% of parents were not using their top tethers either because they were unaware it was available or unsure of how it was supposed to be used.

The survey also highlighted that a number of people were not using the LATCH system at all. Participants indicated a variety of reasons for this, including the fact that they were simply not aware that the system existed or that it was present in their vehicle. Though this is primarily an education issue, the agency believes there are ways the EOU program can be used to help increase LATCH awareness.

B. LATCH Public Meeting

NHTSA held a public meeting on February 8, 2007¹³ that brought child restraint and vehicle manufacturers, retailers, technicians, researchers and consumer groups together to explore ways to improve and increase the use of the LATCH system. At the meeting, four panels were held specifically focusing on: vehicle LATCH design, child restraint LATCH ease of use, child side-impact safety, and educating the public about seat belts and LATCH. Participants were asked to submit written comments to the Docket highlighting issues they may or may not have expressed during the meeting.

Comments from the LATCH public meeting specific to NHTSA's EOU program were received from: General Motors (GM), Honda Motor Company (Honda), American Academy of Pediatrics (AAP), Advocates for Highway and Auto Safety (Advocates), Columbia Medical, Car-Safety.Org, Safe Ride News Publications (SRN Publications), SafetyBeltSafe USA, Cohort 22 of the Florida International University BBA+ Weekend Program (Cohort 22), UVA RN-BSN students (UVA), and several child passenger safety technicians (CPSTs). The comments can be grouped by labeling and instructions, lower anchor design, and other general observations.

1. Labeling and Instructions

Though many commenters agreed with NHTSA that child restraint labels and instructions have been much improved since the beginning of the

¹¹ <http://www.nhtsa.dot.gov/CPS/CSSRating/Index.cfm>.

¹² Decina, Lawrence E., Lococo, Kathy H., and Doyle, Charlene T. *Child Restraint Use Survey: LATCH Use and Misuse*. DOT HS 810 679. December 22, 2006.

¹³ For a transcript of the meeting and all comments submitted please see Docket NHTSA-2007-26833.

EOU rating program, some commenters provided additional suggestions. Cohort 22 and the UVA suggested that either a DVD or a Web site link be included in instruction manuals for an installation video. UVA believes that poor instructional illustrations cause confusion during installation and should be replaced with actual photographs. SRN Publications believes that manuals should explicitly encourage the use of LATCH, rather than simply listing it as an option for installation. A CPST believed that clearer instructions are needed.

GM, UVA, Advocates, AAP, and SRN Publication, suggested that tether and lower anchors in the vehicle could be better labeled,¹⁴ perhaps by using ISO-style symbols. While NHTSA's EOU program does not currently evaluate in-vehicle features, GM made the additional suggestion that symbols could also be included on the lower attachments and tether hooks on the child restraint. GM felt that by seeing the symbols in both places the consumer would be encouraged to use them more often.

2. Lower Attachment Design

Some commenters suggested that the agency evaluate and subsequently encourage a single technology for lower attachment. Honda and AAP commented that the agency conduct research on the ease of using various lower attachment hardware and possibly require the design that emerges as the most user-friendly. Some of the CPSTs suggested that all LATCH systems be identical in appearance so that the system is intuitive and installation is easy. They also suggested an audible confirmation of attachment. With regards to design, one CPST stated that the "mini connector" style lower attachments were the most user-friendly. SRN Publications encouraged restraint manufacturers and NHTSA to weigh the economic benefits of implementing only the most user-friendly design in lower anchor designs. They suggested that the agency encourage rigid attachments over flexible straps, and that all flexible systems, when used, should have adjustment mechanisms on each side of the restraint. SafetyBeltSafe USA recommended that a system be developed to prevent parents from using the wrong configuration for the lower attachments on convertible child restraints (i.e., routing the lower attachments through the RF path while

trying to use the child restraint in the FF mode). Cohort 22 recommended an investigation into a more universal LATCH system for both the vehicle and the child restraint, stating that parents who purchase child restraints with LATCH attachments that are not easily compatible with their vehicles will likely just use seat belts instead.

3. Other Comments

Comments to the docket from a few of the CPSTs indicated that the program should include criteria for lower attachment and tether storage systems. Many of the participants, including Honda, GM, SRN Publications, AAP, SafetyBeltSafe USA, Car-Safety.Org, and some of the CPSTs supported a variety of changes that could be made to vehicle designs rather than the child restraints themselves.

C. Comprehensive Study of the Ease of Use Program

The agency commissioned a study¹⁵ by RONA Kinetics and Associates, a research firm that reviewed the current program and identified areas where improvements could be made. This study combined the expertise of RONA Kinetics with input from CPS technicians from the U.S. and Canada.

One of the suggested program enhancements made in the RONA report was the incorporation of additional criteria that would pertain to the lower anchor and tether storage. The report also suggested that the ratings include a further evaluation of the child restraint instructions and that their storage system be accessible in all modes of the restraint's use. Further, it was suggested that the agency include more LATCH features, especially pertaining to flexible lower anchors. In addition, the report suggested that the agency consider changes to its method of calculating a restraint's score.

D. Feedback From Current Ease of Use Raters

The agency also used input from its own child restraint raters as another source of information. One suggestion was to incorporate a feature that evaluated the recline capabilities of RF child restraints. Raters believed that such a feature could help aid the ability of parents to secure these child restraints without a "pool noodle" or other positioning device. It was also suggested that a number of the existing criteria could be changed to better reflect current and emerging designs. In some cases this could be achieved by combining related criteria into one. In

other cases, deletions were suggested. For example, features that were anticipated but never realized in the actual market, like lower anchors that could be used in multiple orientations and harness buckles that could not be used in reverse, were suggested deletions. It was also felt that a reduction in the weighting factors assigned to many criteria could be adjusted to better convey which features were more critical to correct installation.

VI. Analysis and Agency Decision on Suggested Program Changes

After a review of the comments received to the Docket from the public hearing, NHTSA's own review of the EOU program, and a review of consumers experience with LATCH, the agency has decided to propose several fundamental changes to the EOU program. The proposed changes outlined here serve to better reflect the current spectrum of features seen in the child restraint market. It is the agency's belief that through this upgrade, manufacturers will be encouraged to implement more widespread incorporation of features that will make it easier and more intuitive to install child restraints.

The agency does not plan to change the scope of the EOU rating program. That is, we will continue to apply this program only to add-on child restraints and not built-in child restraints.¹⁶ Similarly, as before, the agency will continue to use three sets of forms to evaluate child restraints. One set will still be used to rate infant-only restraints, convertible restraints, and 3-in-1 restraints in their rear-facing configuration. Another set will rate convertible restraints, forward facing only restraints, combination forward facing/booster restraints, and 3-in-1 restraints in their forward-facing configuration. The third set will be used to rate high- and low-back booster seats, combination forward facing/booster seats, and 3-in-1 restraints in their belt-positioning booster configurations. Each child restraint selected for rating will be evaluated in each configuration that pertains to its proper use. For example, a convertible restraint would be evaluated and assigned a rating using both the rear-facing and forward-facing forms since it may be used in both configurations. A combination forward facing/booster restraint would be evaluated and assigned a rating for both the forward-facing and booster modes.

¹⁴ Federal Standard No. 225, "Child restraint anchorage systems," only requires symbols when the lower vehicle anchors are hidden.

¹⁵ See Docket NHTSA-2006-25344.

¹⁶ For MY 2007, only 7 of the estimated 381 makes and model had the option of purchasing a built-in child restraint.

Additionally, 3-in-1 restraints that may be used rear-facing, forward-facing, and booster seat mode would be evaluated and rated for all three modes.

To ensure the most comprehensive revisions to the rating system, the agency examined all aspects of the current program. This required a thorough examination of the rating categories, features, criteria, weighting factors, the numerical ranges used to assign ratings, and the way the ratings themselves are conveyed.

A. Rating Categories and Their Associated Features

The specific changes to the EOU categories are organized by rating category and feature. With regards to changes made to the features, we first wanted to incorporate concepts that were not included in the original program. Secondly, we wanted to strengthen some existing features by reducing their criteria from three levels to two. For example, a feature that had "A", "B", and "C" criteria could now only have "A" and "C" criteria. Thirdly, we evaluated some related features that could be combined in order to make the highest rating of the new feature more difficult to achieve. The agency also found a need to delete some features altogether. If a feature or its associated criteria is removed from a rating system, there is always concern that "backsliding" could occur. That is, since manufacturers are no longer rated for a feature, they may revert to a previous (and likely less user-friendly) version of that feature due to cost or other considerations. The agency does not believe that is the case with the criteria we have chosen to eliminate. In some cases, a feature was removed because nearly every child restraint since the program was created has always been awarded an "A" for the feature. In other cases, a feature was removed because it has been incorporated into nearly all child restraint systems.

The agency's proposed changes and the corresponding rationale are explained below. It should be noted that features are incorporated into the rating forms only as needed; for example, there are no LATCH features assessed on the booster rating forms since they are not required to have LATCH.

1. Assembly

The agency is proposing to eliminate the "Assembly" rating category and distribute the features from this category among the "Evaluation of Instructions" and "Securing the Child" categories. The "Assembly" category assessed three features on the RF and Booster forms

and four on the FF forms (the additional feature encouraged that the tether arrive attached to the child restraint). A review of the current program revealed that most of the features in the current "Assembly" category should only be assessed under one mode of a multi-mode child restraint to avoid grade inflation. Assessing these features under only one mode of use would then, in effect, require that feature to be marked "n/a" for its remaining modes. Therefore, for some child restraint modes, the entire "Assembly" category could be assigned a rating based on one feature. For these reasons, the agency is proposing to distribute the former "Assembly" category features among the four remaining categories. Additionally, many of the past "out-of-the-box" issues covered by the "Assembly" category, such as child restraints that require tools to assemble, have disappeared from the market, further encouraging this proposal.

2. Evaluation of Labels

Under this category, the labels from the child restraint itself are assessed for accuracy and completeness. The proposed upgraded rating forms, located in Appendix A, include the following features in the "Evaluation of Labels" category. The forms that each are applied to are included in the parenthesis:

- a. Clear indication of child's size range. (RF, FF, Booster)
- b. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)
- c. Are the correct harness slots for this mode indicated? (RF, FF)
- d. Label warning against using a lap belt only. (Booster)
- e. Seat belt use and routing path clarity. (RF, FF, Booster)
- f. Shows how to prepare and use lower attachments. (RF, FF)
- g. Shows how to prepare and use tether. (FF)
- h. Durability of labels. (RF, FF, Booster)
- a. Clear indication of child's size range. (RF, FF, Booster)

The agency would like to expand this feature to assess whether or not the child restraint labels contain additional sizing information beyond the required height and weight limits of Federal Standard No. 213,¹⁷ "Child Restraint Systems". Parents and caregivers could benefit from visual indicators that help describe how an appropriately sized child should fit in the restraint. For example, the label could use a picture

to show that the child's head must be more than 1 inch from the top of the restraint, or that the top of his or her ears must be below the top of the restraint. A limited number of child restraints provide this information now and we believe that this information is useful for parents and caregivers in achieving an appropriate fit for a child. Additionally, such information could reduce the number of children who are placed in child restraints not appropriate for their age.

b. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

The agency feels that the current feature for assessing the proper methods of installation is sufficient. However, we would like to clarify the criteria to include that for the FF mode, the tether must be labeled with every configuration. Currently, the criteria only evaluates whether or not the tether is pictured but does not necessarily require it be labeled. The agency feels that having the top tether labeled could help to reinforce the use of the tether with FF child restraints.

c. Are the correct harness slots for this mode indicated? (RF, FF)

The agency proposes to strengthen this feature to include criteria that evaluate harness slot labels under both the RF and FF modes of use. Previously, if there was nothing on the restraint indicating which harness slots were appropriate for each mode of use, the raters would search the manual for additional information. If it was determined from the manual that all the harness slots were able to be used in the forward-facing mode, the restraint was assigned an "n/a." Now, child restraints can be encouraged to have harness slots that are labeled for both the rear-facing and forward-facing mode. The agency believes that consultation with the manual should not be necessary to properly use this feature. It is critical to the child's safety that the harness slots are used appropriately, as most often these are reinforced for strength; especially in the FF mode. Using RF harness slots for a FF child can lead to a very dangerous misuse, and in light of this, the agency wants to encourage harness slots that are labeled with a graphic or contrasting text to receive the highest rating for this feature.

Additionally, the agency feels that all child restraints should contain some indication to help achieve the correct harness slot height for the child. This includes single mode child restraints and child restraints with no-thread harness adjustments. For example, a RF

¹⁷ See 49 CFR 571.213.

child restraint may state or illustrate that the proper harness slots to use would be at or below the child's shoulder height. A FF child restraint could state or illustrate that the proper harness slot height to use would be at or above the child's shoulder height. In addition, restraints should illustrate this visual to better allow parents and caregivers the ability to assess the child's fit with respect to the harness.

d. Label warning against using a lap belt only. (Booster)

The agency created a new feature for the booster rating forms. We are proposing that child restraints should be evaluated on the presence of an illustrative warning against the use of a lap belt only. The agency is not aware of any booster seats on the market that may be used without a three-point belt. As of model year 2008,¹⁸ all rear seating positions in passenger vehicles must come equipped with three point lap and shoulder belts. The agency feels that the presence of an illustration can reinforce that these devices must be used with a three-point belt. Boosters are arguably the simplest type of child restraints to use correctly and encouraging an extremely clear illustration to avoid a potentially dangerous situation is in the best interest of child safety.

e. Seat belt use and routing path clarity. (RF, FF, Booster)

The agency would like to maintain this feature, which examines how obvious the seat belt and flexible lower attachment routing path is. However, we feel that its robustness could be improved. We propose that the criteria evaluate the restraints on whether or not the belt path is labeled on both sides of the restraint. This ensures that despite the user's point of installation, the belt and lower anchor path can easily be seen.

f. Shows how to prepare and use lower attachments. (RF, FF)

There are currently two features that assess the content of lower attachment-related labels. One examines the labels pertaining to the preparation of the lower attachments and the other examines the instructions for their use. It has been the agency's experience that having these two separate features is unnecessary; it is sometimes difficult for raters to ascertain which operations should specifically constitute "preparation" and which should specifically constitute "use." In order to reduce this confusion, the agency is proposing that these two features now

be combined. In effect, there will now be one complete feature to evaluate whether the labels clearly depict all steps of preparation and use.

g. Shows how to prepare and use tether. (FF)

In an effort to encourage more widespread tether use, the agency proposes to evaluate child restraints on whether their proper use and preparation is sufficiently explained by illustrations and concise text on the child restraint labels.

h. Durability of labels. (RF, FF, Booster)

The agency is proposing to modify this feature so that it better assesses the durability of the labels on the child restraint. The current forms require that the label durability be assessed in every mode of use. For child restraints with more than one mode of use, this tended to inflate the overall score since the same labels are evaluated each time. The agency is revising its forms so that restraints with more than one mode of use will now be assessed only once, under its youngest mode of use (configured to accommodate youngest child recommended for the restraint). The agency believes this will improve the robustness of the label category score and overall rating.

3. Evaluation of Instructions

The most significant changes proposed in this category, which evaluates the restraint's instruction manual, is a reduction in weight for the majority of the criteria. Under the current program, most of the features rated under the "Evaluation of Labels" category are also carried through to the "Evaluation of Instructions" category. Essentially, the same information is encouraged in both places. Though the agency feels it is important to have pertinent information duplicated on the instructions and the labels, we also know that it is much easier for manufacturers to include complete information in an instruction manual than it is to convey the same information on the restraint labels. The agency certainly believes that a restraint's instruction manual must be carefully considered prior to using the restraint. However, NHTSA believes that the pertinent information required for correct daily use can be communicated on the child restraint labels themselves. The labels should reduce the need to consult the instructions.

The upgraded rating forms, located in Appendix A, include the following "Evaluation of Instructions" features.

The forms that each are applied to are included in the parenthesis:

a. Owner's manual easy to find? (RF, FF, Booster)

b. Evaluate the manual storage system access in this mode. (RF, FF, Booster)

c. Clear indication of child's size range. (RF, FF, Booster)

d. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

e. Airbag/rear seat warning? (RF, FF, Booster)

f. Instructions for routing seat belt. (RF, FF, Booster)

g. Shows how to prepare & use lower attachments. (RF, FF)

h. Information in written instructions and on labels match? (RF, FF, Booster)

a. Owner's manual easy to find? (RF, FF, Booster)

The agency feels that if an instruction manual is attached to the child restraint in an obvious location, it has a greater likelihood of being seen and read. As a result, we are proposing to modify the criteria that examine whether the manual is easy to find when the child restraint is taken out of the box. Three levels of evaluation criteria for this feature will be reduced to two. It should be noted that this feature was previously assessed under the "Assembly" category; it was felt that moving the feature to the "Evaluation of Instructions" category was a better location. Also, this feature will now be assessed only once, when the child restraint is being evaluated in its youngest mode of use, to reduce grade inflation.

b. Evaluate the manual storage system access in this mode. (RF, FF, Booster)

In addition to easily finding the child restraint instructions, the agency also feels that an obvious, accessible storage system can help caregivers continue to consult the instructions when needed. Previously, this feature was also assessed under the "Assembly" section.

In the Final Rule establishing the EOU program, NHTSA shared its concerns about the accessibility and visibility of the manual when the child restraint was installed. NHTSA decided at that time that the storage system criteria would be sufficient to encourage easy access to the manual when the child restraint was installed. Instead, the criteria and our ratings focused on whether the storage mechanism is literally difficult to use, rather than difficult to access. There are some products on the market that receive the top rating for the storage system even though the manual cannot be easily accessed when the restraint is installed or when the child is seated.

¹⁸ 69 FR 70904. See Docket NHTSA-2004-18726.

Therefore, the agency is proposing that the feature be updated so that manufacturers are encouraged to design storage systems that are accessible regardless of mode of use, and whether or not the child is sitting in the child restraint. NHTSA believes a manual should be easily stored, and the user should be able to retrieve it while the child restraint is installed and the child is in the restraint.

c. Clear indication of child's size range. (RF, FF, Booster)

Similar to the updated label feature, the agency is proposing to expand these criteria to include whether the child restraint instructions contain additional sizing information beyond the height and weight limits. As previously discussed, such information should decrease the number of children in child restraints not appropriate for their age. Along with the evaluations for clear height and weight limits, the instructions should contain a picture and text indicating additional child sizing information as discussed previously in the "Evaluation of Labels" section.

d. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

The agency feels that the current evaluation for illustrating the proper methods of installation is sufficient. As a result, the feature has been clarified only to include that for the FF mode; the tether must be labeled and pictured in every configuration. The agency feels that this will help to reinforce the use of the tether with FF child restraints.

e. Airbag/rear seat warning? (RF, FF, Booster)

The agency is proposing to change the airbag warning criteria. Currently, all three forms contain a feature that encourages an airbag/rear-facing restraint interaction warning. Instead of encouraging the same warning for each type of child restraint, the agency proposes encouraging FF and booster seat instructions to contain warnings about the rear seat being the safest place for children, since this is more consistent with child passenger safety recommendations. Child restraints evaluated under the RF forms will also have to convey this information in addition to the current airbag warning requirements for a separate, obvious, illustrated warning.

f. Instructions for routing seat belt. (RF, FF, Booster)

The agency is proposing to enhance its requirements for seat belt routing instructions. In addition to looking for

a diagram showing a clear, contrasting belt path, manufacturers should be encouraged to include information on different seat belt styles, retractor types, and latch plate types and how each should be used with the child restraint in question. In this, the agency hopes to continue reducing loose and incorrect installations due to seat belt misuse.

g. Shows how to prepare and use lower attachments and tether. (RF, FF)

As in the "Evaluation of Labels" section, the features for "preparing" and "using" the lower attachments should be combined. The agency also proposes to remove the separate feature that looks for a diagram depicting the correct orientation of the lower attachments. Instead, the correct orientation criteria should be included within this feature. The criteria for this feature is similar to those for the labels: Lower attachment instructions must clearly depict all steps of preparation and use, including routing flexible lower attachments properly for that mode and making certain the user is prompted to tighten the straps. FF child restraints must also have complete tether directions included to satisfy this feature.

h. Information in written instructions and on labels match? (RF, FF, Booster)

The current rating forms assess whether the height and weight information on the labels matches. Prior to the EOU program, it was common to see confusing and even incorrect sizing information between the instructions and labels. Though it is much less common now, the agency proposes to maintain and strengthen this feature since we still see instances where there is conflicting information between the manual and the labels. In some cases, for example, the child restraint labels do not show the same style base or lower attachments as is found in the instructions. In addition to satisfying the current criteria, all pictures on the labels must convey the same information as in the manual. In addition to this, the child restraint model name should be found directly on the product as well as in the manual. The agency feels it is confusing to receive a manual where the purchased product's model name cannot be found.

4. Securing the Child

This category, which examines the child restraint features that help secure the child in the restraint, has the most proposed changes. The rating forms, located in Appendix A, include the following "Securing the Child" features. The forms that each are applied to are included in the parentheses:

a. Is the restraint assembled and ready to use? (RF, FF, Booster)

b. Does harness clip require threading? Is it labeled? (RF, FF)

c. Evaluate the harness buckle style. (RF, FF)

d. Access to and use of harness adjustment system. (RF, FF)

e. Number and adjustability of harness slots in shell and pad. (RF, FF)

f. Visibility & alignment of harness slots. (RF, FF)

g. Ease of conversion to this mode from all other possible modes of use. (RF, FF, Booster)

h. Ease of conversion from high back to no back. (Booster)

i. Ease of adjusting the harness for child's growth.

j. Ease of reassembly after cleaning. (RF, FF, Booster)

k. Ease of adjusting/removing shield. (RF, FF)

a. Is the restraint assembled & ready to use? (RF, FF, Booster)

One feature that has been very successful in influencing the child restraint market has been our encouragement that child restraints arrive completely ready to use when taken out of the box. As a result of the current rating program, virtually every child restraint on the market today does, in fact, arrive fully assembled. The agency considered but ultimately determined not to propose removing the feature from the rating system. Hopefully this will maintain the incentive for child restraints to continue arriving fully assembled when purchased by consumers. This feature was originally located in the "Assembly" category. Since that category is being dissolved it was decided that "Securing the Child" was the next logical location. The agency also proposes to reduce these three levels of criteria to two. Now, to receive the highest rating for this feature, a child restraint cannot require any assembly, regardless of whether it needs tools. Also, this feature would only be evaluated once, when the child restraint is rated under its youngest mode of use, in order to reduce grade inflation.

b. Does harness clip require threading? Is it labeled? (RF, FF)

Previously, there was no EOU feature to evaluate the harness clip on a restraint. The agency has decided to propose one so as to encourage harness clips that do not require threading. In addition, NHTSA would like to encourage them to be labeled with simple text or a graphic that can provide some indication of where they should

be positioned on the properly restrained child. The agency feels that this will increase the correct usage of these devices.

c. Evaluate the harness buckle style. (RF, FF)

In the current rating system, a child restraint is assessed on whether the harness buckle may be secured (and released easily) if it is buckled in reverse. The agency anticipated that parents may find reversing the buckle a sufficient deterrent for children who attempt to release the harness system on their own. The agency has no evidence, anecdotal or otherwise, that this technique is widely used. As a result, we are proposing to remove this feature from the rating program, as nearly all child restraint buckles already receive the top rating.

However, there is no current feature that evaluates the ease of using one type of harness buckle over another. Some buckles allow the user to insert each side of the buckle independently. Other styles require the user to hold the two shoulder portions of the buckle together and insert them at the same time, commonly referred to as a "puzzle buckle" style. Some manufacturers use these "puzzle buckles" to prevent either side from being incorrectly latched, which could lead to a dangerous misuse. However, according to many CPSTs, they are also more difficult for the user. Restraints with shoulder strap buckles that may be inserted independently of one another are ideal from an ease of use perspective, while buckles requiring both shoulder strap pieces to be inserted at together are not. Some "puzzle buckles" are more forgiving than others and have an intermediate method of keeping the two pieces together prior to their insertion into the buckle. For example, some use a small magnet or hook to hold the two separate pieces together, which can ease the process. As such, we are proposing to modify the criteria based on the presence of such features.

d. Access to and use of harness adjustment system. (RF, FF)

The agency proposes to combine the features that evaluate both access to and use of the harness tightening system. It is critical that there is access to the mechanism used to tighten the harness system regardless of the installation mode. A restraint cannot be used correctly if the harness system cannot be tightened onto the child. The condition for access will be assessed using the FMVSS 213 bench by installing the child restraint with both the lower attachments and seat belt (as necessary).

We will also continue encouraging harness systems that may be adjusted with a single action. However, the agency proposes reducing the number of levels this new feature is evaluated on from three to two. For example, in order to receive the highest rating for this feature, there must be access to the harness adjustment system in that mode of installation and the mechanism for adjusting the system must be simple to use.

e. Number and adjustability of harness slots in shell and pad. (RF, FF)

The agency is proposing to combine some related harness slot criteria from this section. The current rating program separately evaluates the number of harness slots and whether the number of harness slots in the shell and padding matches. The agency feels that differing numbers of slots in the shell and pad can easily lead to misrouting the harness straps when they are adjusted. However, these are examples of features that almost always receive the top rating. As a result, the agency would like to combine these features so that no backsliding can occur. This feature will apply to both re-threadable and fully adjustable harness systems. Rather than encouraging a certain number of harness slots for adjustable systems, the agency will encourage that they be adjustable to a minimum of three heights.

f. Visibility & alignment of harness slots. (RF, FF)

The agency maintains its position that having obvious, clear harness slots in the shell and pad helps to reinforce their proper use and avoids misrouting issues. We will continue assessing the alignment of the harness slots in the seat pad with the child restraint shell. The criteria have been re-written for clarity but their requirements are unchanged. Under the new rating system, however, we propose that child restraints with "no-thread" harness systems receive an "n/a" for this feature since its purpose is to help facilitate rethreading.

g. Ease of conversion to this mode from all other possible modes of use. (RF, FF, Booster)

The agency is proposing to restructure the features that assess the ease of converting a child restraint. Previously, the criteria were written in a way that did not fully evaluate the relative complexity of converting a child restraint between its different modes, especially for those equipped with flexible lower anchor systems that need to be re-routed to change to another mode. In addition to this, a number of needs specific to 3-in-1 child restraint

systems were not being reflected. For example, the complexity of removing and replacing the harness when a child restraint is converted from and to its booster mode was not reflected.

Child restraints would now be evaluated on the difficulty a user would experience converting the restraint back to the mode in question from any other mode it could be used in. The agency recognizes that multi-mode child restraints, especially 3-in-1 child restraints, will have difficulty achieving the top rating for this feature. Additionally, the agency recognizes that the process of converting a child restraint is normally an infrequent occurrence. However, given the relative difficulty of converting child restraints between modes, as well as the potential to introduce gross misuse and misplace critical pieces, NHTSA feels it is important to include such a feature in the new ratings.

h. Ease of conversion from high back to no back. (Booster)

The agency is proposing to add a separate feature to assess the difficulty of converting high back boosters to backless boosters. It was felt that the relative ease of converting a high back to a low back booster versus, for example, converting a 3-in-1 child restraint between its modes, warranted its own feature. In the upgraded ratings, a schematic should be found on the child restraint showing the conversion process; in addition, the process must be simple to perform.

i. Ease of adjusting the harness for child's growth.

Though the harness system usually needs to be adjusted when converting the child restraint to another mode, it must also be adjusted as the child grows. The agency is proposing to upgrade its evaluation of harness adjustment systems. The agency is now encouraging child restraints to have fully adjustable or "no-thread" systems that are both easy to understand and simple to use. Any restraint that must be rethreaded to adjust or that still has the possibility of misrouting (some no-thread systems can still be misrouted) will not receive the top rating for this feature.

j. Ease of reassembly after cleaning. (RF, FF, Booster)

Removing the child restraint cover in order to launder it can introduce potential misuse. Similar to the conversion process, harnesses may have to be removed and loose pieces that are generated during the disassembly can be misplaced. Some restraints still require

tools to remove the padding. The current RF and FF forms evaluate this feature by assessing whether loose parts will result from removing the cover and whether the harness system could be routed incorrectly. The agency is proposing to maintain this feature but is clarifying the three rating criteria. Child restraints will continue to be evaluated on whether the harness requires rethreading, if loose critical parts are generated during disassembly, and whether the cover can be easily removed and replaced.

The agency is proposing to add a similar feature to the booster forms, as they did not contain any criteria for this before. Since boosters do not have harnesses that require rethreading, however, there will be no "B" option for this feature on the booster rating forms. The child restraint will receive the highest rating if there are no loose parts and if the pad is easy to remove.

k. Ease of adjusting/removing shield. (RF, FF)

The agency has not made any significant changes to the criteria for this feature. However, the criteria have been clarified to require that the instructions for its use should be found on the child restraint itself.

5. Vehicle Installation Features

The title of this section has been reworded in order to better clarify its scope. This category examines child restraint features that help to ensure correct installation. It does not necessarily assess the difficulty of installing the child restraint in a given vehicle.

The rating forms, located in Appendix A, include the following features under the "Vehicle Installation Features" category. The forms that each are applied to are included in the parenthesis:

a. Ease of routing vehicle belt or flexible lower attachments in this mode. (RF, FF)

b. Can vehicle belt or LATCH attachments interfere with harness? (RF, FF)

c. Evaluate the tether adjustment. (FF)

d. Ease of attaching/removing infant carrier from its base. (RF)

e. Ease of use of any belt positioning devices. (RF, FF, Booster)

f. Does the belt positioning device allow slack? Can the belt slip? (Booster)

g. Evaluate child restraint's angle feedback device and recline capabilities on the carrier and base. (RF)

h. Do the lower attachments require twisting to remove from vehicle? (RF, FF)

i. Storage for the LATCH system when not in use? (RF, FF)

j. Indication on the child restraint for where to put the carrier handle? (RF)

a. Ease of routing vehicle belt or flexible lower attachments in this mode. (RF, FF)

The agency is proposing to update the feature that examines the ease of routing the seat belt through the child restraint belt path. It will now reflect that flexible lower attachments are usually routed through the same path. Previously, there were two separate features, which lead to unnecessary grade inflation. Combining these two features into one will increase the robustness of the rating system.

b. Can vehicle belt or LATCH attachments interfere with harness? (RF, FF)

The agency is proposing to restructure the feature that focuses on interactions between the harness system (including crotch strap) and the seat belt or flexible lower attachments. Interference with any part of the harness system can create an unsafe condition. Hidden slack may be introduced into the system if it becomes tangled with the vehicle belt. In this situation, there is a possibility that neither the harness nor the belt could be tightened enough.

The current FF form separates this idea into two features: One evaluates possible interaction from the seat belt and the other evaluates the possible interaction from the flexible lower attachments. The current RF form contains separate criteria similar to the FF form but in addition, raters are required to evaluate the base and carrier separately for a total of four criteria. There is an element of redundancy in keeping these ideas separate since the flexible lower attachments often share the same routing path as the seat belt. In addition, the design of most child restraints that may be used rear-facing, especially those with add-on bases, is such that interaction with the seat belt or flexible lower attachments is impossible. As a result, the agency has combined the separate features on each form into one comprehensive feature for each mode. This will help avoid grade inflation.

c. Evaluate the tether adjustment. (FF)

The agency already evaluates tether adjustment hardware but is proposing to strengthen the criteria. There will now be two rather than three criteria available to rate this feature. The agency hopes that by continuing to encourage simple tether adjustment mechanisms, more parents will opt to use them, and use them correctly.

d. Ease of attaching/removing infant carrier from its base. (RF)

The agency is proposing to strengthen the feature that evaluates attaching and removing an infant carrier from its base. In addition to maintaining the previous criteria that it be simple to attach and release, there will be a secondary criteria that there be no way to mistake that the carrier is secured to the base. Some designs lend themselves to a dangerous misuse in which the user can mistakenly believe he or she has achieved positive attachment. In this case, the infant carrier may in fact be completely free and not attached to the base. The agency does not believe there should be any indication that the carrier can appear secured to the base if it is not. In order to encourage designs that do not allow for this, the agency proposes including this feature.

e. Ease of use of any belt positioning devices. (RF, FF, Booster)

NHTSA proposes strengthening the feature that evaluates the belt-positioning and lock-off devices¹⁹ for seat belts. Rather than evaluate the belt positioning device based on the number of hands it requires to use, the agency would encourage that the device be "simple to use" and have its instructions for use located on the restraint itself. The agency feels this can encourage more widespread, correct use of these devices.

f. Does the belt positioning device allow slack? Can the belt slip? (Booster)

On the current booster forms, this feature examines whether the shoulder belt positioning device can inadvertently create slack in the belt. The agency has decided to propose an additional criterion for this feature after examining the differences in devices seen in the market. Under the upgraded rating system, the belt positioning device will still have to avoid introducing slack into the shoulder belt, but in addition, it must not allow the shoulder portion of the belt to easily slip out of the device in order to receive the highest rating.

g. Evaluate child restraint's angle feedback device and recline capabilities on the carrier and base. (RF)

The current feature evaluates the presence of a feedback device on the carrier and the base. The agency feels there is a need to improve this feature,

¹⁹ A lock-off is a device that locks the seat belt webbing in place, thereby preventing movement of the child restraint relative to the seat belt webbing. It is often found on belt-positioning boosters but may also be found on RF and FF child restraints.

especially since the LATCH survey showed that 20 percent of infant child restraints were not installed at the correct recline level²⁰. Many child restraints, especially infant carriers, provide users with an obvious, separate device for determining whether the child restraint is at the proper angle for rear-facing infants. Many others, however, simply print an indication line on a label or the shell itself that must be kept "level to ground." The agency feels that dedicated devices that provide the user feedback about the child restraint angle are more helpful to consumers and should be rated accordingly. In addition, the agency felt that this feature could be expanded to encourage more child restraints to provide adjustable systems for achieving the proper angle in the vehicle.

In the RF mode, the agency proposes to evaluate convertible and 3-in-1 child restraints separately from infant carriers with separate bases. Convertibles and 3-in-1 child restraints will be evaluated on whether they have one obvious, separate, recline device and three levels of recline. Infant carriers with separate bases will also undergo this evaluation; however, they will also be evaluated on whether they provide an additional feedback indicator for whichever piece of the system does not have a "separate" device. For example, if the manufacturer decides to place their "separate" feedback device on the child restraint base, they must also provide feedback on the carrier since the consumer may choose to install that on its own. The agency believes that this can increase the consumer's ability to achieve the proper angle during installation.

h. Do the lower attachments require twisting to remove from vehicle? (RF, FF)

In NHTSA's experience, as well as in other organizations' such as Transport Canada²¹, certain styles of lower attachments are proving to be more user-friendly. Participants at the LATCH Public meeting and commenters to the Docket, as discussed above, also indicate this. While the ease of attaching the lower attachments to the vehicle may be similar regardless of type, removing the connectors is a different challenge. There is a feature in the current rating system that attempts to discern between different connectors, but the agency feels that it needs to be rewritten in order to be more effective. The current feature assesses whether the

lower attachments can "be installed in reverse." The way the feature is written requires the raters to assess whether the attachments can physically be installed upside-down without being considered a misuse. At the time this feature was developed, the agency's experience with LATCH was limited. It was written to accommodate lower attachments that would still be used correctly if they were installed upside-down on the vehicle anchors. The agency is not aware of any system that actually allows the lower attachments to be installed upside-down, and as a result, proposes to restructure the feature and its criteria. In order to capture the relative difference between using different types of connectors, the agency reworded this feature to encourage attachments that do not require twisting to remove from the vehicle anchors. The agency proposes to encourage lower attachments that retract on their own and attachments that may be released from the anchors without having to twist them from the vehicle anchors.

i. Storage for the LATCH system when not in use? (RF, FF)

Many participants at the LATCH public meeting, as well as commenters to the accompanying Docket²², expressed their desire for the agency to begin rating LATCH component storage systems. In response to this, the agency proposes adding a feature to rate storage systems for the lower attachments and tether (FF only) when they are not being used. Separate, obvious storage systems with clear labeling will be encouraged. Lower attachment systems that fully retract when not in use would also be encouraged.

j. Indication on the child restraint for where to put the carrier handle? (RF)

The agency is proposing to add a new RF rating feature to encourage the manufacturer to specify where to place the infant carrier handle during driving conditions. It has been the agency's experience that this information is often hard to find in the manual; it can also be very ambiguous. Identifying the correct carrier handle position directly on the child restraint is the most effective way of ensuring proper installation.

B. Rating System

NHTSA is proposing changes to the rating structure of the program as well as the way in which it conveys those ratings to consumers. The individual feature and criteria changes can be seen in Appendix B, which contains the

upgraded EOU scoring forms. We reassigned many of the feature weightings and made changes to the numerical ranges used to assign both category and overall EOU letter grades. These two changes have the net effect of improving the robustness of the rating system. Previously, there were no features assigned a "1" (once equal to a "C") weighting. This would not be true of the upgraded program. Features have been re-weighted according to the following, which is similar to the original ICBC methodology but has since been re-visited because of additional criteria and experience gained in the program.

- "3" weighted feature—Misuse of this feature would correspond to the greatest risk of severe injury.

- "2" weighted feature—Misuse of this feature would correspond to a lower risk of severe injury.

- "1" weighted feature—Misuse of this feature would correspond to a low risk of severe injury.

NHTSA will continue providing consumers with ratings for each of the four categories as well as the restraint's overall rating. However, rather than displaying the scores as letters, the agency is proposing to present the ratings in terms of stars. These star ratings, which can be seen in Appendix C, will be used on NHTSA's Web site and in its brochures for displaying category and overall ratings. Figures 1 through 5 of Appendix C will be used to represent the range of ratings from "1 star" to "5 star," respectively. In this, a "1 star" will now be used to convey the lowest category and overall rating, while a "5 star" will now be the highest rating a child restraint will receive.

Raters will continue to assess each feature using the letters "A", "B", and "C"; in addition, the numerical values of these letters will continue being "3", "2", and "1", respectively. The agency is also maintaining its current method for calculating feature ratings by taking the feature's rated value (i.e., the numerical equivalent of the letter rating given for that feature) and multiplying it by the fixed weighted value of that feature. Then, the sum of these weighted feature ratings is divided by the sum of the applicable fixed weighting factors. The numerical category weighted average that results is assigned a star rating according to the following scale:

- "5 stars" = Category Weighted Average ≥ 2.60 .

- "4 stars" = $2.30 \leq$ Category Weighted Average < 2.60 .

- "3 stars" = $2.00 \leq$ Category Weighted Average < 2.30 .

- "2 stars" = $1.70 \leq$ Category Weighted Average < 2.00 .

²⁰ Decina, Lawrence E., Lococo, Kathy H., and Doyle, Charlene T. *Child Restraint Use Survey: LATCH Use and Misuse*. DOT HS 810 679. December 22, 2006.

²¹ See Docket NHTSA-2007-26833-24.

²² See Docket NHTSA-2007-26833.

- “1 star” = Category Weighted Average < 1.70.

In the original rating system, point ranges for assigning both the category and overall ratings were determined by dividing the range of possible overall scores into three nearly equal parts. The minimum category or overall score for any child restraint is 1.00; this is if all features are rated “C”. The maximum category or overall score for any child restraint is a 3.00; this is if all features are rated an “A”. These updated ranges have been set so that the numerical score needed to receive the middle “3 star” rating is a 2.00, which is the score a restraint would receive if every feature was awarded a “B.” Previously, the numerical weighted average of a category could be less than an average of “B” but the child restraint could still receive a “B” rating for that category. Under the proposed system, the restraint must receive an average of a “B” for all the features in that category to receive a “3 star” for the category. In the original rating program, a numerical value of 1.70 was the break point for a “C”. In order to maintain some continuity, 1.70 will be maintained as the cutoff point for a “1 star” under the new rating system. In establishing the remaining break points, the agency created relatively equal numerical ranges while also taking into consideration realistically achievable ratings.

To calculate the overall rating for the child restraint, the sum of the weighted feature ratings from all four categories is divided by the sum of all the possible weighted scores for that category. The score ranges for assigning an overall star rating to the restraint are structured so that they are similar to those for the individual categories:

- “5 stars” = Overall Weighted Average ≥ 2.60 .
- “4 stars” = $2.30 \leq$ Overall Weighted Average < 2.60.
- “3 stars” = $2.00 \leq$ Overall Weighted Average < 2.30.
- “2 stars” = $1.70 \leq$ Overall Weighted Average < 2.00.
- “1 star” = Overall Weighted Average < 1.70.

It should be noted that the same method was used to establish the break points for the overall star rating as was used for the category star ratings.

The agency feels that displaying EOU category and overall ratings in terms of stars rather than letters will have an overall positive effect on the program. The five levels of ratings that are proposed allow for more discrimination between child restraints, and will likely better assist consumers in their purchasing decisions. The agency also

feels that stars could allow the child restraint manufacturers to promote product ratings more effectively than the current system, as they may also be more recognizable to consumers than letter grades. In conclusion, the agency feels these changes will create greater delineation between child restraints and improve the robustness of this rating program.

C. Other Issues

The following serves to address the comments from the LATCH Public Meeting as well as responses to the corresponding Docket that have not otherwise been previously discussed.

The agency does not plan to incorporate SRN Publications' suggestion that manuals should explicitly encourage the use of LATCH, rather than simply listing it as an option for installation. For one, there is still a considerable portion of the vehicle fleet that is not LATCH-equipped. NHTSA feels that encouraging LATCH over vehicle seat belts could be misleading for those caregivers who have to use their vehicle belts for child restraint installation. The agency maintains its position that child restraints installed tightly and correctly with vehicle seat belts and the top tether are as safe as an installation that uses the LATCH system correctly. There are some seating positions in which the LATCH system is not available, such as in the third row of some minivans and sport utility vehicles. The agency would never want to discourage caregivers from installing child restraints with vehicle seat belts in these positions.

UVA suggested that the agency include a DVD feature in the ratings program as well as begin encouraging real photographs (as opposed to diagrams) into owner's manuals. NHTSA has decided not to propose such an evaluation in the EOU program. The agency does not discourage manufacturers from electing to provide these features but we believe that including these criteria in the EOU program would be overly burdensome with little to no impact on the ability of caregivers to correctly install child restraints into their vehicles. Raters would have to objectively assess the validity of its information, which would require that we could continuously monitor the content and develop new objective criteria. The agency has also decided not to propose UVA's suggestion to replace diagrams in manuals with photographs. The upgraded EOU program, like the current one, has an extensive section to evaluate the manual's graphic instructions. In the agency's experience, having

photographs in the manual does not guarantee the information will be clear and concise. In fact, the agency has seen that some ideas and instructions may be better conveyed through graphics. Many diagrams found in child restraint manuals already do an excellent job of conveying clear instructions.

Honda, AAP, some CPSTs, SRN Publications, SafetyBeltSafe and Cohort 22 suggested making certain lower connector types a requirement.²³ Others asked that the agency mandate rigid systems for child restraints, or specify that two adjustment mechanisms be present on flexible lower anchors. Others asked that the agency mandate a single system for lower anchors or require they have an audible confirmation of attachment. The agency has proposed additional criteria into the EOU program to highlight those lower attachment styles that are easier to use. The agency will consider these comments in the context of possible future changes to its safety standard rather than in this update to the EOU program.

GM, UVA, Advocates, AAP, and SRN Publications suggested that the agency rate child restraints for the presence of ISO-style symbols on the lower attachments and tether hook connectors. These commenters indicated that if child restraints and vehicles were equipped with these symbols it might encourage a more widespread use of LATCH. Currently the use of ISO symbols in vehicles is not well documented and at this time, it is unknown whether or not manufacturers would include these for all applicable seating positions in all future vehicle designs. Furthermore, the effectiveness and benefit of using symbols to identify LATCH seating positions are also unknown. In consideration of these issues and because the perceived benefit of the suggestion assumes that these symbols would also be present in the vehicle, we have decided not to include this suggestion in our proposed upgrade. However, the possibility exists to incorporate something similar in the future, especially if a corresponding vehicle symbol is either encouraged through a ratings program or required as part of a regulation.

The agency will not propose a feature in the new rating system that encourages flexible lower anchor straps that can be adjusted from both sides, which was suggested by SRN Publications. After reviewing the available technologies in the child

²³ Federal Standard No. 213, “Child Restraint Systems,” requires a standard type of tether hook connector.

restraint market the agency did not determine that having an adjuster on either side of the child restraint would necessarily make installing the child restraint easier. In addition, the agency could not find objective, repeatable criteria with which to evaluate this feature. Regardless of the number of adjusters on the lower straps, (except when the flexible lower anchors are self-tightening) the user must still be reminded to tighten the attachments on the child restraint through updated labeling and instruction requirements.

In response to AAP's suggestion that information on the type of lower attachment device on each child restraint be included in the ratings, the agency will investigate the feasibility of including this additional information on the EOU Web site and whether or not consumers would find this additional information helpful in purchasing a child restraint. In addition, the agency welcomes the opportunity to collaborate with AAP on their publication, and is partnering with them not only on our existing brochure but theirs as well.

VII. Rating Vehicles Based on Child Restraint Installation Features

The agency believes that a vehicle rating program is a natural element in reducing the incompatibility between child restraints and vehicles. The agency agrees with the commenters to the LATCH public meeting that the ease of installing a child restraint is not solely dependant on features specific to the restraint and that the vehicle's features play a vital role in determining whether a child restraint can achieve a correct and secure installation. The agency recognizes that even the child restraint rated highest for EOU may do little good if the user attempts installation in a vehicle or a seating position that is not ideal.

However, the agency has concluded that developing a ratings program to address the issue of child restraint and vehicle interaction is premature at this time and is best explored as a separate activity. Therefore it is not part of this proposed upgrade. We are currently evaluating several approaches from around the world in order to develop a vehicle rating that would help address the incompatibility between vehicles and child restraints. The agency will likely publish its intentions by the end of next year.

VIII. Conclusion, Star-System, and Effective Date

Therefore, in consideration of recent surveys conducted on LATCH and the EOU program itself, as well as NHTSA's public meeting on LATCH, NHTSA is

proposing to update the features and criteria it uses for its child restraint EOU ratings program, along with the method in which we display the ratings to consumers. The changes will not only recognize easier to install features, specifically for the LATCH hardware, but it will also provide an incentive for manufacturers to continue to design child restraints with features that are intuitive and easier to use. The agency feels this approach provides additional incentives to manufacturers while at the same time providing consumers with useful information. Similarly, novel design features and products that have entered the market will be recognized by these enhancements to the program. Furthermore, our changes to the numerical break points that determine a child restraint's category and overall ratings will make the top rating harder to achieve. In addition to making the ratings harder to achieve, the agency is also proposing to change the way it conveys these ratings to the public. Rather than using a letter grading system with three levels, EOU ratings would now be presented to consumers using a star rating system containing five levels. The agency feels that the additional levels of discrimination could further aid consumers in their purchasing decisions and continue to add to the robustness of the rating system.

We believe that this consumer information program must undergo the changes outlined in this document to continue encouraging child restraint manufacturers to develop and maintain features that make it easier for consumers to use and install child restraints. The agency believes that the presence of easier to use features on child restraints leads to an increase in their correct use, which thereby results in increased safety for child passengers. NHTSA believes that these changes should be implemented as soon as possible and as such, these program enhancements are proposed for inclusion in the 2008 ratings program, which will begin after we issue a notice of final decision.

IX. Public Comment

Comments are sought on the proposed requirements discussed herein. To facilitate analysis of the comments, it is requested that responses be organized by the requirements listed above. NHTSA will consider all comments and suggestions in deciding what changes, if any, should be made to program described here.

How do I prepare and submit comments?

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

Your comments must be no longer than 15 pages long (49 CFR 553.21). We establish this limit to encourage the preparation of comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit to the length of the attachments.

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 under **FOR FURTHER INFORMATION CONTACT**. This submission must include the information that you are claiming to be private; that is, confidential business information. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that are received by Docket Management 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 in developing a proposal concerning this label, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read comments submitted by other people?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

Please note that even after the comment closing date we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

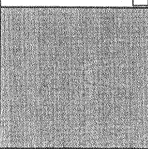
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Appendix A: Ease of Use Rating Forms

NHTSA Ease of Use Rating Form - 2008								
Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode								
Date of Evaluation: _____				Evaluated by: _____				
Manufacturer:		Make & Model: _____						
Model #: _____				Date of Manufacture: _____				
Base Model # if Different: _____				Date of Manufacture on Base if Different: _____				
Style: ☐ Infant Only (RF) ☐ Convertible (RF/FF) ☐ 3-in-1 (RF, FF, & Booster) ☐ Car Bed ☐ Other: _____								
CRS has separate base: ☐ Yes ☐ No								
Harness Style: ☐ 5-point ☐ "V" or 3-pt. ☐ OH Shield ☐ Other: _____								
Seat Characteristics & Measurements								
Appropriate child size range for this mode according to manual: _____				Date on manual: _____				
RF Size Ranges	Weight				Height			
	Minimum		Maximum		Minimum		Maximum	
	kg	lb	kg	lb	cm	in	cm	in

NHTSA Ease of Use Rating Form - 2008				
Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode				
Make & Model _____ 0		Model # _____ 0		
Evaluation of Labels				
	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower attachments, lap belt only, and lap/shoulder belt, with and without the base as necessary.	Illustrated clearly with CR in vehicle seat. Illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without any vehicle seat at all. Illustrations may not be completely labeled for each method of installation. ☐	
Does the CRS indicate the correct harness slot height for this mode? Is there additional information on the CRS about how the shoulder straps should fit for this mode?	Yes, there is a graphic or contrasting text indicating the correct harness slots to use for this mode. Additional harness adjustment information is included alongside a picture. ☐	Yes, there is text indicating the correct harness slots to use for this mode but they may be the same color as the shell. Additional harness adjustment information is included but may be text only. ☐	No indication of correct slots to use for this mode (for applicable multi-mode CRS) and/or no mention of additional sizing information. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelt types and locking mechanisms how this CRS should be installed with each of them.	Illustrated clearly with no need to read text in order to route seatbelts. Label is directly next to the corresponding belt path on both sides of CRS. ☐	Belt routing path is only labeled on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and attach lower anchors to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some steps missing. ☐	
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	

NHTSA Ease of Use Rating Form - 2008				
Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode				
Make & Model _____ 0 _____		Model # _____ 0 _____		
Evaluation of Instructions				
	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all. ☐	
Evaluate the storage system for accessing the manual in this mode.	It is obvious and easy to use. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is obvious and easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system isn't obvious or it is difficult to use regardless of mode of use. ☐	
Clear indication of child's size range. Is there additional information on the CRS about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower attachments, lap belt only, and lap/shoulder belt, and with and without the base as necessary.	Illustrated clearly with CRS in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat. ☐	
Warning to avoid placing a rear-facing child restraint in front of an active airbag.	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. Also remarks that the safest place for children is in the rear. ☐	Illustrated but buried within other unrelated warnings, for example, in a bulleted list. Must still contain a warning that the safest place for children is in the rear AND specifically mention the dangers of RF CRS and airbags. ☐	Buried among other text, incomplete warning, or no warning at all. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelt types and locking mechanisms how this CRS should be installed with each of them.	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Includes instructions for working with different vehicle seatbelt types. ☐	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Instructions for working with different vehicle seatbelt types are present but may be incomplete. ☐	Unclear instructions that require reading text. No mention of how to work with different vehicle seatbelt types correctly. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and affix lower attachments to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some steps missing. ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

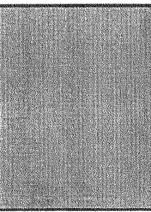
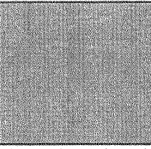
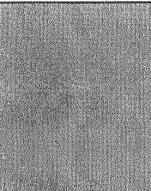
NHTSA Ease of Use Rating Form - 2008				
Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode				
Make & Model _____ 0 _____		Model # _____ 0 _____		
Securing the Child				
	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings.	Yes. ☐		No, not ready to use regardless of how difficult the assembly may be. May direct user to manual or is otherwise difficult. Tools may be required. Please describe under notes. ☐	
Visibility & alignment of harness slots for systems that must be re-threaded.	Can see through all harness slots. All slots in pad are aligned with slots in shell. ☐	Cannot see through all harness slots because they are small or are misaligned with the shell. ☐	Cannot see all harness slots because there is something in way for this mode, e.g. an insert, a head hugger, or body pillow. ☐	☐ n/a, system does not require re-thread
Evaluate the number and adjustability of the harness slots in the shell and the pad.	The number of slots in the pad & shell match, and there are at least 3 OR the system is adjustable to at least 3 heights. ☐		Does not meet "A" criteria. Please describe under notes. ☐	
Ease of adjusting the harness for child's growth.	No need to rethread system. Simple, obvious operation of the harness adjustment system. No mandatory pieces exist that may become loose when adjusting system. ☐	No need to rethread system, but may be otherwise difficult to adjust. ☐	Harness must be rethread to adjust. Loose mandatory pieces may be present. Could misroute or incorrectly resecure harness, even for a no-thread system. ☐	
Does the harness clip require threading to secure properly? Is it labeled to indicate its proper positioning on the child?	No, and harness clip is labeled. ☐	No, but harness clip is not labeled. ☐	Yes. ☐	
Evaluate the ease of inserting the shoulder portions of the harness buckle for this seat.	Each upper portion of the shoulder harness may be inserted separately. ☐	"Puzzle" buckle with an intermediate method of holding the shoulder portions together. ☐	"Puzzle" buckle with no intermediate method of holding the shoulder portions together ☐	
Access to & use of harness adjustment system.	Can access harness system when installed, one hand to tighten (one pull system). Possible 2 hands to loosen (i.e., one to depress button and one to loosen the harness). ☐		Does not meet "A" criteria. Please describe under notes. ☐	
Ease of conversion to RF from all other possible modes of use.	Simple operation with only a single or dual action. Illustrations and instructions on seat showing mode change. ☐	Simple operation but multiple actions are required. Illustrations may be missing from the label, requiring the user to read the manual. ☐	Operation is difficult, requiring many complicated steps that must be followed in the manual. ☐	☐ n/a, single mode CRS
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts. Easy to remove and reattach the padding. No rethreading required. ☐	Harness system may need to be rethreaded to re-assemble, but it is a very simple system. No loose parts exist. ☐	Loose parts may exist, including the harness system. Harness system may need to be rethreaded to re-assemble. May even need hand tool(s). ☐	
Ease of adjusting/removing shield.	Clear illustration on CRS, simple action, shield marked. ☐	Need to read text, simple action, shield not marked. ☐	Other tool(s) required. ☐	☐ n/a, no shield ☐ n/a, shield not adjustable

NHTSA Ease of Use Rating Form - 2008				
Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode				
Make & Model _____ 0		Model # _____ 0		
Vehicle Installation Features				
	A	B	C	Notes
Ease of routing vehicle belt or lower attachment straps (if flexible) for installation in this mode, with and without base if separate.	A 95th percentile male hand can route the seatbelt easily and comfortably. The padding does not need to be moved in order to route the belt. ☐		The belt path does not accommodate a 95th percentile male hand, or has to be routed under the CRS padding for one or more modes of RF installation. ☐	
Can vehicle belt or lower attachment straps (if flexible) interfere with harness (including crotch strap) or be routed incorrectly with respect to other elements such as padding?	No contact or interference possible. ☐		Possible contact or misrouting. Please describe this potential under notes . ☐	
Ease of attaching/removing infant seat from base.	Simple to attach, difficult to mistakenly secure carrier to base. One step release mechanism easy to reach. ☐		Difficult to attach carrier securely to base. Easy to <i>mistakenly</i> secure carrier to base. Release mechanism may be difficult to reach. Carrier has the potential to appear correctly installed when it is not. ☐	☐ n/a, no separate base
Ease of use of any RF belt positioning feature on CRS such as a lock-off.	Simple to use with instruction on CRS. ☐	Simple to use but must refer to manual. ☐	Multiple steps, confusing to use even with manual. ☐	☐ n/a, no belt positioning feature
Evaluate the seat's angle feedback device and the recline capabilities of the base (if separate).	Convertible, 3-in-1	Obvious, separate recline feedback device. Adjustable to at least three levels of recline for this mode. ☐	Indication on a label or text in the same color as the CRS shell used as the recline feedback device. Adjustable to at least three levels of recline for this mode. ☐	No recline feedback device on CRS, or does not have three levels of recline for this mode. ☐
	Carrier with separate base	Obvious, separate recline feedback device on at least one of the components. Base is adjustable so that it allows for at least three levels of recline for this mode. ☐	Base is adjustable so that it allows for at least three levels of recline for this mode. However, does not meet "A" criteria for separate recline feedback device. ☐	Base does not have three levels of recline for this mode. ☐
				☐ n/a, has separate base
Do the lower attachments require twisting to remove from the vehicle?	Lower attachments fully retract from vehicle anchors with release mechanism. ☐	No twisting required but secondary action required to remove lower attachments from seat bight. ☐	User must twist lower attachments to remove from vehicle. ☐	☐ n/a, no lower attachments
Evaluate the storage system for the lower attachments when not in use.	Simple, obvious, dedicated, labeled storage system. Or, lower attachments that completely retract when not in use. ☐	Storage system exists but may easily overlooked. ☐	No separate storage system exists, or user is directed to hook lower attachments together when not in use. ☐	☐ n/a, no lower attachments
Is there an indication on the carrier itself indicating where to put the handle when installed in vehicle?	Yes. ☐		No. ☐	☐ n/a, no separate carrier

[illegible]

NHTSA Ease of Use Rating Form - 2008				
Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode				
Make & Model _____ 0 _____		Seat # (on tag) _____ 0 _____		
Evaluation of Labels				
	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower attachments, lap belt only, and lap/shoulder belt.	Illustrated clearly with CRS in vehicle seat. Illustrations should be labeled for each method of installation, must include label on each mode that indicates tether should be used. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat. Illustrations may not be completely labeled for each method of installation, for example, may not be labeled indicating that tether should be in use for all FF installations. ☐	
Does the CRS indicate the correct harness slot height for this mode? Is there additional information on the CRS about how the shoulder straps should fit for this mode?	Yes, there is a graphic or contrasting text indicating the correct harness slots to use for this mode. Additional harness adjustment information is included alongside a picture. ☐	Yes, there is text indicating the correct harness slots to use for this mode but they may be the same color as the shell. Additional harness adjustment information is included but may be text only. ☐	No indication of correct slots to use for this mode (for applicable multi-mode CRS) and/or no mention of additional sizing information. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelt types and locking mechanisms how this CRS should be installed with each of them.	Illustrated clearly with no need to read text in order to route seatbelts. Label is directly next to the corresponding belt path on both sides of CRS. ☐	Belt routing path is only labeled on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and affix lower attachments to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
Shows how to prepare and use the tether.	Clear illustrations show how to route and attach tether to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	☐ n/a not youngest mode for this CRS

NHTSA Ease of Use Rating Form - 2008				
Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode				
Make & Model _____ 0 _____		Seat # (on tag) _____ 0 _____		
Evaluation of Instructions				
	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all. ☐ n/a not youngest mode for this CRS	
Evaluate the storage system for accessing the manual in this mode.	It is obvious and easy to use. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is obvious and easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system isn't obvious or it is difficult to use regardless of mode of use. ☐	
Clear indication of child's size range. Is there additional information on the CRS about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower attachments, lap belt only, and lap/shoulder belt, and with and without the base as necessary.	Illustrated clearly with CRS in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat, or tether may not be labeled. ☐	
Indication that the safest place in a vehicle for children is the rear seat.	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. ☐	Buried within other warnings, for example, in a bulleted list. ☐	Buried among other text or no warning at all. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelt types and locking mechanisms how this CRS should be installed with each of them.	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Includes instructions for working with different vehicle seatbelt types. ☐	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Instructions for working with different vehicle seatbelt types are present but may be incomplete. ☐	Unclear instructions that require reading text. No mention of how to work with different vehicle seatbelt types correctly. ☐	
Shows how to prepare and use lower attachments & tether.	Clear illustrations show how to route and affix lower attachments and tether to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation. ☐	Text-heavy instructions only provided or no instructions at all provided. ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

NHTSA Ease of Use Rating Form - 2008				
Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode				
Make & Model	0		Seat # (on tag)	0
Securing the Child				
	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings. Tether must also come attached to CRS.	Yes. ☐		No, not ready to use regardless of how simple the assembly may be. May direct user to manual or is otherwise difficult. Tools may be required. Please describe under notes. ☐ n/a not youngest mode for this CRS	
Visibility & alignment of harness slots for systems that must be re-threaded.	Can see through all harness slots. All slots in pad are aligned with slots in shell. ☐	Cannot see through all harness slots because they are small or are misaligned with the shell. ☐	Cannot see all harness slots because there is something in way for this mode, e.g. an insert, a head hugger, or body pillow. ☐ n/a, system does not require re-thread	
Evaluate the number and adjustability of the harness slots in the shell and the pad.	The number of slots in the pad & shell match, and there are at least 3 OR the system is adjustable to at least 3 heights. ☐		Does not meet "A" criteria. ☐	
Ease of adjusting the harness for child's growth.	No need to rethread system. Simple, obvious operation of the harness adjustment system. No mandatory pieces exist that may become loose when adjusting system. ☐	No need to rethread system, but may be otherwise difficult to adjust. ☐	Harness must be rethread to adjust. Loose mandatory pieces may be present. Could misroute or incorrectly resecure harness, even for a no-thread system. ☐	
Does the harness clip require threading to secure properly? Is it labeled to indicate its proper positioning on the child?	No, and harness clip is labeled. ☐	No, but harness clip is not labeled. ☐	Yes. ☐	
Evaluate the ease of inserting the shoulder portions of the harness buckle for this seat.	Each upper portion of the shoulder harness may be inserted separately. ☐	"Puzzle" buckle with an intermediate method of holding the shoulder portions together. ☐	"Puzzle" buckle with no intermediate method of holding the shoulder portions together. ☐	
Access to & use of harness adjustment system.	Can access harness system when installed, one hand to tighten (one pull system). Possible 2 hands to loosen (i.e., one to depress button and one to loosen the harness). ☐		Does not meet "A" criteria. Please describe under notes. ☐	
Ease of conversion to FF from all other possible modes of use.	Simple operation with only a single or dual action. Illustrations and instructions on seat showing mode change. ☐	Simple operation but multiple actions are required. Illustrations may be missing from the label, requiring the user to read the manual. ☐	Operation is difficult, requiring many complicated steps that must be followed in the manual. ☐ n/a, single mode CRS	
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts. Easy to remove and reattach the padding. No rethreading required. ☐	Harness system may need to be rethreaded to re-assemble, but it is a very simple system. No loose parts exist. ☐	Loose parts may exist, including the harness system. Harness system may need to be rethreaded to re-assemble. May even need hand tool(s). ☐	
Ease of adjusting/removing shield.	Clear illustration on CRS, simple action, shield marked. ☐	Need to read text, simple action, shield not marked. ☐	Other tool(s) required. ☐ n/a, no shield ☐ n/a, shield not adjustable	

NHTSA Ease of Use Rating Form - 2008				
Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode				
Make & Model	0		Seat # (on tag)	0
Vehicle Installation Features				
	A	B	C	Notes
Ease of routing vehicle belt or LATCH lower attachment straps (if flexible) for installation in this mode.	A 95th percentile male hand can route the seatbelt easily and comfortably. The padding does NOT need to be moved in order to route the belt. ☐		The belt path does not accommodate a 95th percentile male hand, or has to be routed under the CRS padding for one or more modes of FF installation. ☐	
Can vehicle belt or lower LATCH straps (if flexible) interfere with harness (including crotch strap) or be routed incorrectly with respect to other elements such as padding?	No contact or interference possible. ☐		Possible contact or misrouting. Please describe this potential under notes. ☐	
Ease of use of any FF belt positioning feature on CRS such as a lock-off.	Simple to use with instruction on CRS. ☐	Simple to use but must refer to manual. ☐	Multiple steps, confusing to use even with manual. ☐	☐ n/a, no belt positioning feature
Vehicle belt use & vehicle belt/flexible lower anchor path labeling.	Only one hand required to tighten and release the tether. ☐		Does not meet "A" criteria. ☐	☐ no tether
Do the lower attachments require twisting to remove from the vehicle?	Lower attachments fully retract from vehicle anchors with release mechanism. ☐	No twisting required but secondary action required to remove lower attachments from seat bight. ☐	User must twist lower attachments to remove from vehicle. ☐	☐ n/a, no lower attachments
Evaluate the storage system for the lower attachments & tether when not in use.	Simple, obvious, dedicated, labeled storage system. Or, lower attachments and tether completely retract when not in use. ☐	Storage system exists but may be easily overlooked. ☐	No separate storage mentioned or user is directed to hook lower attachments together or with tether when not in use. ☐	☐ n/a, no lower attachments or tether

Booster Size Range	Weight				Height			
	Minimum		Maximum		Minimum		Maximum	
	kg	lb	kg	lb	cm	in	cm	in

Child size range given in owner's manual: _____ Date on manual: _____

NHTSA Ease of Use Rating Form - 2008				
Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode				
Make & Model _____ 0 _____		Model # _____ 0 _____		
Evaluation of Labels				
	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All method(s) of installing this CRS correctly are indicated (high back and/or low back).	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		No illustrations at all or a method of installation is missing, or may be difficult to tell one method of installation from another. ☐	
Vehicle belt use & vehicle belt path labeling.	Illustrated clearly with no need to read text in order to route seatbelts. Label is directly next to the corresponding belt path or positioning device on both sides of CRS. ☐	Belt routing path or device is only labeled on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path or device is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Label warning against using a lap belt only.	Illustration included warning user against using the CRS with the lap belt only for this mode. ☐	Text warning the user not to use the lap belt only in this mode. ☐	No written or illustrated warning. ☐	☐ n/a, may be used with lap belt
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	☐ n/a not youngest mode for this CRS

NHTSA Ease of Use Rating Form - 2008				
Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode				
Make & Model _____ 0 _____		Model # _____ 0 _____		
Evaluation of Instructions				
	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. Finding it in a very obvious storage system is acceptable. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all. This includes when it is found in an obscured storage system. ☐ ☐ n/a not youngest mode for this CRS	
Evaluate the storage system for accessing the manual in this mode.	It is obvious and easy to use. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is obvious and easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system isn't obvious or it is difficult to use regardless of mode of use. ☐	
Clear indication of child's size range. Is there additional information somewhere in the manual about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing this seat with a lap/shoulder belt including low back and high back modes if they exist.	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		No illustration, text only. May be illustrated, but not all modes shown. ☐	
Indication that the safest place in a vehicle for children is the rear seat.	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. ☐	Buried within other warnings, for example, in a bulleted list. ☐	Buried among other text or no warning at all. ☐	
Instructions for routing lap/shoulder belt alongside a picture warning against using a lap belt only.	Illustrated clearly with CR on vehicle seat. No need to read text in order to route seatbelt. Diagram warning against using a lap belt only is included in this section of the manual unless seat may be used correctly with one. ☐	Illustrated, outlined, but may not be pictured on a vehicle seat. Text warning not to use with a lap belt (only if it is a misuse) included in this section of the manual. ☐	Unclear instructions that require reading text. Fails to caution against the use of lap belt only in this section of the manual (if this is a misuse). ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode

Model # 0

	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings.	Yes. ☐		No, not ready to use regardless of how difficult the assembly may be. May direct user to manual or is otherwise difficult. Tools may be required. Please describe under notes. ☐ n/a not youngest mode for this CRS	
Ease of conversion from any other mode of use to a booster.	Simple operation with only a single or dual action. Illustrations on seat showing mode change. ☐	Simple operation but multiple actions are required. Illustrations may be missing from the label, requiring the user to read text which must be present on CRS. ☐	Operation is difficult, requiring many complicated steps. The instructions may be confusing, or missing altogether. ☐ n/a, booster only	
Ease of conversion from high back to low back booster.	Simple action. Illustration provided on seat showing mode change. ☐	Simple action but no specific illustration is provided on seat. Text may be present. ☐	Action difficult or need additional instructions not found on CRS labels. Tools may be required. ☐ n/a, combination or 3-in-1 n/a, booster may not be converted	
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts. Easy to remove and reattach the padding. ☐		Loose parts. May even need hand tool(s). ☐	

	A	B	C	Notes
Ease of use of any separate shoulder belt positioning or guide hardware on CRS.	Very simple action requiring one hand to use. ☐	Two hands to use but action is simple. ☐	Multiple steps to position belt, most likely need to read instructions for clarification. ☐	☐ n/a, no separate device
Does belt-positioning guide or device allow slack to occur? Does it also prevent the shoulder portion from slipping accidentally?	No. The shoulder belt can move freely through its positioning device. In addition, the shoulder belt cannot slip out of the device accidentally. ☐	No. The shoulder belt can move freely through its positioning device. However, the shoulder belt could slip out of the device accidentally. ☐	Yes. The shoulder belt movement is restricted by the belt-positioning device. ☐	☐ n/a, no separate device

Appendix B: Ease of Use Score Forms

	RF MODE		MODEL #	
	0		0	
	Feature			
Value	Evaluation of Labels	Score	Weighted Score	Weighted Ave.
2	Clear indication of child's size range.	0	0	0
2	Are all modes of use clearly indicated?	0	0	0
2	Are the correct harness slots for this mode indicated?	0	0	0
2	Seat belt & lower attachment routing path clarity.	0	0	0
2	Shows how to prepare & use lower attachments.	0	0	0
1	Durability of labels. (n/a if not youngest mode)	0	0	0
	Total	0	0	
	Weighted Ave	n/a		
	Score	n/a		
	Evaluation of Instructions			
2	Owner's manual easy to find?	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Clear indication of child's size range.	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear-facing airbag warning?	0	0	0
1	Instructions for routing seatbelt.	0	0	0
1	Shows how to prepare & use lower attachments.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
	Total	0	0	
	Weighted Ave	n/a		
	Score	n/a		
	Securing the Child			
3	Is the seat assembled & ready to use?	0	0	0
1	Visibility & alignment of harness slots.	0	0	0
1	Number and adjustability of harness slots in shell and pad.	0	0	0
3	Ease of adjusting the harness for child's growth.	0	0	0
3	Does harness clip require threading? Is it labeled?	0	0	0
2	Evaluate the harness buckle style.	0	0	0
3	Access to and use of harness adjustment system.	0	0	0
3	Ease of conversion to RF from all other possible modes of use.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
2	Ease of adjusting/removing shield.	0	0	0
	Total	0	0	
	Weighted Ave	n/a		
	Score	n/a		
	Vehicle Installation Features			
3	Ease of routing vehicle belt or flexible lower attachments in this mode.	0	0	0
3	Can vehicle belt or lower attachments interfere with harness?	0	0	0
3	Ease of attaching/removing infant seat from base.	0	0	0
3	Ease of use of any belt positioning features.	0	0	0
	Evaluate seat's angle feedback device and recline capabilities.			
2	CRS only	0	0	0
2	Separate carrier and base	0	0	0
2	Do the lower attachments require twisting to remove?	0	0	0
2	Storage system for the lower attachments when not in use?	0	0	0
2	Handle placement instructions for the carrier?	0	0	0
	Total	0	0	
	Weighted Ave	n/a		
	Score	n/a		
	Total	0	0	
	Weighted Ave	n/a		
	Overall Score	n/a		

FF MODE		MODEL #		
0		0		
Feature				
Value	Evaluation of Labels	Score	Weighted Score	Weighted Ave.
2	Is there a clear indication of proper child size?	0	0	0
2	Are all modes of use clearly indicated?	0	0	2
2	Are the correct harness slots for this mode indicated?	0	0	2
2	Seat belt & lower attachment routing path clarity.	0	0	2
2	Shows how to prepare & use lower attachments.	0	0	2
2	Shows how to prepare & use tether.	0	0	2
1	Durability of labels. (n/a if not youngest mode)	0	0	1
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Evaluation of Instructions				
2	Owner's manual easy to find? (n/a if not youngest mode)	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Is there a clear indication of proper child size?	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear seat warning in written instructions.	0	0	0
1	Instructions for routing seatbelt.	0	0	0
1	Shows how to prepare & use lower attachments & tether.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Securing the Child				
3	Is the seat assembled & ready to use?	0	0	0
3	Does harness clip require threading? Is it labeled?	0	0	0
2	Evaluate the harness buckle style.	0	0	0
3	Access to and use of harness adjustment system.	0	0	0
1	Number and adjustability of harness slots in shell and pad.	0	0	0
1	Visibility & alignment of harness slots.	0	0	0
3	Ease of conversion to FF from all other possible modes of use.	0	0	0
3	Ease of adjusting the harness for child's growth.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
2	Ease of adjusting/removing shield.	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Installation in vehicle				
3	Ease of routing vehicle belt and flexible lower attachments in this mode.	0	0	0
3	Can vehicle belt or lower attachments interfere with harness?	0	0	0
3	Ease of use of any belt positioning features.	0	0	0
3	Evaluate the tether adjustment.	0	0	0
2	Do the lower attachments require twisting to remove?	0	0	0
2	Storage system for the lower attachments & tether when not in use?	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
		Total	0	0
		Weighted Ave	n/a	
		Overall Score	n/a	

BOOSTER MODE		MODEL #		
0		0		
Feature				
Value	Evaluation of Labels	Score	Weighted Score	Weighted Ave.
2	Is there a clear indication of proper child size?	0	0	0
2	Are all modes of use clearly indicated?	0	0	0
2	Seat belt use & routing path clarity.	0	0	0
2	Label warning against using a lap belt only.	0	0	0
1	Durability of labels. (n/a if not youngest mode)	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Evaluation of Instructions				
2	Owner's manual easy to find? (n/a if not youngest mode)	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Is there a clear indication of proper child size?	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear seat warning in written instructions.	0	0	0
1	Instructions for routing seatbelt.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Securing the Child				
3	Is the seat assembled & ready to use? (n/a if not youngest mode)	0	0	0
3	Ease of conversion to booster from another mode.	0	0	0
2	Ease of conversion from high back to low back booster.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
Installation in Vehicle				
3	Ease of use of any belt positioning features.	0	0	0
3	Does the belt positioning device allow slack? Can the belt slip?	0	0	0
		Total	0	0
		Weighted Ave	n/a	
		Score	n/a	
		TOTAL	0	0
		Weighted Ave	n/a	
		Overall Score	n/a	

Appendix C : Ease of Use Star Rating System

Figure 1

Sample graphic for a "1 star" rating

Figure 2

Sample graphic for a "2 star" rating

Figure 3

Sample graphic for a "3 star" rating

Figure 4

Sample graphic for a "4 star" rating

Figure 5

Sample graphic for a "5 star" rating

Issued on: November 15, 2007.

Nicole R. Nason,
Administrator.

[FR Doc. E7-22912 Filed 11-21-07; 8:45 am]

BILLING CODE 4910-59-C

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety
Administration**

[Docket No. NHTSA-2007-0036]

**Notice of Receipt of Petition for
Decision That Nonconforming 1992
Alfa Romeo Spyder Passenger Cars
Are Eligible for Importation****AGENCY:** National Highway Traffic
Safety Administration, DOT.**ACTION:** Notice of receipt of petition for
decision that nonconforming 1992 AlfaRomeo Spyder passenger cars are
eligible for importation.**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 Alfa Romeo Spyder passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United

States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 24, 2007.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** 202-493-2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. 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 below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- (1) Go to the Federal Docket Management System (FDMS) Web page <http://www.regulations.gov>.
- (2) On that page, click on "search for dockets."
- (3) On the next page (<http://www.regulations.gov/fdmspublic/>

[component/main](http://www.regulations.gov/fdmspublic/)), select NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select "Nonrulemaking" from the drop-down menu in the Type field and "Vehicle Import Eligibility" in the drop-down menu in the Sub-Type field.

(4) After entering that information, click on "submit."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) of Houston, TX (Registered Importer 90-005) has

petitioned NHTSA to decide whether nonconforming 1992 Alfa Romeo Spyder passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1992 Alfa Romeo Spyder passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S.-certified 1992 Alfa Romeo Spyder passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S.-certified 1992 Alfa Romeo Spyder passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S.-certified 1992 Alfa Romeo Spyder passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 111 *Rearview Mirrors*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 118 *Power-Operated Window, Partition, and Roof Panel Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hub Caps*, 212 *Windshield Mounting*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Installation of an indicator lamp lens cover inscribed with the word "brake" in the instrument cluster in place of one inscribed with the international ECE warning symbol; and

(b) replacement or conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of U.S.-model: (a) Headlamps; (b) taillamps; (c) rear side marker lamps; and (d) rear high mounted stop lamp and associated wiring.

Standard No. 114 *Theft Protection*: Installation of a supplemental key warning buzzer to meet the requirements of this standard.

Standard No. 115 *Vehicle Identification*: Installation of a vehicle identification plate near the left windshield post to meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection*: Installation of: (a) A seat belt warning buzzer; (b) U.S.-model driver's side air bag system; and (c) knee bolsters.

Petitioner states that the vehicle's restraint system includes Type II seat belts at the front outboard designated seating positions.

Standard No. 214 *Side Impact Protection*: Installation of U.S.-model door reinforcement beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister to comply with the requirements of this standard.

The petitioner states that U.S.-model bumper support structure components must be installed to ensure compliance with the requirements of the Bumper Standard found in 49 CFR part 581.

The petitioner further states that all vehicles will be inspected for compliance with the parts marking requirements of the Theft Prevention Standard at 49 CFR part 541 and that U.S.-model antitheft devices will be installed on vehicles not already so equipped prior to importation.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 16, 2007.

Claude H. Harris,
Director, Office of Vehicle Safety Compliance.
[FR Doc. E7-22861 Filed 11-21-07; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals Pursuant to Executive Order 13441

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of three newly designated individuals whose property and interests in property are blocked pursuant to Executive Order 13441 of August 1, 2007, "Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions."

DATES: The designation by the Secretary of the Treasury of the three individuals identified in this notice pursuant to Executive Order 13441 is effective on Monday, November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On August 1, 2007, the President issued Executive Order 13441 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*, the National Emergencies Act, 50 U.S.C. 1601, *et seq.*, and section 301 of title 3, United States Code. In the Order, the President declared a national emergency to address the threat posed by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions, to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation, to reassert Syrian control

or contribute to Syrian interference in Lebanon, or to infringe upon or undermine Lebanese sovereignty.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including any overseas branch, of the following persons: Persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State, (1) to have taken, or to pose a significant risk of taking, actions, including acts of violence, that have the purpose or effect of undermining Lebanon's democratic processes or institutions, contributing to the breakdown of the rule of law in Lebanon, supporting the reassertion of Syrian control or otherwise contributing to Syrian interference in Lebanon, or infringing upon or undermining Lebanese sovereignty; (2) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, such actions, including acts of violence, or any person whose property and interests in property are blocked pursuant to the Order; (3) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to the Order; or (4) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to the Order.

On Monday, November 5, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in the Order, three individuals whose property and interests in property are blocked pursuant to Executive Order 13441.

The list of designees is as follows:

1. HARDAN, Assaad Halim (a.k.a. HARDAN, As'ad; a.k.a. HARDAN, Assad); DOB 31 Jul 1951; POB Rashayya al-Fakhar, Lebanon; alt. POB Rashayya al-Fuqhar, Lebanon; alt. POB Rashia al Foukhar, Lebanon.

2. MAKHLUF, Hafiz (a.k.a. MAKHLOUF, Hafez); DOB circa 1975; POB Damascus, Syria; Colonel.

3. WAHHAB, Wi'am (a.k.a. WAHAB, Wiyam; a.k.a. WAHHAB, Wiam; a.k.a. WIHAB, Wi'am; a.k.a. WIHAB, Wiyam); DOB 1964; POB Al-Jahiliya, Shuf Mountains, Lebanon.

Dated: November 14, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7-22888 Filed 11-21-07; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Individual Pursuant to Executive Order 13338

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly designated individual whose property and interests in property are blocked pursuant to Executive Order 13338 of May 11, 2004, "Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria."

DATES: The designation by the Secretary of the Treasury of the individual identified in this notice pursuant to Executive Order 13338 is effective on Monday, November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On May 11, 2004, the President issued Executive Order 13338 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*, the National Emergencies Act, 50 U.S.C. 1601, *et seq.*, the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108-175, and section 301 of title 3, United States Code. In the Order, the President declared a national emergency to address the threat posed by the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining the United States and international

efforts with respect to the stabilization and reconstruction of Iraq.

Section 3 of the Order blocks, with certain exceptions, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State, (1) to be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property or interests in property are blocked under the United States law for terrorism-related reasons; (2) to be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon; (3) to be or to have been directing or otherwise significantly contributing to the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles; (4) to be or to have been directing or otherwise significantly contributing to any steps taken by the Government of Syria to undermine the United States and international efforts with respect to the stabilization and reconstruction of Iraq; or (5) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to the Order.

On Monday, November 5, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13338.

The designee is as follows:

KHAYRBIK, Muhammad Nasif (a.k.a. KHAIRBEK, Mohammed Nassif; a.k.a. KHAYR-BAYK, Muhammad Nasif; a.k.a. KHEIRBEK, Mohammad Nasif), Damascus, Syria; DOB 5 Apr 1937; Syrian Deputy Vice President for Security Affairs; Major General.

Dated: November 14, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7-22874 Filed 11-21-07; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the names of one individual and twelve entities from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism*. The individual, Ahmed Idris NASREDDIN, was designated pursuant to Executive Order 13224 on April 19, 2002. The twelve entities: AKIDA BANK PRIVATE LIMITED, AKIDA INVESTMENT CO. LTD. GULF CENTER S.R.L., MIGA-MALAYSIAN SWISS, GULF AND AFRICAN CHAMBER; NASCO BUSINESS RESIDENCE CENTER SAS DI NASREDDIN AHMED IDRIS EC, NASCO NASREDDIN HOLDING A.S., NASCOSERVICE S.R.L., NASCOTEX S.A., NASREDDIN COMPANY NASCO SAS DI AHMED IDRIS NASREDDIN EC, NASREDDIN FOUNDATION, NASREDDIN GROUP INTERNATIONAL HOLDING LIMITED, NASREDDIN INTERNATIONAL GROUP LIMITED HOLDING; were designated pursuant to Executive Order 13224 on August 28, 2002.

DATES: The removal of the one individual and twelve entities from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of Thursday, November 15, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

On April 19, 2002, one additional person and, on August 28, 2002, twelve additional entities were designated by the Secretary of the Treasury. The Department of the Treasury's Office of Foreign Assets Control has determined that these individuals and entities no longer meet the criteria for designation under the Order and are appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following designations are removed from the list of Specially Designated Nationals and Blocked Persons:

1. NASREDDIN, Ahmed Idris (a.k.a. NASREDDIN, Ahmad I.; a.k.a. NASREDDIN, Hadj Ahmed; a.k.a. NASREDDINE, Ahmed Idriss), Corso Sempione 69, 20149 Milan, Italy; 1 via delle Scuole, 6900 Lugano, Switzerland; Piazzale Biancamano, Milan, Italy; Rue de Cap Spartel, Tangiers, Morocco; DOB 22 Nov 1929; POB Adi Ugri, Ethiopia; Italian Fiscal Code NSRDRS29S22Z315Y.

2. AKIDA BANK PRIVATE LIMITED (f.k.a. AKIDA ISLAMIC BANK INTERNATIONAL LIMITED; f.k.a. IKSIR INTERNATIONAL BANK LIMITED), c/o Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas, The; P.O. Box N–4877, Nassau, Bahamas, The.

3. AKIDA INVESTMENT CO. LTD. (f.k.a. AKIDA BANK PRIVATE LIMITED; a.k.a. AKIDA INVESTMENT COMPANY LIMITED), c/o Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas, The; P.O. Box N–4877, Nassau, Bahamas, The.

4. GULF CENTER S.R.L., Corso Sempione 69, 20149 Milan, Italy; Italian

Fiscal Code 07341170152; V.A.T. Number IT 07341170152.

5. MIGA-MALAYSIAN SWISS, GULF AND AFRICAN CHAMBER (f.k.a. GULF OFFICE ASSOC. PER LO SVILUPPO COMM. IND. E TURIS. FRA GLI STATI ARABI DEL GOLFO E LA SVIZZERA), Via Maggio 21, 6900 Lugano TI, Switzerland.

6. NASCO BUSINESS RESIDENCE CENTER SAS DI NASREDDIN AHMED IDRIS EC (n.k.a. HOTEL NASCO), Corso Sempione 69, 20149 Milan, Italy; Italian Fiscal Code 01406430155; V.A.T. Number IT 01406430155.

7. NASCO NASREDDIN HOLDING A.S., Zemin Kat, 219 Demirhane Caddesi, Zeytinburnu, Istanbul, Turkey.

8. NASCOSERVICE S.R.L., Corso Sempione 69, 20149 Milan, Italy; Italian Fiscal Code 08557650150; V.A.T. Number IT 08557650150.

9. NASCOTEX S.A. (a.k.a. INDUSTRIE GENERALE DE FILATURE ET TISSAGE; a.k.a. INDUSTRIE GENERALE DE TEXTILE), KM 7 Route de Rabat, BP 285, Tangiers, Morocco; KM 7 Route de Rabat, Tangiers, Morocco.

10. NASREDDIN COMPANY NASCO SAS DI AHMED IDRIS NASREDDIN EC, Corso Sempione 69, 20149 Milan, Italy; Italian Fiscal Code 03464040157; V.A.T. Number IT 03464040157.

11. NASREDDIN FOUNDATION (a.k.a. NASREDDIN STIFTUNG), c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein.

12. NASREDDIN GROUP INTERNATIONAL HOLDING LIMITED (a.k.a. NASREDDIN GROUP INTERNATIONAL HOLDINGS LIMITED), c/o Arthur D. Hanna & Company, 10 Deveaux Street, Nassau, Bahamas, The; P.O. Box N–4877, Nassau, Bahamas, The.

13. NASREDDIN INTERNATIONAL GROUP LIMITED HOLDING (a.k.a. NASREDDIN INTERNATIONAL GROUP LTD. HOLDING), c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein; Corso Sempione 69, 20149, Milan, Italy.

The removal of the one individual's and twelve entities' names from the list of Specially Designated Nationals and Blocked Persons is effective as of Thursday, November 15, 2007. All property and interests in property of the one individual and twelve entities that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: November 14, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–22897 Filed 11–21–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Two Entities Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of two newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the two entities identified in this notice, pursuant to Executive Order 13224, is effective on October 25, 2007.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On October 25, 2007, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of additional designees is as follows:

1. BANK SADERAT IRAN (a.k.a. BANK SADERAT PLC; a.k.a. IRAN EXPORT BANK), PO Box 1269, Muscat 112, Oman; PO Box 4182, Almakhtoum Rd, Dubai City, United Arab Emirates; PO Box 316, Bank Saderat Bldg, Al Arooba St, Borj Ave, Sharjah, United Arab Emirates; 5 Lothbury, London,

EC2R 7HD, United Kingdom; Alrose Building, 1st floor, Verdun—Rashid Karame St, Beirut, Lebanon; PO Box 15175/584, 6th Floor, Sadaf Bldg, 1137 Vali Asr Ave, 15119–43885, Tehran, Iran; Borj Albarajneh Branch—Alholom Bldg, Sahat Mreijeh, Kafaat St, Beirut, Lebanon; Sida Riad Elsoleh St, Martyrs Square, Saida, Lebanon; PO Box 2256, Doha, Qatar; No 181 Makhtoomgholi Ave, 2nd Floor, Ashgabat, Turkmenistan; PO Box 700, Abu Dhabi, United Arab Emirates; PO Box 16, Liwara Street, Ajman, United Arab Emirates; PO Box 1140, Al-Am Road, Al-Ein Al Ain, Abu Dhabi, United Arab Emirates; PO Box 4182, Murshid Bazar Branch, Dubai City, United Arab Emirates; Sheikh Zayed Rd, Dubai City, United Arab Emirates; Khaled Bin Al Walid St, Dubai City, United Arab Emirates; PO Box 5126, Beirut, Lebanon; 16 rue de la Paix, 75002 Paris, France; PO Box 15745–631, Bank Saderat Tower, 43 Somayeh Avenue, Tehran, Iran; Postfach 160151, Friedenstr 4, Frankfurt am Main D–603111, Germany; Postfach 112227, Deichstrasse 11, 20459 Hamburg, Germany; PO Box 4308, 25–29 Venizelou St, GR 105 64 Athens, Attica, Greece; Aliktsiad Bldg, 3rd floor, Ras El Ein Street, Baalbak, Baalbak, Lebanon; Alghobeiri Branch—Aljawhara Bldg, Ghobeiry Blvd, Beirut, Lebanon.

2. ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)—QODS FORCE (a.k.a. PASDARAN—E ENGHELAB—E ISLAMI (PASDARAN); a.k.a. SEPAH—E QODS (JERUSALEM FORCE)).

Dated: November 14, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–22864 Filed 11–21–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of One Entity Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the entity identified in this

notice, pursuant to Executive Order 13224, is effective on Thursday, November 15, 2007.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf

of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On Thursday, November 15, 2007, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

TAMILS REHABILITATION ORGANISATION (a.k.a. ORGANISATION DE REHABILITATION TAMOULE; a.k.a. ORGANISATION PRE LA REHABILITATION TAMIL; a.k.a. ORGANIZZAZIONE PER LA RIABILITAZIONE DEI TAMIL; a.k.a. ORT FRANCE; a.k.a. TAMIL REHABILITATION ORGANIZATION; a.k.a. TAMIL REHABILITERINGS ORGANISASJONEN; a.k.a. TAMILISCHE REHABILITATION

ORGANISATION; a.k.a. TAMILS REHABILITATION ORGANIZATION; a.k.a. TAMILSK REHABILITERINGS ORGANISASJON; a.k.a. TRO; a.k.a. TRO DANMARK; a.k.a. TRO ITALIA; a.k.a. TRO NORGE; a.k.a. TRO SCHWEIZ; a.k.a. TSUNAMI RELIEF FUND—COLOMBO, SRI LANKA; a.k.a. WHITE PIGEON; a.k.a. WHITEPIGEON), 2390 Eglinton Avenue East, Suite 203A, Toronto, Ontario M1K 2P5, Canada; 26 Rue du Departement, Paris 75018, France; Via Dante 210, Palermo 90141, Italy; Address Unknown, Belgium; Langelinie 2A, St, TV 1079, Vejile 7100, Denmark; P.O. Box 82, Herning 7400, Denmark; P.O. Box 212, Vejle 7100, Denmark; Address Unknown, Finland; Postfach 2018, Emmenbrucke 6021, Switzerland; Tribschenstri, 51, Lucerne 6005, Switzerland; 8 Gemini—CRT, Wheelers Hill 3150, Australia; Box 4254, Knox City, VIC 3152, Australia; Voelklinger Str. 8, Wuppertal 42285, Germany; Gruttolaan 45, BM landgraaf 6373, Netherlands; M.G.R. Lemmens, str—09, BM Landgraaf 6373, Netherlands; Warburgstr. 15, Wuppertal 42285, Germany; P.O. Box 4742, Sofienberg, Oslo 0506, Norway; Box 44, Tumba 147 21, Sweden; 356 Barkers Road, Hawthorn, Victoria 3122, Australia; P.O. Box 10267, Dominion Road, Auckland, New Zealand; 371 Dominion Road, Mt. Eden, Auckland, New Zealand; Address Unknown, Durban, South Africa; No. 6 Jalan 6/2, Petaling Jaya 46000, Malaysia; 517 Old Town Road, Cumberland, MD 21502; 1079 Garratt Lane, London SW17 0LN, United Kingdom; 410/112 Buller Street, Buddhaloga Mawatha, Colombo 7, Sri Lanka; Kandasamy Koviladi, Kandy Road (A9 Road), Kilinochchi, Sri Lanka; 254 Jaffna Road, Kilinochchi, Sri Lanka; Ananthapuram, Kilinochchi, Sri Lanka; 410/412 Bullers Road, Colombo 7, Sri Lanka; 75/4 Barnes Place, Colombo 7, Sri Lanka; No. 9 Main Street, Mannar, Sri Lanka; No. 69 Kalikovil Road, Kurumankadu,

Vavuniya, Sri Lanka; 9/1 Saradha Street, Trincomalee, Sri Lanka; Arasaditivu Kokkadicholai, Batticaloa, Sri Lanka; Ragama Road, Akkaraipattu—07, Amparai, Sri Lanka; Paranthan Road, Kaiveli Puthukkudiyiruppu, Mullaitivu, Sri Lanka; Address Unknown, Vaharai, Sri Lanka; Registration ID 50706 (Sri Lanka); alt. Registration ID 6205 (Australia); alt. Registration ID 1107434 (United Kingdom); alt. Registration ID D4025482 (United States); alt. Registration ID 802401—0962 (Sweden); Tax ID No. 52—1943868 (United States).

Dated: November 14, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7—22866 Filed 11—21—07; 8:45 am]

BILLING CODE 4811—45—P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

AGENCY: United States Institute of Peace.

Date/Time: Tuesday, December 4, 2007, 9 a.m.—11 a.m.

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036—3011.

Status: Closed Meeting—Pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98—525.

Agenda: December 4, 2007 Board Meeting; Consideration of Building Committee Recommendation.

Contact: Susan F. Douglas, HQ Project Office, Telephone: (202) 429—7172.

Dated: November 15, 2007.

Patricia P. Thomson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 07—5818 Filed 11—20—07; 10:31 am]

BILLING CODE 6820—AR—M



Federal Register

**Friday,
November 23, 2007**

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1221

**Sorghum Promotion, Research, and
Information Order; Proposed Rule**

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1221**

[Docket No. AMS-LS-07-0056; LS-07-02]

Sorghum Promotion, Research, and Information Order**AGENCY:** Agricultural Marketing Service (AMS), USDA.**ACTION:** Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for sorghum, which includes, but is not limited to, grain sorghum, sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage. For the purpose of clarity, the term sorghum will mean all the above mentioned types of sorghum unless specifically identified otherwise. The proposed Order would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). The proposed Sorghum Promotion, Research, and Information Order (Order) would establish a national Sorghum Promotion, Research, and Information Board (Board) comprised initially of 13 sorghum producers. Producers and importers would pay assessments based on the value of the sorghum they produce or import. A referendum would be conducted 3 years after assessments begin to determine if sorghum producers and importers favor the program.

DATES: Comments must be received by January 22, 2008. Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA), comments on the information collection burden that would result from this proposal must be received by January 22, 2008.

ADDRESSES: Comments must be posted online at <http://www.regulations.gov> or sent to Kenneth R. Payne, Chief, Marketing Programs, Livestock and Seed Program, AMS, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250-0251; *Telephone:* (202) 720-1115; *Fax:* (202) 720-1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at <http://www.regulations.gov>. All comments should reference the docket number, Docket No. AMS-LS-07-0056; LS-07-02, the date, and the page number of this issue of the **Federal Register**.

Pursuant to the PRA, send comments regarding the accuracy of the burden estimate; ways to minimize the burden, including the use of automated collection techniques or other forms of information technology; or any other aspect of this information collection to the above address. In addition, comments concerning the information collection also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th St., NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch; *Telephone:* (202) 720-1115; *Fax:* (202) 720-1125, or e-mail Kenneth.Payne@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Act of 1996 (7 U.S.C. 7411-7425).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the U.S. for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20-days after the date of the entry of the Secretary's final ruling.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies

to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Six States currently have State-legislated sorghum research and promotion programs. In accordance with the Act, this proposed rule would not preempt any of these State-legislated programs. Further, section 1221.112(j) of the proposed Order provides for an annual allocation to State programs based on the State's proportional contribution of total assessments collected by the national program.

In 2005 and 2006, representatives of the 6 State-legislated sorghum promotion programs were among other sorghum industry representatives who met with AMS representatives to discuss the possibility of implementing a national sorghum promotion, research, and information program. State program representatives participated in the development of the provisions of the proposed Order during these meetings and through direct communication with the National Sorghum Producers (NSP) during the drafting of their proposal.

Not only were the States informed throughout the development of the national program, they were instrumental in the sorghum industry's decision to institute a national program. In addition to receiving support from NSP and the U.S. Grains Council, an organization that is dedicated to expanding export opportunities and markets for sorghum and sorghum products, industry and producer organizations from four of the largest grain sorghum producing States have expressed their support for the proposed Order—Kansas, Nebraska, Texas, and Oklahoma. New Mexico, a producer of grain sorghum and sorghum silage, has also expressed support. Within these States, the following organizations have indicated their interest in establishing the program: The Texas Grain Sorghum Board; the Texas Grain Sorghum Association; the Kansas Grain Sorghum Producers Association; the Kansas Grain Sorghum Commission; the Nebraska Grain Sorghum Producers Association; the Oklahoma Grain Sorghum Association; and the New Mexico Grain Sorghum Association.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore

has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), USDA is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the U.S. to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, commodity promotion programs.

The Order is intended to develop and finance, through assessments, an effective and coordinated program of promotion, research, and information to maintain and expand the markets for sorghum. While the proposed Order would impose certain reporting and recordkeeping requirements on persons subject to the Order, the information required under the proposed Order could generally be compiled from records currently maintained.

Under the proposed Order, first handlers would remit assessments collected from producers to the Board. First handlers would also be required to keep records and provide information to the Board that it deems necessary. Currently, first handlers already complete and maintain the same or similar information for existing State sorghum and soybean programs, as well as for the Soybean Checkoff Program (7 CFR part 1221). Reporting forms would require the minimum information necessary to fulfill the intent of the Act. Such records and reports would be retained for 2 years beyond the fiscal year of their applicability. First handlers would also be required to make available, to the Secretary, their books and records in order to determine compliance with the Order.

In addition to paying assessments, producers would have a reporting and recordkeeping burden. This burden relates to producers and importers who would seek nomination to serve on the Board, request an organic exemption, request a refund of assessments paid, or vote in a nation-wide referendum. The proposed Order requires producers to keep records and to provide information to the Board or the Secretary when

requested and to keep records to qualify for a refund. However, it is not anticipated that producers would be required to regularly submit assessment and other related information to the Board. Information could be obtained through an audit of producers' records to confirm information provided by first handlers or as part of the Board's compliance program.

When seeking nominations to serve on the Board, producers would be required to complete two forms that would be submitted to the Secretary.

Any producer paying assessments could request a refund of assessments paid by submitting an application to the Board. Refunds would be made only if the program was not approved in referendum.

With regard to imports of sorghum, U.S. Customs and Border Protection (Customs) would collect and remit assessments from importers to the Board. Customs would also provide information to the Board regarding the value and volume of imported sorghum, and therefore it is not anticipated that importers would have any regular reporting burden. The proposed Order would require importers to keep records and to provide information to the Board or the Secretary, when requested, and to keep records to qualify for a refund. Information could be obtained through an audit of importers' records to confirm information provided by Customs or as part of the Board's compliance program.

Importers would have similar reporting and recordkeeping requirements as producers concerning nominations to serve on the Board, organic exemptions, refunds of assessments paid, or referendums.

The Small Business Administration (SBA) [13 CFR 121.201] defines small agricultural service businesses as those whose annual receipts are less than \$6.5 million. According to the National Agricultural Statistics Service (NASS) 2002 Census of Agriculture, there are 22 grain sorghum producing States and approximately 3,000 wholesale grain merchants who would be considered first handlers under the proposed Order, in these 22 States. By calculating the average values of product sold by grain merchants in each of the 22 grain sorghum producing States, one can determine that 16 States have wholesale grain industries where, on average, the wholesalers each sold in excess of \$6.5 million per year. This gives a rough approximation that as many as 73 percent of wholesale grain elevators in grain sorghum producing States may have annual sales in excess of \$6.5 million and therefore would not be considered small businesses.

Based upon data collected from State sorghum boards, NSP estimates that approximately 1,150 first handlers of grain sorghum could be affected. This number represents the number of wholesale grain merchants who buy grain sorghum out of the approximately 3,000 wholesale grain merchants identified in the paragraph above. Although State promotion, research, and information programs do not currently exist for sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage, NSP estimates that approximately 700 first handlers of these products could be affected. This was determined through discussions with State sorghum promotions program representatives and State organizations representing sorghum producers. In order to have as much information as possible, we are inviting comments on the number and size of handlers of all types of sorghum that would be affected by this proposed Order.

Under SBA criteria, importers of sorghum are considered agricultural service businesses. The proposed Order defines an importer as a person who imports more than 1,000 bushels of grain sorghum, or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage during a calendar year.

At present, a relatively small amount of grain sorghum is imported into the U.S., and the exact number of sorghum importers who would be affected by the proposed Order is not known. It is believed that most grain sorghum imports are related to sorghum seed breeding activities at the present time. For the purpose of this initial Regulatory Flexibility Analysis, we therefore will assume that some importers would be small businesses.

For 2005, United States International Trade Commission (USITC) database reports indicate that there were 24,549 bushels of grain sorghum imported, valued at \$96,800. Based upon 2005 NASS data, this total would equal approximately 0.01 percent of the value of the domestic grain sorghum crop. In 2006, USITC database reports indicate that there were 2,547 bushels of grain sorghum imported, valued at \$46,000. Using 2006 NASS data, this would again equal approximately 0.01 percent of the value of the domestic grain sorghum crop. Using data from USITC reports for January–August 2007, the amount of grain sorghum imported is currently 75,497 bushels, valued at \$374,000. Based upon NASS projections for the upcoming marketing year, grain sorghum imports would equal approximately 0.02 percent of the value

of the 2007 domestic grain sorghum crop.

In order to have as much information as possible for a comprehensive analysis of sorghum importers, we are inviting comments regarding the importation, marketing, and uses of all types of imported sorghum.

The SBA defines small agricultural producers as those having annual receipts of not more than \$750,000 annually. According to the NASS 2002 Census of Agriculture, the average grain sorghum farm size was 204 acres. The USDA Economic Research Service's (ERS) *Feed Grains Data Base Yearbook Tables* indicate that for 2002 the weighted average farm price for grain sorghum was \$2.32 and that, on average, 50.6 bushels per acre were produced. Based on these figures, the average value of grain sorghum produced would be \$23,948. Accordingly, most grain sorghum producers subject to this proposed Order would be classified as small businesses.

Sufficient data is not available to make similar calculations for the burden of assessments on sorghum forage, sorghum hay, sorghum haylage, sorghum billets, sorghum silage and sorghum seed producers. We are therefore inviting comments regarding the burden of assessments on all types of sorghum.

ERS report *Feed Outlook*, August 14, 2007, forecasted grain sorghum production of 475 million bushels in 2007, making it the largest production year since 2001. If this level of production were realized, the proposed Board would collect \$9.4 million in assessments on grain sorghum. While ERS does not provide a production forecast for sorghum silage, NASS reports that 4,642,000 tons of sorghum silage were produced in 2006. NASS does not estimate the value of sorghum silage, but at \$18 per ton, an estimate provided by NSP, the Board would collect approximately \$2.9 million from sorghum silage. Were production and prices to remain at these record levels, the Board could collect approximately \$12.3 million from domestic production of grain and silage sorghum and \$2,244 from imported grain sorghum.

An estimate of the grain sorghum assessments that would have been paid by producers in 2002 can be calculated by multiplying the average farm size (204 acres) by the average production (50.6 bushels per acre) by the price received (\$2.32 per bushel) by the proposed grain sorghum assessment rate of 6 tenths of one percent of the value of the grain sorghum (0.006). The burden to each farm can be estimated to be approximately \$144 for 2002. In this

example, the year 2002 was selected because it is the most recent NASS Census of Agriculture reporting farm size.

Sufficient data is not available to make a more accurate forecast of assessment collections on sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage production. We therefore are also inviting comments regarding the production and value of all types of sorghum.

In addition to sorghum first handlers, importers, and producers, there are other entities affected by the proposed Order. State, regional and national organizations representing sorghum producers and importers would have a role in the proposed Order. There would be some burden on producer organizations that voluntarily request to participate in the program by becoming certified to make nominations to the Board. AMS estimates that two organizations within each State would request certification. It is not known at this time how many sorghum producer organizations may wish to be certified.

If this proposed Order is implemented, AMS would publish a notice in the **Federal Register** announcing that it would accept applications for certification of organizations to participate in the nomination of Board members pursuant to criteria in section 1221.107. Certified organizations would be required to re-submit applications for certification periodically. It is anticipated that this would occur every 5 years.

Additionally, there would be a burden on sorghum producer organizations requesting qualification by the Secretary to receive funding from the Board pursuant to section 1221.112(j). Only one organization within each State would be qualified by the Secretary to receive funding from the Board and preference would be given to existing State legislated sorghum promotion organizations. Organizations would be required to submit an application for qualification to the Secretary pursuant to section 1221.128. It is estimated that one organization would be qualified per State although it is not required that each State have a qualified organization. Qualified organizations receiving funding through the Order would be required to re-submit applications for qualification periodically. It is anticipated that this would occur every 5 years.

While the exact number of certified and qualified organizations is not known, nonetheless their membership to a great extent would be producers who are largely small entities, and,

when applicable, importers who we assume include small entities.

With regard to alternatives to this proposed rule, the Act itself provides authority to tailor a program according to the individual needs of an industry. Section 514 of the Act provides for orders applicable to producers, first handlers, and other persons in the marketing chain as appropriate. Provision is made for permissive terms in an order in Section 516 of the Act and authorizes an order to provide for coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; and provision for credits for generic and branded activities. In addition, Section 518 of the Act provides for a referendum to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate.

This proposal includes provisions for a delayed referendum. Approval would be based upon the majority of those persons voting for approval who were engaged in the production or importation of sorghum during the representative period established by the Secretary.

We have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. While we have performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning potential effects of the proposed Order. In particular, we are seeking information on the number and size of first handlers, producers, and importers that would be covered by the program. We are also requesting information on certified and qualified organizations. In addition, we are interested in more information on the number and kind of small entities that may incur benefits or costs from

implementation of the proposed Order and information on expected benefits or costs.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), AMS announces its intention to request approval for a new information collection for the proposed sorghum program.

Under the proposed Order, first handlers would be required to collect assessments from producers, file reports with, and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records would be retained for at least two years beyond the marketing year of their applicability. Each first handler would be responsible for the collection of assessments and remittance of the assessments to the Board. It is anticipated that the bulk of assessments would be submitted to the Board by first handlers who purchase sorghum. A producer would be considered a first handler when that person markets sorghum of their own production directly to a consumer.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the proposed Order, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple and easy to understand and place as small a burden as possible on the person required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the industry, while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and first handlers who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required

information without the use of these forms.

For the purpose of estimating the cost of reporting and recordkeeping, the proposal uses \$18.55, the mean hourly earnings of first line supervisors and managers of farming, fishing, and forestry workers as obtained from the U.S. Department of Labor Bureau of Labor Statistics National Compensation Survey of Occupational Wages.

Information collection requirements that are included in this proposal include:

(1) Background Information Form (OMB Form No. 0505-0001.

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer or importer nominated to serve on the Board.

Respondents: Producers and importers.

Estimated Number of Respondents: (26 for initial nominations to the Sorghum Board, 8 in the second year, 10 in the third year, and 8 in the fourth year, sequencing 8, 10 and 8 annually, thereafter).

Estimated Number of Responses per Respondent: 0.33.

Estimated Total Annual Burden on Respondents: 4.29 hours for the initial nominations to the Sorghum Board and sequencing 1.3, 1.6, and 1.3 annually thereafter.

Total Cost: (Number of respondents $\times$ responses per respondent $\times$ \$18.55) \$79.58 initial, and sequencing \$24.12, \$29.68, and \$24.12 annually thereafter.

(2) Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the Order.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.1 hour per recordkeeper maintaining such records.

Recordkeepers: Producers, importers, and first handlers.

Estimated Number of Recordkeepers: 35,050.

Estimated Total Recordkeeping Hours: (Number of recordkeepers $\times$ 0.1 hours) 3,502 hours.

Total Cost: (Number of recordkeepers $\times$ 0.1 hour per recordkeeper $\times$ \$18.55) \$64,962.

(3) Remittance Form by Each First Handler.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hour per first handler.

Respondents: First handlers.

Estimated Number of Respondents: (1,150 first handlers of grain plus 700 first handlers of silage and hay) 1,850.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: (Number of first handlers $\times$ total number of reports $\times$ 0.25 hour per report) 5,550 hours.

Total Cost: (5,550 hours $\times$ \$18.55) \$102,952.50.

(4) Application for Refund Form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.167 hour per response.

Respondents: Producers and importers.

Estimated Number of Respondents: (25 percent of 33,200 total producers) 8,300.

Estimated Number of Responses per Respondent: Six.

Estimated Total Annual Burden: (8,300 producers $\times$ 6 reports per year $\times$ 0.167 hour per report) 8,317 hours.

Total Cost: (8,317 hours $\times$ \$18.55) \$154,280.

(5) Application for Certification of Organizations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: National, State, or regional sorghum associations or organizations.

Estimated Number of Respondents: (Two organizations certified in each of 22 sorghum producing States) 44.

Estimated Number of Responses per Respondent: (Estimating recertification every 5 years) 0.2.

Estimated Total Annual Burden: (44 organizations $\times$ 0.2 responses $\times$ 0.5 hour per response) 4.4 hours.

Total Cost: (4.4 hours $\times$ \$18.55) \$81.62.

(6) Application for Qualification of Organizations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: State associations or organizations.

Estimated Number of Respondents: (one organization certified in each of 22 sorghum producing States) 22.

Estimated Number of Responses per Respondent: (estimating requalification every 5 years) 0.2.

Estimated Total Annual Burden: (22 organizations $\times$ 0.2 responses $\times$ 0.5 hour per response) 2.2 hours.

Total Cost: \$40.81.

(7) Nominations for Appointments to the Sorghum Board Form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: National, State, or regional sorghum associations and organizations.

Estimated Number of Respondents: (certified organizations) 22.

Estimated Number of Responses per Respondent: One per year.

Estimated Total Annual Burden: (22 organizations $\times$ 1 response $\times$ 0.5 hour per response) 11 hours.

Total Cost: (11 hours $\times$ \$18.55) \$204.

(8) *Organic Exemption Form.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hour per exemption form.

Respondents: Producers and importers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: (Annual exemption application required) 1.0.

Estimated Total Annual Burden on Respondents: 5.0 hour.

Total Cost: (5 hours $\times$ \$18.55) \$92.75.

(9) *Referendum Ballot.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.1 hours per referendum ballot.

Respondents: Producers and importers.

Estimated Number of Respondents: 8,300.

Estimated Number of Responses per Respondent: (Estimating referendums every 5 years) 0.2.

Estimated Total Annual Burden on Respondents: 166 hours.

Total Cost: (166 hours $\times$ \$18.55) \$3,079.30.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and the USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning information collection should be sent to the address cited under the **ADDRESSES** section.

Background

NSP submitted a draft Sorghum Promotion, Research, and Information Order to USDA on December 28, 2006, along with letters of support from nine industry organizations. These letters

represent producer organizations from five sorghum producing States, NSP, and the U.S. Grains Council.

USDA has modified the proponent's proposal to provide clarity, consistency, and correctness with respect to word usage and terminology. USDA also changed the proposal to make it consistent to other similar national research and promotion programs.

According to NSP, a national promotion, research, and information program for sorghum would allow the industry to address a number of production and marketing problems it currently faces. Three main problems currently affecting sorghum producers are as follows: lack of yield improvement and technology; aggressive market competition; and lagging ethanol research. The sorghum industry has declined in recent years in both production and acreage.

State grain sorghum promotion, research, and information programs currently exist in Kansas, Texas, Nebraska, Oklahoma, Louisiana, and Arkansas. These promotion, research, and information programs are based on volumetric assessments, so as volumes of grain sorghum change, so do the promotion, research, and information assessments. This variability leads to sporadic research funding. Also, State programs cannot generate a sufficient scale of funding to effectuate large coordinated research programs. A national promotion, research, and information program would address both of these concerns.

The proposed Order would be based on value, so variability of funding would lessen. Also, the revenue generated by a national promotion, research, and information program would reach levels that could adequately fund large coordinated research programs in sorghum.

NSP proposes that the implementation referendum be conducted within 3 years after assessments begin, which is consistent with the provisions of the Act. Approval would be based upon a majority of eligible persons voting for approval who have engaged in the production or importation of sorghum during the representative period established by the Secretary.

The program would be administered by a 13-member Board appointed by the Secretary from industry nominations. The Board would recommend the assessment rate, programs and projects, budgets, and any rules and regulations that might be necessary for the administration of the program. The Board would consist of five producers nominated from the State with the

largest production, three from the State with the second largest production, one from the State with the third largest production, and four producers would serve as at-large representatives with at least two representatives appointed from States other than the top three sorghum producing States.

Importers would be entitled to one seat if the value of assessments collected on imported sorghum reaches or exceeds the production of the State with the third largest sorghum production. Currently, imports of grain sorghum are very limited and not at a value that would trigger the provision of appointing an importer representative to serve on the Board. For example, Nebraska was the third largest producer of grain sorghum in 2006 at approximately 19,200,000 bushels. Imports of grain sorghum in 2006, according to USITC data, were 2,547 bushels.

For the purpose of establishing the initial Board, USDA grain sorghum production data would be used to determine the top three grain sorghum producing States. Section 515(3) of the Act provides for periodic reapportionment of the Board. The Act provides that at least once every 5 years, but not more frequently than once every 3 years the Board shall review the geographical distribution of the production of the agricultural commodity covered by the Order including the quantity or value. If warranted, the Board would recommend reapportionment of the Board membership.

For the purpose of reapportionment under Section 1221.100 of the proposed Order, "production" means the total assessments collected by the Board during the last 5 crop years, excluding the high and low years. The key to understanding reapportionment in the proposed Order is the definition of production. The proposed Order in section 1221.100(f) specifically uses the term production and never refers to a quantity such as "bushels" harvested per acre. The intent of this was to use assessment collections as the basis for reapportionment and maintain a link to assessment collections.

The proposed Order would use this definition since it reflects the difference in geographic regions found in the sorghum belt where sorghum prices vary widely. Furthermore, NASS does not report pricing for sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage, so the Board assessment records will provide a method to track the value of all types of sorghum. Using the assessment collections would permit the

Board to analyze sorghum production in a consistent manner and base reapportionment decisions on a value as provided for in the Act.

According to NASS, in 2005 the grain sorghum crop yielded 393.9 million bushels. Kansas was the largest producer at 195.0 million bushels, or 49.5 percent of the total crop. The 2005 grain sorghum crop was valued by NASS at \$737 million dollars. Conversely, the 1984 grain sorghum crop was 866.2 million bushels. Kansas was the largest producer at 216.8 million bushels, or 25.0 percent of the total crop. The 1984 grain sorghum crop was valued by NASS at \$2.1 billion dollars.

The sorghum silage crop in 2005 was 4.2 million tons. Texas was the largest producer at 1.5 million tons, or 35.6 percent of the total sorghum silage crop. Although NASS does not estimate the value of sorghum silage, at \$18 per ton, the 2005 crop would be valued at \$75.6 million. The 1984 sorghum silage crop was 6.5 million tons. Kansas was the largest producer at 2.1 million tons, or 32.3 percent of the total sorghum silage crop. Again, if the silage was valued at \$18 per ton, the 1984 sorghum silage crop was worth \$117.0 million. NASS sorghum silage estimates do not include the use of sorghum for haying or grazing. Acreage decline has also occurred during this period. In 1984, 17.3 million acres were planted for grain sorghum and sorghum silage while in 2005 only 6.5 million acres were planted. According to the NASS 2002 Census of Agriculture, 33,200 farms reported growing grain sorghum as a crop for an average of 204 acres per farm. In the NASS 1997 Census of Agriculture, 50,860 farms reported growing grain sorghum as a crop for an average of 170 acres per farm.

The U.S. is the largest exporter of grain sorghum in the world. Mexico and Japan are the largest customers. According to the December 11, 2006, *World Agricultural Supply and Demand Estimates* by USDA, in the 2006–2007 marketing year, exports will be the single largest use of grain sorghum. The feed industry is the largest domestic market for grain sorghum.

Grain sorghum is growing rapidly in industrial usage. Ethanol accounts for 23 to 26 percent of domestic grain sorghum use. According to NSP, this is the fastest growing segment of use for grain sorghum resulting in new ethanol plants in western Kansas and the panhandle of Texas. While this is promising, research into starch availability and fermentation is significantly less in grain sorghum as compared to some other grains. A

national promotion, research, and information program could invest in this type of research to keep grain sorghum as a viable alternative in current ethanol production systems. Additionally, NSP estimates there are approximately 3 million acres of forage type sorghum planted in the U.S. each year. There is no official data kept regarding actual production numbers. However, with the ever increasing price of energy worldwide, significant interest has surfaced in the use of forage sorghum as a feedstock for cellulosic ethanol production. While most of the Department of Energy research and focus is currently on crops like switchgrass and corn stubble, both U.S. and international research document that forage sorghum has a tremendous ability to produce large amounts of cellulosic material while utilizing much less water than many other plants. A national promotion, research, and information program could invest in this research and better position forage sorghum in the forefront of cellulosic ethanol production.

Grain sorghum yield increases have lagged behind corn, soybeans, and cotton in annual increases. Much of the difference in yield increases among the crops can be attributed directly to limited technology investment related to sorghum production. According to NSP, the difference in per acre profitability between corn and sorghum is significant. Private industry, in order to maximize stockholder return on investment, is investing research dollars in corn, soybeans, and cotton, instead of sorghum. Additionally, a survey by Frey¹ documented that there are 545 corn plant breeders including private, State, and USDA Agricultural Research Service (ARS) plant breeders. An NSP survey estimates that there are only 20 sorghum plant breeders at the private, State, and ARS levels. Therefore, the proponents of the proposed Order identify this as an opportunity where a national program of promotion, research, and information, through investment in genetic research, could improve sorghum yields and expand markets for sorghum.

Additional basic agricultural research opportunities exist for sorghum production. Several crops now have herbicides approved for use as over-the-top, postemergence grass control products. Sorghum production could benefit from this type of technology and a national promotion, research, and information program could fund the

research needed to make this available for sorghum producers.

The sorghum industry is facing competition in the marketplace from both indirect and direct competitors. Like all agricultural commodities, sorghum must compete for a share of customers' dollars. On average, approximately 45 percent of U.S. grain sorghum production goes to the export market. The top foreign market for U.S. grain sorghum for the last ten years has been Mexico. Due to the passage of the North American Free Trade Agreement (NAFTA), beginning in 2008, U.S. corn will be allowed duty-free entry into Mexico. Currently, cracked corn is entering Mexico without tariff and has depressed grain sorghum imports into Mexico. When U.S. corn enters duty-free into Mexico, industry analysts suggest that a significant portion of the U.S. grain sorghum crop will need an alternative market. This will lead to the need for greater investment in new market opportunities, domestically as well as internationally. This investment could come from a national promotion, research, and information program.

According to NSP information, one key U.S. sorghum competitor is Australia. Australian farmers invest 1 percent of the value producers receive for grain sorghum each year towards promotion and research, and the Australian government invests an additional amount equal to 0.6 percent of the value producers receive for grain sorghum for research and market development. This is an investment of 1.6 percent of the value producers receive for grain sorghum. In contrast, all six of the current U.S. State grain sorghum checkoff programs, when combined, only account for 0.22 percent of value producers receive for grain sorghum. The USDA, through the ARS, invests 0.50 percent of the value producers receive for grain sorghum into sorghum research. U.S. investment of a total of 0.72 percent is less than half of the investment made by Australia. A national promotion, research, and information program could provide research into alternative uses for sorghum and help increase market share.

The proposed Order would establish an assessment in section 1221.116 that would be paid by sorghum producers and importers. The assessment would be collected and remitted to the Board by first handlers. The term "producer" is defined in the proposal as any person who is engaged in the production and sale of sorghum in the U.S. and who owns or shares the ownership and risk of loss of the sorghum.

¹ Frey, K.J. 1996. National plant breeding survey—1. Iowa State Univ., Iowa Agr. and Home Econ. Expt. Stn. Spec. Rpt. 98.

“Importer” is defined as any person importing more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage into the U.S. in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or purchases sorghum outside of the U.S. for sale in the U.S., and who is listed as the importer of record for such sorghum. “First handler” is defined as the first person who buys or takes possession (excluding a common or contract carrier of sorghum owned by another) of more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage from producers in a calendar year for marketing. The term first handler includes a producer who markets sorghum of the producer’s own production directly to consumers. It may also mean the Commodity Credit Corporation (CCC) in any case in which sorghum is pledged as collateral for a loan issued under any CCC price support loan program and the sorghum is forfeited by the producer in lieu of loan repayment.

The definition of first handler is constructed so that any commercial grain elevator would meet the requirement of the definition by buying more than the minimum amount of grain sorghum in a calendar year and therefore would assess all grain sorghum purchased. The definition of first handler is designed to exclude small cattle feeding operations and dairies that would buy less than 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage. The proposed Order does not have a de minimis clause applicable to producers, but it does define first handler and importer in a way as to exclude very small entities.

As mentioned above, the approximately 1,850 first handlers of sorghum would collect and remit assessments to the Board. First handlers would remit assessments to the Board on a monthly basis along with a report detailing the volume of sorghum on which assessments were collected as well as identifying the State in which the sorghum was produced. Information regarding the origin of the sorghum’s production would be necessary so that the Board could make recommendations to USDA regarding reapportionment of its membership.

Section 1221.119 of the proposed Order provides for refunds. Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment

directly to the Board, through the announcement of the results of the implementing referendum, upon failure of the referendum would then have the right to receive from the Board a refund of assessments paid. Any producer or importer requesting a refund would be required to submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer, but no later than the date the results of the required referendum are announced by the Secretary. Section 1221.112(j) proposes an allocation of a portion of all assessments collected could be available to qualified State sorghum producer organizations. Each year the Board would establish an allocation amount of no less than 15 percent but no more than 25 percent of the total assessments collected on all sorghum available for any fiscal period, less the expenses incurred by the Secretary for administration and supervision of the Order. The funds could be made available for use by qualified sorghum producer organizations pursuant to section 1221.128 for State programs of promotion, research, and information. Amounts allocated by the Board for State promotion, research, and information programs would be based on requests submitted to the Board by qualified sorghum producer organizations. An important aspect of the availability of an allocation to a qualified State organization is that the organization would not automatically receive a 15–25 percent allocation. The Board would establish each year that the qualified organizations would have to submit requests for the funds, which could be for no more than their allocated amount. A detailed marketing plan describing projects with budgets would be a part of this request to demonstrate that the allocation would be used in a way consistent with the Order.

An example of how an allocation amount would be determined is as follows:

A particular qualified State organization contributes 40 percent of the total assessments collected by the Board for the previous annual fiscal period. Total assessments collected less the USDA expenses for the previous fiscal period were \$12,300,000. The Board has set the allocation amount at 25 percent. The qualified organization representing that State may submit requests up to \$1,230,000 ($\$12,300,000 \times 40 \text{ percent} \times 25 \text{ percent}$).

The proposed Order provides for exemptions from assessments under specific conditions. Any importer of less than and including 1,000 bushels of grain sorghum; or 5,000 tons of sorghum

forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under section 1221.116. An importer desiring an exemption would apply to the Board for a certificate of exemption and certify that the importer will import less than the above stated quantities of sorghum. The Board would then issue a certificate of exemption and the importers who receive a certificate of exemption would be eligible for reimbursement of assessments collected by Customs. The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

A producer or importer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP could be exempt from the payment of assessments. The producer or importer would submit the request to the Board annually as long as the producer continues to be eligible for the exemption.

The proposed Order submitted by the proponent is summarized as follows with discussion of the provisions that were changed.

Section 1221.1 through 1221.32 of the proposed Order defines certain terms such as sorghum, producer, importer, and first handler, which are used in the proposed Order. The term “unit” was removed as unnecessary from the definitions and section 1221.101 was amended to eliminate the use of the term.

Section 1221.100 through 1221.111 includes provisions relating to the Board. These provisions cover establishment and membership, nominations, nominee’s agreement to serve, appointment, term of office, vacancies, removal, certification of organizations, procedure, compensation and reimbursement, power and duties, and prohibited activities. The Board is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about sorghum, subject to oversight of the Secretary. Section 1221.106, removal, was added to make the proposal consistent with similar orders and to express the Secretary’s authority to remove any person from the Board under certain circumstances. Section 1221.107 was amended by adding paragraph (c) to express the primary considerations in determining the

certification of an organization to nominate persons to serve on the Board.

Section 1221.112 through 1221.120 covers expenses and assessments. Sections 1221.112 through 1221.115 include provisions relating to budget and expenses, financial statements, operating reserve, and investment of funds. Section 1221.116 through 1221.120 include provisions related to assessments and specify assessment rates, and the imposition of late payment charges. Also included are provisions for exemptions, refund, escrow accounts, refunds, and procedures for obtaining a refund. Section 116 was amended to specify that if Customs does not collect an assessment form an importer, the importer is responsible for paying the assessment to the Board.

Section 1221.221 through 1221.223 covers programs, plans, and projects detailing the types of activities to be engaged by the Board. Also covered are provisions for an independent evaluation and the protection of patents, copyrights, inventions, trademarks, information, publications, and product formulations derived from assessment funded activities.

Section 1221.124 through 1221.127 includes provisions for reporting requirements on first handlers and importers; books and records; use of information; and the confidential treatment of all personally identifiable information obtained from books and records of persons subject to the Order.

Section 1221.128 covers the qualification by the Secretary of State organizations that would be eligible to receive funding from the Board. Section 1221.128 was amended by adding paragraph (e) to express the primary considerations in determining the qualification of an organization to receive funding.

Sections 1221.129 through 1221.138 discusses the rights of the Secretary; referenda; suspension or termination; proceeding after termination; effects of termination or amendment; personal liability; separability; amendments; rules and regulations; and OMB numbers.

While the proposal set forth below has not received the approval of USDA, it is determined that the proposed Order is consistent with and will effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 1221

Administrative practice and procedure, Advertising, Sorghum and Sorghum product, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Chapter XI of Title 7 of the Code of Federal Regulations be amended to add Part 1221 as follows:

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Sorghum Promotion, Research, and Information Order

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- 1221.2 Board.
- 1221.3 Calendar year.
- 1221.4 Certified organization.
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- 1221.124 Reports.
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Subparts B Through E—[Reserved]

Authority: 7 U.S.C. 7411–7425.

Subpart A—Sorghum Promotion, Research, and Information Order

Definitions

§ 1221.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1221.2 Board.

Board or Sorghum Promotion, Research, and Information Board means the administrative body established pursuant to § 1221.100, or such other name as recommended by the Board and approved by the Secretary.

§ 1221.3 Calendar year.

Calendar year means the 12-month period from January 1 through December 31.

§ 1221.4 Certified organization.

Certified organization means any organization that has been certified by the Secretary pursuant to this part as eligible to submit nominations for membership on the Board.

§ 1221.5 Conflict of interest.

Conflict of interest means a situation in which a representative or employee of the Board has a direct or indirect financial interest in a person or business that performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1221.6 Crop year.

Crop year means the time period by which the USDA reports crop production for sorghum and is indicated by the calendar year in which sorghum is normally harvested.

§ 1221.7 Customs.

Customs means the U.S. Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1221.8 Department.

Department means the United States Department of Agriculture or any officer or employee of the USDA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1221.9 First handler.

First handler means the first person who buys or takes possession (excluding a common or contract carrier of sorghum owned by another) of more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage from producers in a calendar year for marketing. The term "first handler" includes a producer who markets sorghum of the producer's own production directly to consumers. In any case in which sorghum is pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the sorghum is forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation will be considered a first handler.

§ 1221.10 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1221.11 Handle.

Handle means to engage in the receiving or acquiring of sorghum and in the shipment (except as a common or contract carrier of sorghum owned by another) or sale of sorghum, or other activity causing sorghum to enter the current of commerce.

§ 1221.12 Harvest.

Harvest means combining or threshing sorghum for grain and/or severing the stalks from the land with mechanized equipment.

§ 1221.13 Importer.

Importer means any person importing more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage into

the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or purchases sorghum outside of the United States for sale in the United States, and who is listed as the importer of record for such sorghum.

§ 1221.14 Information.

Information means information and programs that are designed to develop new markets and marketing strategies; increase market efficiency; enhance the image of sorghum on a national or international basis; and assist producers in meeting their conservation objectives. These include, but are not exclusive to:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of sorghum;

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the sorghum industry, and activities to enhance the image of the sorghum industry.

§ 1221.15 Market.

Market means to sell or otherwise dispose of sorghum into intrastate, interstate, or foreign commerce by buying, distributing, or otherwise placing sorghum into commerce.

§ 1221.16 Net market price.

Net market price means the sales price, or other value, per volumetric unit, received by a producer for sorghum after adjustments for any premium or discount.

§ 1221.17 Net market value.

Net market value means:

(a) Except as provided in paragraph (b) of this section, the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for sorghum after adjustments for any premium or discount.

(b) For imported sorghum, the total value paid by the importer for the sorghum as reported on the appropriate Customs form; or

(c) For sorghum pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, the principal amount of the loan.

§ 1221.18 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic

promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1221.19 Part and subpart.

Part means the Sorghum Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1221.20 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1221.21 Producer.

Producer means any person who is engaged in the production and sale of sorghum in the United States and who owns, or shares the ownership and risk of loss of, the sorghum.

§ 1221.22 Production.

Production, as used in § 1221.100, means:

(a) For the purpose of establishing the initial Board in paragraphs (a), (b), (c), (d), and (e) of section 1221.100, the volume of grain sorghum produced during the last 5 crop years, excluding the high and low years, and

(b) For the purpose of reapportionment in paragraphs (e) and (f) of section 1221.100, the total assessments collected by the Board during the last 5 crop years, excluding the high and low years.

§ 1221.23 Promotion.

Promotion means any action taken to present a favorable image of sorghum to the public and the end-user industry for the purpose of improving the competitive position of sorghum and stimulating the sale of sorghum. This includes paid advertising and public relations.

§ 1221.24 Qualified sorghum producer organization.

Qualified sorghum producer organization means a qualified State-legislated sorghum promotion, research, and education commission or organization, approved by the Secretary. For States without a qualified State-legislated sorghum promotion, research, and education commission or organization, qualified sorghum producer organization means any qualified organization that has the primary purpose of representing sorghum producers, has sorghum producers as members, and that is approved by the Secretary.

§ 1221.25 Referendum.

Referendum means a referendum conducted by the Secretary pursuant to the Act whereby producers and importers are provided the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting.

§ 1221.26 Research.

Research means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of sorghum, including, but not limited to, research relating to yield, nutritional value, cost of production, new product development, inbred and hybrid development, nutritional value, health research, and marketing of sorghum.

§ 1221.27 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1221.28 Sorghum.

Sorghum means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus *Sorghum* of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

§ 1221.29 State.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1221.30 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1221.31 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1221.32 United States.

United States or *U.S.* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Sorghum Promotion, Research, and Information Board**§ 1221.100 Establishment and representation.**

There is hereby established a Sorghum Promotion, Research, and Information Board, hereinafter called the Board. Representation includes, but is not limited to, fixed State seats determined by total production with at-large seats to allow representation from a broad geographical area. The Board shall initially be composed of 13 representatives, with the maximum number of producers from one State limited to 6, appointed by the Secretary from nominations as follows:

(a) The largest production State based on total production shall have 5 sorghum producers to serve as representatives.

(b) The second largest production State based on total production shall have 3 sorghum producers to serve as representatives.

(c) The third largest production State based on total production shall have one sorghum producer to serve as a representative.

(d) There shall be 4 sorghum producers to serve as at-large national representatives with at least two representatives appointed from States not described in paragraphs (a), (b), and (c) of this section.

(e) If the value of assessments on imported sorghum reaches or exceeds the production of the third largest sorghum producing State, there shall be one importer to serve as a representative plus an additional at-large national representative, with the maximum number of producers from one State being increased from six to seven.

(f) At least once every 5 years, the Board will review the geographical distribution of production of sorghum in the United States, the production of sorghum in the United States, and the value of assessments on sorghum imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board may recommend to the Secretary that representation on the Board be altered to reflect any changes in geographical distribution of domestic sorghum production. If, in the review, the Board determines that the value of assessments on sorghum imported into the United States exceeds 15 percent of the production of sorghum, the Board shall recommend to the Secretary that the nomination procedures and appointments to the Board be altered as necessary or appropriate to facilitate the

equitable representation of importers on the Board.

§ 1221.101 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations for State-specific and at-large national seats shall be obtained by the Secretary from eligible organizations certified under § 1221.107. Certified eligible organizations representing producers in a State, or when making nominations for at-large seats, shall submit to the Secretary at least two nominees for each vacant seat. If the Secretary determines that a State is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the State.

(b) If so required pursuant to § 1221.100(f), at least two nominations for the importer representative shall be submitted by the Board to the Secretary.

(c) After the establishment of the initial Board, the Secretary shall announce when a vacancy does or will exist. Nominations for subsequent Board representatives shall be submitted to the Secretary not less than 90 days prior to the expiration of the terms of the representatives whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to section 1221.105.

(d) When there is more than one certified eligible organization representing a State or when the Secretary solicits nominations from organizations and persons residing in that State, or when eligible certified organizations are nominating persons for at-large positions, eligible certified organizations may caucus and jointly nominate two qualified producers for each position on the Board for which a representative is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that State, or to fill an at-large position.

§ 1221.102 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any sorghum promotion entity or with any organization that has or is being

considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1221.103 Appointment.

From the nominations made pursuant to § 1221.101, the Secretary shall appoint the representatives of the Board on the basis of representation provided in § 1221.100.

§ 1221.104 Term of office.

(a) The term of office for the representatives of the Board shall be three years, except for the initial term, pursuant to paragraph (c) of this section.

(b) Representatives may serve a maximum of 2 consecutive 3-year terms.

(c) When the Board is first established, the Secretary shall establish staggered terms as follows:

(1) Largest Producing State—2 representatives shall serve a 2-year term, 1 representative shall serve a 3-year term, and 2 representatives shall serve a 4-year term.

(2) Second Largest Producing State—1 representative shall serve a 2-year term, 1 representative shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(3) Third Largest Producing State—The representative shall serve a 3-year term.

(4) At-large national—1 representative shall serve a 2-year term, 2 representatives shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(5) States with multiple representatives shall have the staggered terms assigned by the Secretary.

(6) Representatives serving initial terms of 2 or 4 years shall be eligible to serve a single term of 3 years after their initial 2 or 4 year term.

(d) Each representative shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(e) Any successor appointed pursuant to § 1221.105 serving 1 year or less may serve two consecutive 3 year terms.

§ 1221.105 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, a successor for the unexpired term of such representative shall be appointed by the Secretary pursuant to § 1221.103 from the most recent list of nominations for the position pursuant to § 1221.101 or the Secretary shall request nominations for a successor pursuant to

§ 1221.101, except that said nomination and replacement shall not be required if an unexpired term is less than 6 months.

§ 1221.106 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in act of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be a detriment to the purposes of the Act.

§ 1221.107 Certification of organizations.

(a) The eligibility of State, regional, or national organizations to participate in making nominations for membership on the Board shall be certified by the Secretary. Those organizations that may seek certification include:

(1) State-legislated sorghum promotion, research, and information organizations;

(2) Organizations whose primary purpose is to represent sorghum producers within a State, region, or at the national level; or,

(3) Organizations that have sorghum producers as members;

(b) Such eligibility shall be based, in addition to other information, upon a report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of State specific and national at-large members to the Board. Any sorghum producer organization found eligible by the Secretary under this section shall be certified by the Secretary, and the Secretary's determination as to eligibility shall be final.

§ 1221.108 Procedure.

(a) At a Board meeting, it will be considered a quorum when a simple majority of the voting representatives are present.

(b) At the start of each fiscal period, the Board will approve a chairperson, vice chairperson, and secretary/treasurer who will conduct meetings throughout that period.

(c) All Board representatives and the Secretary or the Secretary's designee will be notified at least 30 days in advance of all Board and committee meetings, unless an emergency meeting is declared.

(d) Each voting representative of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of the total votes of the Board representatives present at the meeting.

(e) It will be considered a quorum at a committee meeting when a simple majority of those assigned to the committee are present at the meeting. Committees may consist of individuals other than Board representatives, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a simple majority of the Board representatives by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all representatives must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All telephone

votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting representative.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1221.109 Compensation and reimbursement.

The representatives of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board representatives.

§ 1221.110 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, and organize, and select from among the representatives of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the representatives, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the

Secretary considers relevant.

Furthermore, any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with § 1221.112;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of Board and committee meetings as is given to representatives in order that the Secretary's representative(s) may attend such meetings;

(j) To act as intermediary between the Secretary and any producer, first handler or importer;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and with the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the

sorghum industry's position in the marketplace; maintain and expand existing markets and uses for sorghum; and to carry out programs, plans, and projects designed to provide maximum benefits to the sorghum industry;

(o) To provide not less than annually a report to producers and importers accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request; and

(p) To invest funds in accordance with § 1221.115.

§ 1221.111 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that is a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, State, national, and foreign governments, other than recommending to the Secretary amendments to this part; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that is false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1221.112 Budget and expenses.

(a) Prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget that increases the budget must be approved by the Secretary. Shifts of

funds that do not result in an increase in the Board's approved budget and that are consistent with this subpart and the Board's governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first fiscal period of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects in accordance with the Order. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) In accordance with § 1221.118(a), the Board shall deposit funds in a refund escrow account and refrain from allocating this amount for expenditure until the Order is approved by the required referendum except as provided for in § 1221.118.

(h) The Board shall allocate an appropriate amount each year to allow for payment of future referendums.

(i) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Board shall determine annually an allocation amount no less than 15 percent but no more than 25 percent of the total assessments collected on all sorghum available for any fiscal period, less the expenses pursuant to paragraph (i) of this section, for use by qualified sorghum producer organizations pursuant to § 1221.128 for State programs of promotion, research, and information. Amounts allocated by the Board for State promotion, research, and information programs will be based on requests submitted to the Board by qualified sorghum producer organizations when it is determined that these requests meet the goals and objectives stated in the Order. Qualified

sorghum producer organizations shall not submit requests for State promotion, research, and information programs that exceed the annual allocation amount determined by the Board which shall be the product of:

(1) The State's proportional contribution based on reports submitted by first handlers pursuant to § 1221.124(a) to total assessments remitted on all sorghum for the previous fiscal period; multiplied by

(2) The total assessments collected on all sorghum for the previous fiscal period less expenses pursuant to paragraph (i) of this section.

(k) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal period except for the initial fiscal period. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(l) The Board shall allocate all other funds available for any fiscal period, to the extent practicable pursuant to paragraphs (g), (h), (i), (j), and (k) of this section on national, regional, multi-State, and State promotion, research, and information programs. Amounts allocated by the Board for national, regional, multi-State, and State promotion, research, and information programs will be based on requests submitted to the Board when it is determined that these requests meet the goals and objectives stated in the Order.

(m) The Board shall determine annually the allocation of total funds pursuant to this section, with the approval of the Secretary.

§ 1221.113 Financial statements.

(a) As requested by the Secretary, the Board shall prepare and submit financial statements to the Secretary on a monthly basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, fiscal period-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§ 1221.114 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal period excess funds in a reserve so established; provided, that funds in the reserve shall not exceed one fiscal period's anticipated expenses.

§ 1221.115 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any State or any political subdivision of a State; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

§ 1221.116 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) First handlers of domestic sorghum shall be responsible for collecting assessments from producers on all domestically handled sorghum. This includes sorghum of the first handler's own production. Grain pledged as collateral for a Commodity Credit Corporation price support loan program shall be considered handled sorghum. A first handler shall not collect an assessment on sorghum from a producer when said producer presents documentation demonstrating that an assessment has previously been collected on said sorghum.

(c) The following assessment rates for sorghum shall apply:

(1) Grain sorghum shall be initially assessed at a rate of 0.6 percent of net market value received by the producer with a maximum modification of 1 percent pursuant to paragraph (e) of this section; and

(2) Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage shall be initially assessed at a rate of 0.35 percent of net market value received by the producer with a maximum modification of 1 percent pursuant to paragraph (e) of this section.

(d) Importers of sorghum shall pay an assessment to the Board through Customs on sorghum imported into the United States. The following apply to imported sorghum:

(1) The assessment rates for imported sorghum shall be the same or equivalent

to the rates for sorghum produced in the United States.

(2) The import assessment shall be uniformly applied to imported sorghum that is identified by the numbers 1007.00.0020 and 1007.00.0040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported sorghum shall be paid when the sorghum enters the United States.

(4) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The Board will review the assessment rates and may make recommendations to modify the assessment rates to the Secretary. Assessment rates may be raised or lowered no more than 0.2 percent of net market value received by the producer in any one calendar year.

(f) Each person responsible for collecting assessments under paragraph (b) of this section shall remit the amount due to the Board in such a manner as required by regulations recommended by the Board and prescribed by the Secretary.

(g) Any unpaid assessment due to the Board pursuant to this section shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a later date than the date prescribed by this subpart because of a person's failure to timely submit a report to the Board shall be considered to have been payable by the date it would have been due if the report had been filed timely. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board.

(h) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(j) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(k) The collection of assessments pursuant to this section shall begin with

respect to sorghum handled on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(l) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(m) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in § 1221.124 and § 1221.125 shall be mailed to the location designated by the Board.

§ 1221.117 Exemptions.

(a) Any importer of less than and including 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under § 1221.116.

(b) An importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. An importer shall certify that the importer will import less than and including 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the sorghum was actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply

to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

(g) A producer or importer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces or imports only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (m) of this section; and is not, or does not import products from, a split operation shall be exempt from the payment of assessments.

(h) To apply for an exemption under this section, the applicant shall submit the request to the Board or other party as designated by the Board, on a form provided by the Board, at any time initially and annually thereafter on or before January 1 as long as the applicant continues to be eligible for the exemption.

(i) The request shall include the following: the applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the applicant. The Board will have 30 days from the date of receiving the request to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(k) The producer or importer shall provide a copy of the Certificate of Exemption to each first handler. The first handler shall maintain records showing the name and address of the exempt producer or importer and the exemption number assigned by the Board.

(l) The exemption will apply at the first reporting period following the issuance of the exemption.

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not

disqualify a producer or importer from exemption under this section, except that producers or importers who produce or import both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

§ 1221.118 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum by ten percent (10 percent).

(b) Upon failure of the required referendum, the Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) If the Order is approved by the required referendum conducted under § 1221.130 then:

(1) The escrow account shall be closed; and

(2) The funds shall be available to the Board for disbursement under § 1221.112.

§ 1221.119 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, upon failure of the required referendum shall have the right to receive from the Board a refund of such assessment, or a prorated share

thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

§ 1221.120 Procedure for obtaining a refund.

Upon failure of the required referendum, each producer or importer who paid an assessment pursuant to this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary:

(a) A producer or importer shall obtain a Board-approved refund application form from the Board. Such forms may be obtained by written request to the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) Producer's or importer's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of bushels or tons of sorghum on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid; and

(6) The producer's or importer's signature or properly witnessed mark.

(c) The documentation provided pursuant to § 1221.125(b) to the producer by the first handler responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's refund application. An importer must submit documentation showing that the assessment was paid along with a copy of the appropriate Customs form stating the net market value of the sorghum.

(d) The Board shall initiate payment of refund requests, or pay a prorated

share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1221.119.

Promotion, Research, and Information

§ 1221.121 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including consumer and industry information, with respect to sorghum; and

(2) The establishment and conduct of research with respect, but not limited to: the yield, use, nutritional value and benefits, sale, distribution, and marketing of sorghum, and the creation of new products thereof, to the end that the marketing and use of sorghum may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of sorghum.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Sorghum of all origins shall be treated equally.

§ 1221.122 Independent evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7411–7425), the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of

each periodic independent evaluation conducted under this paragraph.

§ 1221.123 Patents, copyrights, inventions, trademarks, information, publications, and product formulations.

(a) Any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1221.131 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

Reports, Books, and Records

§ 1221.124 Reports.

(a) Each first handler, on a State-by-State basis, will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

- (1) Number of bushels or tons of domestic sorghum handled within the State;
- (2) Number of bushels or tons of domestic sorghum within the State on which an assessment was paid;
- (3) The amount of assessments remitted on sorghum within the State;
- (4) Date that any assessments were paid within the State;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market price multiplied by the number of bushels or tons handled within the State; and

(6) The first handler's tax identification number.

(b) Each importer will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

- (1) Number of bushels or tons of sorghum imported;
- (2) Number of bushels or tons of imported sorghum on which an assessment was paid;
- (3) The amount of assessments remitted;
- (4) Date that any assessments were paid;
- (5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market value; and
- (6) The importer's tax identification number.

§ 1221.125 Books and records.

(a) Each first handler or importer shall maintain and make available to the Secretary for inspection such books and records as may be required by regulations recommended by the Board and prescribed by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Each first handler responsible for collecting assessments pursuant to this subpart is required to give the producer from whom the assessment was collected, written evidence of payment of the assessment paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

- (1) Name and address of the first handler,
- (2) Name of producer who paid the assessment,
- (3) Total number of bushels or tons of sorghum on which the assessment was paid,
- (4) Total assessment paid by the producer,
- (5) Date of sale, and
- (6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1221.126 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is

appropriate to the administration or enforcement of the Act, subpart, or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding producers, first handlers, or importers, that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

§ 1221.127 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board representatives, first handlers, producers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this part, together with a statement of the particular provisions of this part violated by such person.

Qualification of Sorghum Producer Organizations

§ 1221.128 Qualification.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to § 1221.112(j). Only one sorghum producer organization per State may be qualified.

(b) State-legislated sorghum promotion, research, and information organizations may request qualification and will be considered first for qualification by the Secretary.

(c) If a State-legislated sorghum promotion, research, and information organization does not elect to seek qualification from the Secretary within

a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any State sorghum producer organization whose primary purpose is to represent sorghum producers within a State, or any other State organization that has sorghum producers as part of its membership, may request qualification.

(d) Qualification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organizations operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(e) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its qualification to submit requests for funding to the Board. Any sorghum producer organization found eligible by the Secretary under this section will be qualified by the Secretary, and the Secretary's determination as to eligibility shall be final.

Miscellaneous

§ 1221.129 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and

prepared by the Board shall be submitted to the Secretary for approval.

§ 1221.130 Referenda.

(a) For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1221.116 who, during a representative period determined by the Secretary, have engaged in the production or importation of sorghum.

(1) The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) This part will be approved in a referendum if a majority of those persons voting vote for approval.

(b) The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board; or

(3) At the request of 10 percent or more of the sorghum producers or importers eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by sorghum producers eligible to vote.

(d) The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1221.131 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of sorghum.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1221.132 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its representatives to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such persons, title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, by qualified organizations pursuant to § 1221.128 in the interest of continuing sorghum promotion, research, and information programs.

§ 1221.133 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other persons with respect to any such violation.

§ 1221.134 Personal liability.

No representative or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such representative or employee, except for acts of dishonesty or willful misconduct.

§ 1221.135 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1221.136 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1221.137 Rules and regulations.

The Secretary may prescribe such rules and regulations as may be

necessary to effectively carry out the provisions of this subpart.

§ 1221.138 OMB control number.

The control number assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505—new.

Subparts B Through E—[Reserved]

Dated: November 15, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–5767 Filed 11–21–07; 8:45 am]

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Federal Register

**Friday,
November 23, 2007**

Part III

Securities and Exchange Commission

**17 CFR Parts 228, 229, 230 et al.
Concept Release on Mechanisms To
Access Disclosures Relating to Business
Activities in or With Countries Designated
as State Sponsors of Terrorism; Concept
Release; Proposed Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, 240 and 249

[Release Nos. 33–8860; 34–56803; File No. S7–27–07]

RIN 3235–AJ98

Concept Release on Mechanisms To Access Disclosures Relating to Business Activities in or With Countries Designated as State Sponsors of Terrorism

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Securities and Exchange Commission is soliciting comment about whether to develop mechanisms to facilitate greater access to companies' disclosures concerning their business activities in or with countries designated as State Sponsors of Terrorism.

DATES: Comments should be received on or before January 22, 2008.

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/concept.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–27–07 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/concept.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

James Lopez, Division of Corporation Finance at (202) 551–3536; U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of State publishes a list of countries that the Secretary of State has designated as State Sponsors of Terrorism.¹ The five countries the U.S. Secretary of State currently designates as State Sponsors of Terrorism are Cuba, Iran, North Korea, Sudan and Syria. Over the last several years, a large number of state governments, universities, pension funds, and other institutional investors, as well as individual investors, have sought information relating to public company business activities in or with State Sponsors of Terrorism in furtherance of their desire to ensure that their invested funds do not directly or indirectly support terrorism.²

The Commission's Office of Global Security Risk routinely monitors public company disclosure of material business activities in or with State Sponsors of Terrorism. On June 25, 2007, the Commission added a feature to its Web site that provided direct access to public companies' 2006 annual report disclosures concerning past, current or anticipated business activities in or with one or more of these countries.³ The sole purpose of the Web site feature was to provide direct access to company disclosures on this topic.

The web feature was constructed as a tool to assist investors seeking to view companies' disclosures regarding business activities in or with any of the five State Department-designated State Sponsors of Terrorism. It was not based on a simple keyword search of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The web tool

was the result of a staff review of company disclosure including any reference to a State Sponsor of Terrorism. This disclosure review allowed the web tool to exclude disclosure unrelated to a company's activities in or with any of these countries (e.g., generic references to a country; references to a State Sponsor of Terrorism in the context of an executive officer's or director's experience and educational background; or generic descriptions of risk associated with the possibility of war).⁴ It also permitted the web tool to exclude companies whose disclosures stated that they did not conduct business in or with State Sponsors of Terrorism. The Commission's staff did not apply any other filter in screening disclosure content. In order to provide proper context, all of the company disclosures available through the web tool were linked directly to the full text of the company's annual report. Our Web site analytics indicated that visitors typically clicked through a company name to the text of a company's own disclosure. Moreover, the SEC provided no commentary on the company's own disclosures except to state that the existence of a disclosure by a company concerning activities in one of the State Sponsors of Terrorism does not, in itself, mean that the company directly or indirectly supports terrorism or is otherwise engaged in any improper activity.

The construction and operation of the web tool generated many comments, both positive and negative, based on exceptionally high traffic. A number of the negative comments raised serious concerns about the lack of updated information beyond what a company had included in its most recent annual report. Other concerns included the possible negative connotation that could attach to a company when its disclosure was presented, even though the company's disclosure concerned benign activities such as news reporting within a State Sponsor of Terrorism or immaterial activities that the company voluntarily disclosed. The comments received have been extremely useful to the Commission in evaluating the performance and appropriateness of the web tool.

Because of the importance the SEC places on complete, accurate, and timely disclosure, comments about the web tool's inability to access more current information about a company's business activities in or with a State

¹ State sponsors of terrorism are designated under three laws: Export Administration Act of 1979, 50 U.S.C. App. § 2405(j) (2000), Arms Export Control Act, 22 U.S.C. 2780(d) (2000), and Foreign Assistance Act of 1961, 22 U.S.C. 2371(a) (2000).

² See, e.g., Letter from 50 trustees of state treasurers to the State Department, Commerce Department, Treasury Department and Securities and Exchange Commission (June 3, 2005), available at http://www.cii.org/site_files/pdfs/letters/Joint%20Ltr%2050%20pf%20to%20US%20govt%2006-03-05.pdf.

³ Press Release, SEC Adds Software Tool for Investors Seeking Information on Companies' Activities in Countries Known to Sponsor Terrorism (June 20, 2007).

⁴ For example, the web posting excluded generic references to hostilities or discord between North Korea and South Korea.

Sponsor of Terrorism since the date of the company's most recent annual report were of particular concern to the agency. Because more recent disclosure might include, for example, the fact that a company had completely terminated its activities in a country, the more recent information could be material to a complete understanding of the disclosure in the last annual report. We also question whether a company's disclosure of legitimate or immaterial business activity should lead to its being identified through a web tool that highlights connections to State Sponsors of Terrorism.

To address these and related concerns, on July 20, 2007, the web tool was indefinitely suspended. The July 20, 2007 suspension announcement indicated that the Commission staff would consider whether to recommend a Concept Release on the question of how best to make public company disclosure of business activities in or with a State Sponsor of Terrorism more accessible.⁵ The Commission is issuing this Concept Release as a result of that process, in order to solicit public comment on these important issues in a more formal way. Engaging the public's input on these issues is particularly appropriate to the extent that we contemplate novel approaches to investor access to company disclosures. The Commission hopes that this process will afford the best opportunity to address all legitimate concerns.

II. Disclosure of Business Activities in or With Countries Designated as State Sponsors of Terrorism

The federal securities laws do not impose a specific disclosure requirement that addresses business activities in or with a country based upon its designation as a State Sponsor of Terrorism. However, the federal securities laws do require disclosure of business activities in or with a State Sponsor of Terrorism if this constitutes material information that is necessary to make a company's statements, in the light of the circumstances under which they are made, not misleading.⁶ The term "material" is not defined in the federal securities laws. Rather, the Supreme Court has determined information to be material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment

decision or if the information would significantly alter the total mix of available information.⁷

The materiality standard applicable to a company's activities in or with State Sponsors of Terrorism is the same materiality standard applicable to all other corporate activities. Any such material information not covered by a specific rule or regulation must be disclosed if necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. The materiality standard's extensive regulatory and judicial history helps companies and their counsel to interpret and apply it consistently, and we remain committed to employing this standard to company disclosure regarding business activities in or with State Sponsors of Terrorism.

Although the Commission is well positioned to review disclosure relating to business activities regardless of the country in which they are conducted, we do not have the expertise or information necessary to identify the particular countries whose governments have funded, sponsored, provided a safe haven for, or otherwise supported terrorism. Nor is it the Commission's role to determine the degree to which a public company's business activities may support terrorism or may be inconsistent with U.S. foreign policy or U.S. national interests.

Information that companies provide regarding their business activities in or with State Sponsors of Terrorism is currently available in various public filings they make with the Commission. Searching for and comparing such disclosure can be difficult and time consuming using the EDGAR system, although we have recently made it easier by adding an advanced full-text search function.⁸ The Commission seeks public comment on whether easier access to this information is appropriate.

Request for Comment

1. The Commission does not provide enhanced access to disclosures concerning other specific subject areas.

⁷ *TSC Industries v. Northway, Inc.*, 426 U.S. 438 (1976). It has also held that materiality of contingent or speculative events or information depends on balancing the probability that the event will occur and the expected magnitude of the event. *Basic v. Levinson*, 485 U.S. 224, 238 (1988).

⁸ By accessing EDGAR, the page titled "EDGAR Full-Text Search," and clicking on "Advanced Search," the user can search for, among other terms, the names of the countries designated as State Sponsors of Terrorism, and limit the results to certain filings and documents, such as annual reports (e.g., Form 10-K or 20-F) or company correspondence ("CORRESP") with the Commission's staff.

Should we do so in this case? Why or why not?

2. Would providing easier access to companies' disclosures of business in or with State Sponsors of Terrorism place appropriate emphasis on that issue or would it place undue emphasis? Would providing for easier access to such disclosures be consistent with the Commission's mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation?

3. Regardless of the particular approach that the Commission might pursue to provide investors with easier access to companies' disclosures concerning their business in or with State Sponsors of Terrorism, are there potential unintended consequences of providing easier access to company disclosures in this area that the Commission should consider? If so, what are they? Are there steps the Commission could take to minimize them?

4. Would providing easier investor access to companies' disclosures concerning their business in or with State Sponsors of Terrorism disproportionately impact U.S. or foreign private issuers? If so, how?

5. Would providing easier investor access to U.S. listed companies' disclosures concerning their business in or with State Sponsors of Terrorism positively or negatively impact the competitiveness of U.S. financial markets?

6. The Commission's staff, when reviewing disclosure related to business activities in or with a State Sponsor of Terrorism, interprets materiality in the same way it does when reviewing disclosure relating to any other corporate activities not covered by a specific rule or regulation. We nevertheless seek comment raising any opposing views and alternatives. Commenters should discuss in detail the bases for their views and recommendations.

7. Is the information currently available in public company filings regarding business activities in or with State Sponsors of Terrorism sufficient?

8. Do investors find the information that public companies currently disclose about their business activities in or with State Sponsors of Terrorism important in making investment decisions?

III. Means of Providing Easier Access to Existing Company Disclosures

In seeking public comment on whether providing easier access to such disclosure is appropriate, the Commission seeks additional comment

⁵ Press Release, Statement by Securities and Exchange Commission Chairman Christopher Cox Concerning Companies' Activities in Countries Known to Sponsor Terrorism (July 20, 2007).

⁶ Rule 408 of Regulation C, [17 CFR 230.408] and Rule 12b-20 under the Securities Exchange Act of 1934 [17 CFR 240.12b-20].

on whether it should pursue one of the following alternative means to accomplish this end.

Improvements to the Web Tool

The web tool we discuss in Section I, and previously available on the Investor Information section of the SEC Web site, contained the names of companies that disclosed in their 2006 annual reports business activities in or with one or more of the five State Sponsors of Terrorism. After accessing the web tool and clicking on one of the five countries, an investor could click on the name of a company that appeared under the country name to view the relevant portion of its 2006 annual report. The disclosure page included a link to the company's entire 2006 annual report as well as all of its other filings, including those it filed after its annual report. As discussed above, company disclosure referencing a State Sponsor of Terrorism that was unrelated to business activities was not available through the web tool.⁹ However, company disclosure indicating that the company was in the process of terminating business activities in or with one of the countries was made available through the web tool. Similarly, company disclosure of business activities regardless of their materiality, nature, or legality was made available through the web tool. The inclusion of company disclosure regardless of the amount or nature of business activities in or with a State Sponsor of Terrorism was designed to avoid any indication that a conclusion had been reached about or any advice provided regarding the propriety of a company's activities. Instead, the tool was designed to provide easier access to information that would allow an investor to come to his or her own conclusion regarding a company's business activities in or with State Sponsors of Terrorism. This approach raised concerns, however. Companies named on the SEC's Web site maintained that inclusion of a company's disclosure via the web tool, regardless of the appropriateness of the activity, created a negative impression and might cause them reputational harm.

The Commission seeks public comment on whether it should reinstate a web tool and, if so, how to address the shortcomings that were present in the prototype. Some have suggested that, at a minimum, the following issues would need to be addressed: broadening the universe of available disclosure

documents; including a company's most recent filings to ensure that the Web site information is timely; and displaying the methodology used to select the companies for the Web site and the frequency of updates, including a description of the limitations on the information such as the fact that a company might disclose more than is required under the securities laws. Of the above list, the most difficult recommendation to implement would be the requirement that Commission staff constantly update the universe of current and periodic report and other filing disclosure available through the web tool, in order to keep the information timely. Doing this would require a significant and indefinite commitment of agency personnel, with concomitant impacts on the SEC budget and on the other work of the Commission, particularly within the Division of Corporation Finance. The recommendations listed above may not address all of the concerns that the web tool raised.

Request for Comment

9. Do the recommendations listed above adequately address the concerns with the prototype web tool? What specific improvements could be made to address those concerns? Are there additional concerns that need to be addressed?

10. Should the Commission reinstitute the web tool, with improvements? If so, what specific improvements should we make to the web tool before we once again make it publicly available?

11. If the Commission were to reinstitute the web tool, how frequently should it update the database of documents containing relevant disclosure?

12. Could the implementation of a web-based tool have adverse consequences, such as reducing the amount of information, not otherwise subject to disclosure under the federal securities laws, which a company chooses to make available to investors?

13. Is the concept of a web tool that begins with a Commission-generated list of companies inherently flawed?

Data Tagging by Companies Themselves

Since 2004, the Commission has devoted increasing attention and resources to the possibility of making periodic reports companies file with the Commission, including financial statements, interactive. Through the use of data tags—computer labels written in the XBRL computer language—users of company disclosure documents could more easily search, retrieve, and analyze

information. For nearly two years, the Commission has had a pilot program underway in which companies voluntarily tag their financial statement information using XBRL labels. Over 40 companies, with a market capitalization of over \$2 trillion, now participate in the program. At the same time, the Commission is currently developing web-based tools that take advantage of the power of interactive data technology. One such tool, which we expect to make available soon, will let investors compare executive compensation across 500 of the nation's largest public companies.

One means of enhancing the searchability and comparability of company disclosures concerning business activities in State Sponsors of Terrorism would be for a company to apply data tags to identify the nature of the disclosure. The Commission seeks public comment on whether it should consider the use of data tagging to enhance access to public company information about business activities in or with the State Sponsors of Terrorism.

When the Commission released a web tool on June 25, 2007 that provided direct access to public companies' disclosures about their business activities in or with the State Sponsors of Terrorism, we stated that "[t]he existence of a disclosure by a company concerning activities in one of the listed countries does not, in itself, mean that the company directly or indirectly supports terrorism or is otherwise engaged in any improper activity."¹⁰ Nonetheless, several of the companies whose disclosures were identified in the web tool stated that the information in their annual reports was not indicative of their doing business in a State Sponsor of Terrorism, or alternatively that it was not indicative of their doing a material amount of business in such a country, or that it did not concern the kinds of business activities with which investors normally would be concerned. The common theme to these various comments was, in other words, that company disclosures had been mislabeled. One way to directly address this concern would be to authorize the companies themselves to use data tags that would determine how their disclosures would be called up in response to web-based searches.

Were this approach to be adopted, a further potential benefit would be to eliminate any Commission role in characterizing a company's disclosure

⁹ As such, companies were excluded if the disclosure stated that the company did not do business in or with the particular country.

¹⁰ Press Release, SEC Adds Software Tool for Investors Seeking Information on Companies' Activities in Countries Known to Sponsor Terrorism (June 20, 2007).

with a web tool. Because companies would apply the tags themselves to their own disclosures, the information that a web search tool would highlight for investor scrutiny would be determined not by the Commission but by each company.

The use of company data tagging also has the potential to address concerns about the timeliness of information the web tool displays. Rather than relying upon a company's most recent annual report, the web tool would rely on data tags attached to any company filing, including, for example, current reports on Form 8-K. As a result, the web tool would display information to any user the moment it was electronically filed with the Commission.

Finally, the use of company data tagging would substantially reduce the necessity to dedicate significant Commission staff resources on an ongoing basis, since the companies, not the Commission staff, would determine what disclosures the web tool would display.

In order for the Commission to adopt this approach, it would first be necessary to prepare a simple taxonomy of XBRL data tags which companies could apply to the various kinds of disclosure that they make with respect to business activities in or with State Sponsors of Terrorism. A recent example of how this might be done is the specialized taxonomy that was prepared for mutual fund performance data by the Investment Company Institute, and that is currently being reviewed by XBRL US, the independent private sector standard setter for interactive data tags. Once the taxonomy was completed, the data tags would

then be published on the web and made available, free of charge, to every public company. The Commission seeks public comment on whether it should seek to provide investors easier access to public companies' disclosure about business activities in or with State Sponsors of Terrorism through the use of interactive data tags in the XBRL language that companies would apply themselves.

Request for Comment

14. Should the Commission consider proposing a requirement that companies use XBRL data tags to identify various types of disclosure regarding business activities in or with State Sponsors of Terrorism? Alternatively, should the use of XBRL data tags be voluntary?

15. If the Commission were to pursue data tagging, who should define the various categories of disclosure?

16. If the Commission were to pursue data tagging, to which categories of disclosure should the data tags correspond? For example, should there be a category for business activities that the company considers immaterial to its business, but which it chooses to disclose voluntarily? Or for business activities in State Sponsors of Terrorism that are perceived as benign, such as news gathering or humanitarian work? Should there be a category for business activity that has ceased? Or for disclosure that no business activities with any State Sponsor of Terrorism have ever existed? What other categorization would be necessary to promote clarity and ease of use?

17. If the Commission were to pursue data tagging, what types of information should it require companies to tag? For example, should a company be required

to tag only that disclosure which relates to ongoing business activities in or with a State Sponsor of Terrorism? Should it also tag data relating to disclosure of business activities that ceased during the period of the report, or during a certain time period prior to that?

18. If the Commission were to pursue data tagging, which reports and filings with the SEC should include this tagged disclosure?

19. Should the Commission consider options other than data tagging or a web tool? If so, what?

IV. General Request for Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address that are related to the Commission's consideration of providing improved investor access to disclosures concerning public companies' business activities in or with State Sponsors of Terrorism. We are also interested in any issues that commenters may wish to address relating to the relative benefits and costs of providing improved access to public company disclosures in this area. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations to support or illustrate your comments.

By the Commission.

Dated: November 16, 2007.

Nancy M. Morris,
Secretary.

[FR Doc. E7-22789 Filed 11-21-07; 8:45 am]

BILLING CODE 8011-01-P



Federal Register

**Friday,
November 23, 2007**

Part IV

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Chapter 1, Parts 2, 22, 23 et al.
Federal Acquisition Regulation; Final
Rules and Small Entity Compliance Guide**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR–2007–0002, Sequence 7]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–22;
Introduction****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of final
rules.**SUMMARY:** This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council in this Federal Acquisition
Circular (FAC) 2005–22. A companion
document, the Small Entity Compliance
Guide (SECG), follows this FAC. The
FAC, including the SECG, is available
via the Internet at [http://](http://www.regulations.gov)
www.regulations.gov.**DATES:** For effective dates and comment
dates, see separate documents, which
follow.**FOR FURTHER INFORMATION CONTACT** The
analyst whose name appears in the table
below in relation to each FAR case.
Please cite FAC 2005–22 and the
specific FAR case number(s). For
information pertaining to status or
publication schedules, contact the FAR
Secretariat at (202) 501–4755.**LIST OF RULES IN FAC 2005–22**

Item	Subject	FAR case	Analyst
I	Implementation of Section 104 of the Energy Policy Act of 2005	2006–008	Clark.
II	Contractor Code of Business Ethics and Conduct	2006–007	Woodson.

SUPPLEMENTARY INFORMATION:Summaries for each FAR rule follow.
For the actual revisions and/or
amendments to these FAR cases, refer to
the specific item number and subject set
forth in the documents following these
item summaries.FAC 2005–22 amends the FAR as
specified below:**Item I—Implementation of Section 104
of the Energy Policy Act of 2005 (FAR
Case 2006–008)**This final rule implements Section
104 of the Energy Policy Act of 2005.
Section 104 requires that all
acquisitions of energy consuming-
products and all contracts that involve
the furnishing of energy-consuming
products require acquisition of ENERGY
STAR® or Federal Energy Management
Program (FEMP) designated products.
The final rule provides a clause for the
Contracting Officer to insert in
solicitations and contracts to ensure that
suppliers and service and construction
contractors recognize when energy-
consuming products must be ENERGY
STAR® or FEMP-designated.**Item II—Contractor Code of Business
Ethics and Conduct (FAR Case 2006–
007)**This final rule amends Federal
Acquisition Regulation (FAR) Parts 2, 3,
and 52 to address the requirements for
a contractor code of business ethics and
conduct and the display of Federal
agency Office of the Inspector General
(OIG) Fraud Hotline Posters. In response
to public comments, this final rule
reduces the burden on small entities by
making the requirements for a formaltraining program and internal control
system inapplicable to small businesses.
If a small business subsequently finds
itself in trouble ethically during the
performance of a contract, the need for
a training program and internal controls
will likely be addressed by the Federal
Government at that time, during a
criminal or civil lawsuit or debarment
or suspension.

Dated: November 16, 2007.

Al Matera,
*Director, Office of Acquisition Policy.***Federal Acquisition Circular**Federal Acquisition Circular (FAC)
2005–22 is issued under the authority of
the Secretary of Defense, the
Administrator of General Services, and
the Administrator for the National
Aeronautics and Space Administration.Unless otherwise specified, all
Federal Acquisition Regulation (FAR)
and other directive material contained
in FAC 2005–22 is effective December
24, 2007.

Dated: November 15, 2007.

Shay D. Assad,
*Director, Defense Procurement and
Acquisition Policy.*

Dated: November 16, 2007.

Al Matera,
*Acting Deputy Chief Acquisition Officer,
Office of the Chief Acquisition Officer,
General Services Administration.*

Dated: November 14, 2007.

William P. McNally,
*Assistant Administrator for Procurement,
National Aeronautics and Space
Administration.*

[FR Doc. 07–5798 Filed 11–21–07; 8:45 am]

BILLING CODE 6820–EP–S**DEPARTMENT OF DEFENSE****GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 22, 23, 36, and 52**[FAC 2005–22; FAR Case 2006–008; Item
I; Docket 2006–020; Sequence 12]**RIN 9000–AK63****Federal Acquisition Regulation; FAR
Case 2006–008, Implementation of
Section 104 of the Energy Policy Act of
2005****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address implementation of Section 104 of the Energy Policy Act of 2005.

DATES: *Effective Date:* December 24, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219-1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-22, FAR case 2006-008.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 70937, December 7, 2006. The rule proposed to amend FAR Parts 23, 36, and 52 to ensure compliance with the Federal mandate to promote energy efficiency when specifying or acquiring energy-consuming products. This mandate stems from Section 104 of the Energy Policy Act of 2005. Section 104 requires that all acquisitions of energy consuming-products and all contracts that involve the furnishing of energy-consuming products require acquisition of ENERGY STAR® or Federal Energy Management Program (FEMP) designated products.

On February 5, 2007, the public comment period closed. Seven respondents submitted comments on the proposed rule (3 associations/coalitions, 3 Government agencies or offices, and 1 Government employee).

1. Voice positive support for the clause.

Comment: Three respondents all voice positive support for the proposed clause at FAR 52.223-15, Energy Efficiency in Energy-Consuming Products. One respondent states that adding the clause will make ENERGY STAR®/Federal Energy Management Program (FEMP)-designated products an enforceable part of contracts, which will make it easier to comply with the environmentally friendly purchasing regulations. Another respondent states that it supports the proposal as written. This respondent notes in particular that it is important to have a contract clause for ENERGY STAR® and FEMP-designated products. A third respondent supports the draft FAR clause implementing the Energy Act of 2005, because this will promote the overall goal to proactively develop programs to reduce the environmental impacts of

industries' manufacturing processes and products throughout their entire life cycle.

Response: None required.

2. Recommend deletion of clause.

Comment: Although one respondent fully supports the policy of promoting the acquisition of energy-efficient products by both the Federal Government and commercial buyers, the respondent believes that the new mandatory FAR clause would place an unnecessary and unreasonable burden on contractors. According to this respondent, the Energy Policy Act suggests that the procuring agency should bear the burden of making sure that it buys an ENERGY STAR® or FEMP-designated product when such a product is available and cost-effective. This approach has been effective. The proposed rule does not explain why it is now necessary to change this approach, other than the statement that "agencies often overlook including the pre-existing requirements in FAR 23.203 in contract specifications." The respondent states three reasons why shifting the burden of compliance to the contractor is a heavy risk.

- ENERGY STAR® compliance is not guaranteed for the life of the product model. If new standards come out, the product may lose its ENERGY STAR® compliance and must remove the label. The producer (or reseller) could no longer provide the product to the Government under any contract that included the proposed clause.

- Whether a product is compliant with the ENERGY STAR® qualifications can change after the Government takes possession. Procuring agencies often modify products delivered by contractors, transforming a product that was compliant into one that does not meet the qualifications. The potential impacts of the proposed rule would be amplified for Federal Supply Schedule (FSS) vendors who deliver products to the Government under delivery orders. Through enhancements of the buying agency, the product might be changed in such a way that it no longer meets the ENERGY STAR® standards.

- An agency generally will not be in a position to determine if an ENERGY STAR® or FEMP-designated product is available or life-cycle cost-effective until it makes its source selection decision. Putting the proposed clause in solicitations would discourage all potential offerors whose products are not ENERGY STAR® or FEMP-designated to forego the competition. Therefore, the respondent suggests that at least the clause should not be included in solicitations.

Response: The Councils do not agree that including a clause causes an unreasonable burden on contractors. It is no more burden than including the requirement in the specifications. The rationale provided in the **Federal Register** notice that agencies are neglecting to include the requirement in the specifications provides adequate rationale for the need for a clause. In response to the three reasons to delete the clause offered by the respondent—

- The Councils agree that some change in wording may help clarify that it is not the intent of the clause to require changes after contract award. If the product is ENERGY STAR® compliant or a FEMP-designated product at the time of contract award, then delivery or furnishing of that product will be acceptable for the life of the contract (see change at 52.223-15(b)).

- Any change to a product after the Government takes possession would have no impact on the contractor. The contractor has fulfilled its obligation upon delivery. Ordering activities should not be placing orders for products on the Federal Supply Schedules that are modified in such a way that the product no longer meets ENERGY STAR® Standards. In such circumstances, the agency should award a contract, without the clause at 52.223-15, rather than ordering off the schedule.

- The third reason appears to apply to delivery of compliant end products. It is necessary to include the clause in the solicitation, so that offerors know the expectations of the agency. The agency should do market research in advance of the solicitation, to determine whether ENERGY STAR® or FEMP-designated products are available that meet the agency needs and are cost-effective over the life of the product, so that the clause is not included if the agency can determine in advance that an exception applies. If the clause is included in the solicitation, it includes language that the requirement may be waived by the contracting officer. Therefore, there is no prohibition against an offer of noncompliant products, but the Government is not encouraging submission of such offers. If the contracting officer determines after receipt of offers that no compliant products are available that meet the agency needs and are cost-effective over the life of the product, then it may be appropriate to amend the solicitation, and the clause need not be included in the contract.

3. Approval level for exemptions.

Comment: One respondent thinks that "agency head" is too high an approval authority for the exemptions at 23.205

in the proposed rule. (Note: The Councils have renumbered section 23.205 as 23.204 in the final rule.) The respondent recommends changing to “agency head or his/her designee” or “head of the contracting activity.”

Response: According to FAR drafting conventions, the phrase “or designee” should not be used in the FAR. FAR 1.108(b) states that each authority is delegable unless specifically stated otherwise (see 1.102–4(b)).

4. Exemptions at 23.205 do not match exemptions in paragraph (c) of the clause.

Comment: One respondent recommends that the exceptions as proposed in paragraph (c) of the clause should be the same as stated in the proposed text at 23.205.

Response: The proposed FAR 23.205 is entitled, “Procurement Exemptions” and goes on to describe two circumstances in which an agency is not required to procure ENERGY STAR® qualified or FEMP-designated products: namely, if the head of the agency determines in writing either that no qualified or designated product is reasonably available that meets the agency’s functional requirements, or that no qualified or designated product is cost-effective over the life of the contract. If the agency head makes either of these written determinations, the proposed clause at FAR 52.223–15 never appears in the solicitation. As such, the solicitation would be consistent with the policies defined in the proposed FAR 23.205.

Even if the head of the agency does not make the written determinations before issuance of the solicitation, and the clause does appear in the solicitation, there is no apparent inconsistency. The key issue with regard to the difference between the statement of the exemptions at 23.205 and in the clause at paragraph (c) is that the proposed text at 23.205 is addressed to the agency and the clause is addressed to the contractor. FAR 23.205 provides criteria for the agency to determine that use of the clause is not required. However, if the clause is included in the solicitation/contract, the contractor can determine whether ENERGY STAR® or FEMP-designated products are listed, but only the contracting officer could provide the determination whether listed products meet the needs of the agency or whether such products would be cost effective over the life of the product. Therefore, the contractor must rely on written approval from the contracting officer for these exemptions.

5. Object to proposed statement that exemptions should be rare (FAR 23.205(b)).

Comment: Three respondents object to the statement at FAR 23.205(b) that it should be rare for a determination to be made that no ENERGY STAR® or FEMP-designated product is cost-effective over the life of the product taking energy cost savings into account. They recommend deletion of the language for the following reasons:

- The language is overly broad and a blanket declaration that a determination “should be rare” is not supported. Depending on the product, it could be common that extra costs for an ENERGY STAR® product are not justified by the energy cost savings. The qualifying specifications for a product to be considered as an ENERGY STAR® or FEMP-designated product are ever evolving. The periodic update of the specifications may mean that products considered to be energy-efficient today may not be eligible for the ENERGY STAR® label when the updated specification is introduced. Therefore, it doesn’t make sense to limit the use of the life-cycle cost exception by claiming that the determination should be rare.

- The statement lacks statutory basis.
- The language is unnecessary and will discourage agencies from waiving the requirement to purchase an ENERGY STAR® product—even when procuring such a product would not be life-cycle cost-effective.

Response: The Councils agree that the statement “Such determinations should be rare as such products are normally life cycle cost effective” may be presumptuous in that the accuracy of the statement is dependent on the product in question and various governing label standards. The intent of the statement was to state a probability, not impose a condition on agency heads. Product life-cycle cost effectiveness is considered by the Department of Energy and the Environmental Protection Agency in the process of identifying ENERGY STAR® or FEMP-designated performance levels. ENERGY STAR®-qualified and FEMP-designated products are assumed to be life-cycle cost-effective under typical operating conditions and energy prices. The agency head may waive the requirements if the agency head determines that no ENERGY STAR® or FEMP-designated product is cost effective over the life of the product, regardless of the number of such waivers already granted. The Councils have deleted the language that was proposed at 23.205(b).

6. Impact on small business.

Comment: One respondent suggests that the statement at 23.205(b) that exemptions for life-cycle cost should be rare (see previous Section A.5.) has a particularly negative impact on small businesses, which do not have the resources comparable to large businesses to devote to developing new energy efficient technologies. According to this respondent, small businesses are at a competitive disadvantage and less likely to obtain the ENERGY STAR® label. The respondent concludes that such businesses will therefore be more reliant on the exceptions in the Energy Policy Act. The respondent recommends that the Councils revisit the conclusion that the proposed rule will not have a significant impact on small businesses and delete the unnecessary language proposed at FAR 23.205(b).

Response: As discussed in the previous section A.5., the Councils have agreed to delete the proposed language that exemptions for life-cycle cost should be rare.

Furthermore, the proposed rule does not change the requirements to obtain the ENERGY STAR® label. The criteria of obtaining the ENERGY STAR® label apply equally to small and large businesses. The respondent offers no evidence that small businesses are unable to obtain the ENERGY STAR® label. Comments on the ability of a small business to obtain the ENERGY STAR® label should be addressed to the EPA and the Department of Energy and are outside the parameters of this rule. Therefore, the Councils re-affirm the statement in the preamble to the proposed rule, that the rule is not expected to significantly impact small businesses because the rule only emphasizes existing requirements. See also Section B., Regulatory Flexibility Analysis.

7. Clarify that prescription applies even if Government does not take title.

Comment: One respondent suggests clarifying the proposed FAR 23.207(b) to indicate that products furnished by contractors while performing at a Federally-controlled facility must meet the ENERGY STAR®/FEMP requirements regardless of whether the Government receives title at the end of contract performance.

Response: The Councils did not agree to any change to the proposed rule in response to this comment. Since no exclusions are listed, all energy consuming products furnished by a contractor at a Government facility are covered by the rule, whether or not the Government takes title. FAR 23.207(b) (now 23.206(b)) already makes it clear that we are not just applying the rule to

end products delivered by the Contractor and accepted by the Government.

8. Consistency of language between clause prescription, 52.213-4(b), and paragraph (b) of the clause.

Comment: One respondent points out that the clause prescription does not match the paragraph (b) of the clause 52.223-15. The respondent recommends changes to the clause as follows:

- (b)(1)—Change “Delivered” to “Delivered by the contractor”.

- (b)(3) and (4)—Combine into one paragraph to read “Specified in the design construction, renovation or maintenance of a facility, including any article, material, or supply to be incorporated into the facility or work, regardless of whether the designs, plans, or specifications utilized have been prepared by an architect-engineer.”

Response: The Councils reviewed the proposed language at 23.207, 52.213-4(b)(1)(viii) (which duplicates 23.207), and 52.223-15(b), and agreed to make the language consistent in the prescription and clauses.

The Councils concluded that the statement “delivered” was sufficient and not ambiguous. When discussing contractual requirements, “delivered” always applies to the contractor (or its subcontractors). Although a requirement for the contractor to deliver a particular item legally would require the contractor to ensure that any item delivered by a subcontractor met the same requirements, the Councils have added in paragraph (c) of the clause that the requirements of paragraph (b) apply to the contractor (including any subcontractors).

The Councils did not agree to any change to the phrase “furnished by the contractor.” There was no substantive inconsistency here between text and clause, and the term “furnished” could imply “furnished by the Government” as Government-furnished property, so including the term “by the contractor” makes it unambiguous. The Councils added language to include products “acquired by the contractor for use in performing services at a Federally-controlled facility” and products “furnished by the contractor for use by the Government.”

The Councils agreed to change prescription, 52.213-4, and paragraphs (b)(3) and (4) of the clause to clarify that “specified” applies to the design phase, and “incorporation” applies to the phase of construction, renovation, or maintenance. In addition, the word “building or work” is substituted for facility, because it is a defined term, used currently with regard to construction in Parts 22 and 25. The

definition of this term has been moved from 22.4 to Part 2, because it is used in more than one FAR part.

9. Rule should cover other energy savings.

Comment: One respondent recommends that the rule should be expanded to cover water conserving products and low standby power. Although the respondent recognizes that these issues could be addressed in another FAR case at a later time, the respondent points out advantages of combining these new ideas in this case, because of similarity of purpose and urgency of achieving energy efficiency more quickly.

Response: The underlying rationale for the current FAR case is implementation of Section 104 of the Energy Policy Act. Section 104 of the Act makes no mention of low standby power or water efficiency and such coverage is outside the scope of this case.

However, in considering whether such coverage would be necessary or desirable, the Councils have determined that low standby power is one of the FEMP energy attributes and is already included at FAR 23.203. Low standby power is addressed separately at FAR 23.203 because there is a separate Executive order related to low standby power. However, separate mention in the clause is unnecessary. If acquiring a product that has standby power requirements, one would be expected to deliver, furnish, or specify a product meeting the FEMP designation.

Water efficient products are also covered to some extent by FEMP and ENERGY STAR®. For example, FEMP covers faucets, shower heads, and urinals. Although water efficiency is not the primary focus of ENERGY STAR®, it is also one of the factors that is considered in rating the energy efficiency of such appliances as washing machines or dishwashers. To the extent that FEMP or ENERGY STAR® standards cover water efficient products, they are covered by the proposed FAR clause. If there is a need to expand the focus on water efficiency, it needs to be achieved through expansion of the coverage of water efficient products by ENERGY STAR® or FEMP.

10. Other changes to the proposed rule.

- “Energy-efficient product” is already defined in FAR Part 2, and within that definition, are the descriptions of ENERGY STAR® and FEMP. Therefore, the proposed definition of “FEMP-designated product” at FAR 23.201 and in the clause have been deleted, and the restriction on the meaning of the term

“product” has been added to the definition of “energy-efficient product” in FAR Part 2. This revised definition of “energy-efficient product” has been added to the clause.

- The website for FEMP has been updated, both in the text at FAR 23.204 (now 23.203) and paragraph (d) of the clause.

- The statutory cite has been added at 52.212-5(b)(26).

This is not a significant regulatory action and, therefore, is not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only emphasizes existing requirements. Whereas the Councils recognize that the rule may affect small entities performing contracts for those agencies that have not fully implemented the program in service and construction contracts, public comments did not indicate that the number of entities affected, or the extent to which they will be affected, will be significant. The rule may affect the types of products these businesses use during contract performance. Assistance (including product listings and recommendations) is available to all firms at the ENERGY STAR® and FEMP websites, <http://www.energystar.gov/products> and http://www1.eere.energy.gov/femp/procurement/eep_requirements.html, respectively. Options to comply with the requirements of the rule can be as simple as purchasing ENERGY STAR® or FEMP-designated products when performing service and construction contracts. The final rule has eliminated the one aspect of the proposed rule that was criticized in a public comment as having a potentially adverse impact on small businesses. No Initial or Final Regulatory Flexibility Analysis has, therefore, been performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 22, 23, 36, and 52

Government procurement.

Dated: November 16, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 22, 23, 36, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 22, 23, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order the definition “Building or work”; and revising the definition “Energy-efficient product” to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Building or work means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

* * * * *

Energy-efficient product— (1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency

criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) As used in this definition, the term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**22.401 [Amended]**

■ 3. Amend section 22.401 by removing the definition “Building or work”.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 4. Amend section 23.201 by revising paragraph (b) to read as follows:

23.201 Authorities.

* * * * *

(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8259b, 8262g, and 8287).

* * * * *

■ 5. Revise section 23.203 to read as follows:

23.203 Energy-efficient products.

(a) Unless exempt as provided at 23.204—

(1) When acquiring energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)—

(i) Agencies shall purchase ENERGY STAR® or FEMP-designated products; and

(ii) For products that consume power in a standby mode and are listed on FEMP’s Low Standby Power Devices product listing, agencies shall—

(A) Purchase items which meet FEMP’s standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase

items with the lowest standby wattage practicable; and

(2) When contracting for services or construction that will include the provision of energy-consuming products, agencies shall specify products that comply with the applicable requirements in paragraph (a)(1) of this section.

(b) Information is available via the Internet about—

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

23.204 [Redesignated as 23.205]

■ 6. Redesignate section 23.204 as new section 23.205.

■ 7. Add new section 23.204 to read as follows:

23.204 Procurement exemptions.

An agency is not required to procure an ENERGY STAR® or FEMP-designated product if the head of the agency determines in writing that—

(a) No ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the agency; or

(b) No ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into account.

■ 8. Add new section 23.206 to read as follows:

23.206 Contract clause.

Unless exempt pursuant to 23.204, insert the clause at 52.223–15, Energy Efficiency in Energy-Consuming Products, in solicitations and contracts when energy-consuming products listed in the ENERGY STAR® Program or FEMP will be—

(a) Delivered;

(b) Acquired by the contractor for use in performing services at a Federally-controlled facility;

(c) Furnished by the contractor for use by the Government; or

(d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 9. Amend section 36.601–3 by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

36.601–3 Applicable contracting procedures.

(a)(1) * * *

(2) Facility design solicitations and contracts that include the specification of energy-consuming products must comply with the requirements at subpart 23.2.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–5 by revising the clause date to read “(DEC 2007)”; redesignating paragraphs (b)(26) through (b)(38) as paragraphs (b)(27) through (b)(39); and adding a new paragraph (b)(26) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

(b) * * *
(26) FAR 52.223–15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).

* * * * *

■ 11. Amend section 52.213–4 by revising the clause date to read “(DEC 2007)”; redesignating paragraphs (b)(1)(viii) through (b)(1)(xi) as paragraphs (b)(1)(ix) through (b)(1)(xii); and adding a new paragraph (b)(1)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(b) * * *
(1) * * *
(viii) 52.223–15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b) (Unless exempt pursuant to 23.204, applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—
(A) Delivered;
(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(C) Furnished by the Contractor for use by the Government; or
(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

* * * * *

■ 12. Section 52.223–15 is added to read as follows:

52.223–15 Energy Efficiency in Energy-Consuming Products.

As prescribed in 23.206, insert the following clause:

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)

(a) *Definition.* As used in this clause—
Energy-efficient product— (1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for—

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html.

(End of clause)

[FR Doc. 07–5799 Filed 11–21–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, and 52

[FAC 2005–22; FAR Case 2006–007; Item II; Docket 2007–0001; Sequence 1]

RIN 9000–AK67

Federal Acquisition Regulation; FAR Case 2006–007, Contractor Code of Business Ethics and Conduct

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the requirements for a contractor code of business ethics and conduct and the

display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Posters.

DATES: *Effective Date:* December 24, 2007

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–22, FAR case 2006–007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 7588, February 16, 2007, to address the requirements for a contractor code of business ethics and conduct and the display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Posters. The original comment period closed on April 17, 2007, but on April 23, 2007, the comment period was reopened and extended to May 23, 2007. We received comments from 42 respondents plus an additional late comment from one of the initial respondents. However, 15 of the respondents were only requesting extension of the comment period. The remaining 27 public comments are addressed in the following analysis.

The most significant changes, which will be addressed, are—

- The clause requirement for a formal training program and internal control system has been made inapplicable to small businesses (see paragraph 5.c.v. and 11. of this section);

- The contracting officer has been given authority to increase the 30 day time period for preparation of a code of business ethics and conduct and the 90 day time period for establishment of an ethics awareness and compliance program and internal control system, upon request of the contractor (see paragraph 6.c. of this section);

- The requirements in the internal control system relating to “disclosure” and “full cooperation” have been deleted, and moved to FAR Case 2007–006 for further consideration (see paragraphs 2.e. and 6.d. of this section);

- The clause 52.203–XX with 3 alternates has been separated into 2 clauses, one to address the contractor code of business ethics and conduct, and one to address the requirements for hotline posters (see paragraphs 3.h. and 10.b. of this section); and

- A contractor does not need to display Government fraud hotline posters if it has established a mechanism by which employees may

report suspected instances of improper conduct, and instructions that encourage employees to make such reports (see paragraph 7.a. of this section).

1. General support for the rule.

Comments: The majority of respondents expressed general support for the rule. These included consultants, industry associations, a non-profit contractor, a construction contractor, inspectors general and interagency IG working groups, other Government agencies, and individuals. Many respondents were laudatory of the rule in general. For example, one respondent considered the proposed rule to be a "good attempt" and another considered it to be "an outstanding, well thought-out and needed policy change." Others identified particular benefits of the proposed rule, such as—

- Reduce contract fraud;
- Reduce waste, fraud, abuse and mismanagement of taxpayers' resources;
- Enhance integrity in the procurement system by strengthening the requirements for corporate compliance systems; and
- Promote clarity and Government-wide consistency in agency requirements.

Response: None required.

2. General disagreement with the rule as a whole.

Although all respondents agree that contractors should conduct themselves with the highest degree of integrity and honesty, not all agree that the proposed rule is taking the right approach to achieve that goal.

a. Ineffective.

Comment: One respondent considers that this rule will not effectively correct the ethics and business conduct improprieties. Other respondents note that a written code of ethics does not ensure a commitment to compliance with its provisions.

Response: There is no law, regulation, or ethics code that ensures compliance. Laws, regulations, and ethics codes provide a standard against which to measure actions, and identify consequences upon violation of the law, regulation, or ethics code.

b. Unnecessary or duplicative, potentially conflicting.

Comment: One respondent views the rule as unnecessary, because it adds "a further level of compliance and enforcement obligations where contractors already are or may be contractually or statutorily obliged to comply." Another respondent comments that the rule is duplicative of other similar requirements. Furthermore, meeting multiple

requirements for the same purpose can cause conflicts.

Response: This rule is not duplicative of existing requirements known to the Councils. The rule requires basic codes of ethics and training for companies doing business with the Government. Although many companies have voluntarily adopted codes of business ethics, there is no current Government-wide regulatory requirement for such a code. For DoD contracts, the Defense Federal Acquisition Regulation Supplement (DFARS) recommends such a code, but does not make it mandatory.

Legislation such as the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204), cited by some of the respondents, applies only to accounting firms and publicly traded companies. Sarbanes-Oxley focuses on auditor independence, corporate governance, internal control assessment, and enhanced financial disclosure. Sarbanes-Oxley provides broad definition of a "code of ethics" but does not specify every detail that should be addressed. It only requires publicly-traded companies to either adopt a code of ethics or disclose why they have not done so.

The respondents did not identify any specific points of conflict between this rule and other existing requirements. Since this requirement is broad and flexible, capturing the common essence of good ethics and standards of conduct, the Councils consider that it should reinforce or enhance any existing requirements rather than conflict with them.

c. Negative effect on current compliance efforts.

Comment: According to one respondent, the rule may have a "chilling effect" on current compliance efforts and may create a fragmented approach to standards of conduct.

Response: As stated in the prior response, this rule should enhance current compliance efforts.

d. Vague and too broad.

Comment: Several respondents consider the rule too vague and broad, so that it is open to different interpretations.

Response: The rule is intended to allow broad discretion. The specific requirements of the rule will be further addressed under paragraph 6. of this section.

e. Change in role of Government.

Comment: One respondent fears that the rule will "fundamentally change the Government's role in the design and implementation of contractor codes and programs" because it moves from "the well-established principles of self-governance and voluntary disclosure" to "contractual prescriptions and

potentially mandatory disclosure." This respondent states that the proposed rule is not just a minor modification of existing policy. Rather, it "would change far more than the FAR Councils have acknowledged."

Response: This rule does constitute a change. The Councils are requiring that contractors establish minimum standards of conduct for themselves. However, the rule still allows for flexibility and, where appropriate, contractor discretion. The Councils have deleted any clause requirement relating to mandatory disclosure but it will be considered as part of the new FAR Case 2007-006 (72 FR 64019, November 14, 2007).

f. Unduly burdensome and expensive for contractors.

Comment: One respondent thinks that this rule imposes significant new requirements on contractors. Other respondents consider the requirement unduly burdensome for the contractors. They think the rule will be a disincentive to doing business with the Government.

Response: Most companies already have some type of ethics code. The mandatory aspects of this rule do not apply to commercial items, either at the prime or subcontract level. The rule has been changed to lessen the impact on small businesses (see paragraph 11. of this section).

g. Impact on small business.

Comment: Several respondents note the impact on small businesses.

Response: See detailed discussion of impact on small business at paragraph 11. of this section and changes to the rule to lessen that impact.

h. Difficult to administer for Government.

Comment: Several respondents consider the rule expensive and impractical to administer for the Government. One respondent comments on the further paperwork burdens on contracting officials, and that it cannot be effectively administered.

Response: There are no particularly burdensome requirements imposed on the Government by this rule. Review of contractors' compliance would be incorporated into normal contract administration. The Government will not be reviewing plans unless a problem arises.

i. Rule should be withdrawn or issue 2nd proposed rule.

Comment: One respondent requests that the rule be withdrawn. Several respondents recommend significant redrafting of the proposed rule and an opportunity to comment on a second proposed rule that makes important revisions.

Response: Although the Councils have made significant revisions to the proposed rule to address the concerns of the public, the revisions do not go beyond what could be anticipated from the text of the proposed rule and the preamble to the proposed rule. The changes are in response to the public comments. They do not rise to the level of needing republication under 41 U.S.C. 418b. However, the Councils published a new proposed rule on mandatory disclosure under FAR case 2007-006.

3. Broad recommendations.

a. Should not cover ethics.

Comment: One respondent recommends not using the term “ethics” throughout the rule. Contractors can and should develop and train employees on appropriate standards of business conduct and compliance for its officers, employees and others doing (or seeking to do) business with the Federal Government. However, contractors typically do not teach “ethics” to their employees.

Response: The term “ethics” is a term currently used throughout the FAR (reference FAR 3.104 and 9.104-1(d)) and is not considered to be an unfamiliar term to the professional business world. However, the Councils have modified the term to “business ethics,” consistent with usage in other FAR parts.

b. 2005 Federal Sentencing Guidelines.

Comments: Several respondents comment that the requirements of an internal control system should be like the United States Sentencing Commission 2005 Federal Sentencing Guidelines (Ch. 8 section 8B2.1), either by direct incorporation into the FAR or by reference. The proposed rule already included 8B2.1(b)(2) and (b)(3). One respondent is concerned that if they are not identical, businesses (especially small businesses) will believe they have met the compliance requirements of the U.S. Government by following the FAR; this will create a false sense of security. This respondent believes that the FAR requirements fall short when compared to the corporate sentencing guidelines. The respondent also points out that there are no clauses applying to smaller contracts, or to commercial item contracts, although companies with these contracts are still subject to the sentencing guidelines. Key requirements of the guidelines are omitted from the rule, such as knowledgeable leadership, exclusion of risky personnel, and individuals with day-to-day responsibility for implementing compliance systems.

Several respondents ask for a specific reference to be made in the rule to the U.S. Sentencing Guidelines.

• First, in this area of corporate compliance, it could be confusing if it appeared that the FAR was setting a different standard than the Sentencing Commission and the Federal courts, which implement the Guidelines.

• Second, the Sentencing Guidelines are subject to routine reexamination and revision by both the Sentencing Commission after substantial study and public comment, and the Federal courts in specific cases, allowing for adjustments to this proposed rule without having to open a new FAR case.

Therefore, the respondent believes that the Guidelines should serve as the baseline standard for a contractor’s code of ethics and business conduct. By referencing the Guidelines, we would be able to ensure that the Federal Government speaks with one voice on corporate compliance.

Response: The initiators of the case asked that the FAR mirror the DFARS. The DFARS provisions are very similar to the Sentencing Guidelines and are adequate for this final rule. It would require public comment to include additional requirements from the Sentencing Guidelines as requirements in the FAR. The request to more closely mirror the Sentencing Guidelines is being considered as part of a separate case, FAR 2007-006.

c. Make pre-award requirement.

Comments: One respondent suggests making the rule a pre-award requirement, to ensure that only contracts are awarded to firms electing to conduct business in an ethical manner, consistent with FAR Part 9. The respondent believes that once contractors choose to implement the program with employees acknowledging the consequences of violations, it becomes a self-perpetuating program, requiring no additional actions by the contractor other than certification for new awards.

Response: FAR Part 9 (9.104-1(d)) already provides that a prospective contractor must have a satisfactory record in integrity and business ethics as a standard for determining a prospective contractor responsible as a pre-award requirement. The Councils believe that the respondent’s suggestion would encumber or circumvent new contract awards which the Government wishes to encourage. Therefore, no change to the rule has been made.

d. Hire certified management consultants (CMCs).

Comments: One respondent recommends that the rule be amended to encourage Government agencies that

are hiring consultants to hire Certified Management Consultants or those who ascribe or commit to a code of ethics from an acceptable professional organization such as the Institute of Management Consultants for all Government contracts, including consulting and/or advisory services.

Response: It is the contractors’ responsibility to comply with the rule and establish a code of business ethics. The Government cannot endorse any particular business or organization as an appropriate contractor. Therefore, the Councils have not changed the rule in response to this comment.

e. Use quality assurance systems.

Comments: One respondent states that the rule does not lead to future improvements in compliance methods. The respondent recommends that, where possible, corporate compliance systems might be bolstered by drawing on and meshing compliance with existing quality assurance systems. Traditional quality assurance systems, used to capture errors, may be applied to corporate compliance systems to catch and root out ethical and legal failures.

Response: The cost of additional controls may or may not balance with the benefit received and should be carefully considered prior to implementation. While a contractor may elect to draw on existing systems as an additional internal control, the Councils have left the rule unchanged in this regard and do not specifically require use of existing quality assurance systems.

f. Establish rewards rather than punishments.

Comments: One respondent states that the regulation offers an opportunity to establish a regulation that rewards contractors who behave appropriately, contradicting the Federal Government’s “. . . mindset to penalize the wrong doer rather than rewarding the desired behavior.”

Response: The Councils do not agree that this regulation should include a special “reward” for contractors who behave ethically. The Government “rewards” contractors who perform satisfactorily through payment of profit on the contract, favorable past performance evaluations, and the potential award of additional contracts.

g. Should not be mandatory - be more like the DFARS.

Comments: Several respondents expressed the view that the FAR rule should be modeled on the DFARS rule at Subpart 203.70, which is discretionary rather than mandatory. It states that contractors should have standards of conduct and internal

control systems. One of these respondents believes that the proposal to impose contractual mandates is misguided.

Response: The discretionary rule in the DFARS is no longer strong enough in view of the trend (U.S. Sentencing Guidelines and the Sarbanes-Oxley Act) to increase contractor compliance with ethical rules of conduct. According to the Army Suspension and Debarment Official, the majority of small businesses that he encounters in review of Army contractor misconduct, have not implemented contractor compliance programs, despite the discretionary DFARS rule.

However, with regard to the requirement for posters when the contractor has established an adequate internal reporting mechanism, see paragraph 7. of this section.

h. More logical sequence for procedures and clause, and delete opening paragraph of procedures.

Comment: One respondent recommends that the proposed changes at 3.1003 be rewritten in a logical sequence. This respondent also recommended that the clause paragraphs should be rewritten in logical sequence with the alternate versions sequentially deleting the last paragraphs instead of creating the delete and renumber provisions.

Another respondent recommends deletion of the opening paragraph at 3.1003 because following the procedures does not ensure that the policies are implemented.

Response: The procedures section has been completely rewritten to reduce redundancy and inconsistencies. The Councils have separated the clause into two clauses, which makes the second point about logical order in the clause moot. The opening paragraph at 3.1003 has been deleted.

4. Policy.

a. "Should" vs. "shall."

Comment: At least four respondents comment on an inconsistency between "should" in the policy and "shall" elsewhere. Section 3.1002, Policy, states that contractors "should" have a written code of ethics, etc, while the Section 3.1003, Procedures, and the contract clause at 52.203-13 makes the programs mandatory unless the contract meets one of several exceptions.

Response: The inconsistency was deliberate. The policy applies to all contractors but the specific mandatory requirements of the clause apply only if the contract exceeds \$5 million and meets certain other criteria. Section 3.1003 has been rewritten as "Mandatory requirements" to clearly

distinguish it from the policy, which applies to all Government contractors.

b. "Suitable to" vs. "commensurate with."

Comment: One respondent comments that the policy uses the phrase "suitable to" the size of the business whereas the clause uses the term "Commensurate with."

Response: The phrase "commensurate with" has been deleted from the clause.

5. Exceptions—general.

Comments: Two respondents commented on the exceptions to the rule in general.

- The rule be revised to list exceptions separately.

- The key exceptions to the rule in subpart 3.1003(a) and 3.1004(a)(1) are not consistent. 3.1003(a) exempts contracts awarded under FAR Part 12 from the required employee ethics and compliance-training program and internal control system, or displaying the fraud poster, but it does not list the exemption from having a written code of business ethics. 3.1004(a)(1) clearly exempts contracts awarded under FAR Part 12 from all of the clause requirements.

Response: The Councils partially concur with the respondents' recommendations. The Councils have revised the final rule to—

- Move the exceptions into the clause prescription; and
- Delete the conflicting wording in the proposed rule at 3.1003(a).

a. Commercial items.

i. Concur with exception for commercial items.

Comment: Two respondents agree that the rule should exclude contracts awarded under FAR Part 12. One respondent agrees with the intent of the rule concerning consistent standards of ethics and business conduct for Federal contracts, and the exclusion FAR 12. Another respondent agrees that all contractors should have written codes of conduct as a good business practice code of, but believes the FAR Part 12 exemption should be from the full coverage of the rule, including the written code of conduct requirement.

Response: The Councils note that the FAR Part 12 exemption does include exemption from the requirement for a written code of conduct (see introductory paragraph at beginning of this Section 5.)

ii. Disagree with exception for commercial items.

Comments: Three respondents comment that the rule should apply to commercial contracts. They note that although other Federal agencies currently maintain policies similar to the rule, none of the agencies exclude

contracts for commercial services. One respondent recommends that the rule apply to commercial item contracts or require that such contractors should have compliance systems in place, especially since such firms fall under the Sentencing Commission's general expectation that corporations will put appropriate compliance systems in place. Another respondent is concerned that the "errant behavior of contractors" will not stop at contracts awarded under FAR Part 12 and by carving out a major segment of acquisitions to which the rule will not apply, the rule sub-optimizes its intended effect of reducing unethical behavior.

Response: The Councils do not agree the clause should be included in contracts awarded under Part 12. Requiring commercial item contractors to comply with the mandatory aspects of the rule would not be consistent with Public Law 103-355 that requires the acquisition of commercial items to resemble customarily commercial marketplace practices to the maximum extent practicable. Commercial practice encourages, but does not require, contractor codes of business ethics and conduct. In particular, the intent of FAR Part 12 is to minimize the number of Government-unique provisions and clauses. The policy at 3.1002 of the rule does apply to commercial contracts. All Government contractors must conduct themselves with the highest degree of integrity and honesty. However, consistent with the intent of Pub. L. 103-355 and FAR Part 12, the clause mandating specific requirements is not required to be included in commercial contracts.

iii. Disagree with exception for commercial items if contract is for advisory and assistance services.

Comment: One respondent believes that the rule should apply to all advisory and assistance services, some of which are commercial items.

Response: The Councils have not agreed to make further distinctions between the types of contracts to which the rule should apply. For the same reasons stated in answer to the prior comment, the Councils do not agree to application of this rule to advisory and assistance services that are commercial items.

b. Outside U.S.

Comment: Two respondents comment on the exception for contracts to be performed outside the United States, mostly from a definitional perspective.

i. Supporting office in the U.S.

Comment: One respondent suggests that the meaning of "work currently performed outside the United States" needs to be better defined. The

proposed rule is unclear whether offices in the United States supporting the foreign project would be required to comply.

Response: The term “performed outside the United States” is used throughout the FAR several dozen times. There is never any explanation regarding possible application to offices in the United States supporting the foreign project. If part of a contract is performed in the United States and part of it is performed outside the United States, then the part performed in the United States is subject to whatever conditions apply to work performed in the United States.

ii. Outlying areas.

Comments: One respondent specifically endorses the exception for contracts performed outside the United States. However, the respondent requests clarification of the term “outlying areas.”

Response: This term is defined in FAR 2.101.

c. Dollar threshold.

Eight respondents commented on the rule’s \$5 million threshold.

i. Should not allow agencies to require posters below \$5 million.

Comments: One respondent does not support the requirement at the 3.1003(c) that authorizes agencies to establish policies and procedures for the display of the agency fraud hotline poster for contracts below \$5 million.

Response: Federal agency budgets and missions vary and are distinct. Some agencies already require display of the hotline posters below the \$5 million threshold. For this reason, agencies that desire to have contractors display the hotline poster should be allowed to implement the program in a way that meets their needs. Therefore, the Councils have not made any change to the rule in response to this comment.

ii. There should be no threshold.

Comment: Three respondents suggest removing the \$5 million threshold and requiring all contractors to comply with the rule.

In addition, the late supplemental comment received from the U.S. Government Office of Ethics expressed concern that a specific instance of conflict of interest problems occurred with two contracts that would not meet the \$5 million threshold.

Response: The Councils do not agree with removal of the threshold. Removing the \$5 million dollar threshold and requiring all contractors to comply with the rule is not practical. At lower dollar thresholds, the costs may outweigh the benefits of enforcing a mandatory program. Nevertheless, the

policy at 3.1002 applies to all contractors.

The Councils note with regard to the OIG audit report ED-OIG/A03F0022 of March 2007, that the contractor in question did not include the required conflict of interest clauses in its subcontracts and consulting agreements. This is the essence of the problem rather than the lack of a contractor code of ethics and compliance and internal control systems in contracts less than \$5 million.

iii. How is application of the threshold determined?

Comment: One respondent is concerned that the rule fails to state how the \$5 million threshold for the application of the clause is to be determined and questions if the threshold should apply to contracts with multi-years as the option years for such contracts may not be awarded, thereby impacting the total value of the contract award. The respondent recommends that the threshold apply to contracts with one term and only to the base year in contracts with options.

Response: FAR 1.108(c) provides uniform guidance for application of thresholds throughout the FAR.

iv. \$5 million threshold is too low.

Comments: One respondent is concerned that many companies have not implemented programs that would adequately meet the rule and that the \$5 million threshold is too low. It will therefore serve as a disincentive for many small and medium-sized companies who may not be willing or able to comply with the requirement to implement training and control systems.

Response: The \$5 million threshold is consistent with the threshold established by the U.S. Department of Defense (DoD) for contractor ethics. DoD contracts with the largest number of Federal contractors. Therefore, the Councils have not made any change to the threshold for application of the clause. For revisions made to lessen the impact on small business see paragraph 11. of this section.

v. Alternate standards.

Comment: One respondent recommends that the rule focus on the size of the firm and its volume of Federal work over a more significant period of time, and that SBA size standards and some proportion of the work the contractor performs be used as determining factors.

Response: The Councils have revised the final rule to limit the requirement for formal awareness programs and internal control systems to large businesses, while retaining the \$5 million threshold for application of the clause. The clause needs to be included,

because it might flow down from a small business to a large business, from whom full compliance would be required. Although the proposed rule allowed contractors to determine the simplicity or complexity and cost of their programs “suitable to the size of the company and extent of its involvement in Government contracting,” this left many respondents unsure as to what would be acceptable (see also paragraph 11. of this section).

Comment: One respondent is concerned that the rule does not adequately identify which contractors should be covered by the requirements and suggests that the kind of work and responsibilities of the contractor is a better indicator of the need for ethics rules than the size of the contract award.

Response: As a practical matter, all contractors doing business with the Government should have a satisfactory of integrity and business ethics, irrespective of the work the contractor is performing or the dollar amount of the contract. However, given the volume and complexities of work contractors perform for the Government, it is not practical to apply the rule on the basis of a contractor’s work or responsibilities. It is more realistic for the Government to establish monetary thresholds and/or size standards to ensure its widest impact and viability.

d. Performance period.

Comments: Five respondents commented on the 120-day performance period, considering that 120 days is too short, because it takes longer than that to implement a compliance program, including an internal control system. Even if the compliance programs can be implemented in the required timeframe, that leaves as little as 30 days between implementation of the program and completion of the contract. The 120-day performance period operates as a disincentive to small and medium size companies. Some respondents recommend using a minimum of one year for the period of performance.

Response: The Councils do not concur that 120 days is too short. Although on an initial contract it may take some time to get the program established, on follow-on contracts the program will already be in operation. Many contracts responding to emergency situations are of short duration, and are the very type of contract that needs to be covered. The contracting officer is given leeway in the final rule to expand the 90-day period (See paragraph 6.c. of this section).

e. Other exceptions.

Comment: Two respondents submitted comments suggesting an expansion to the list of exceptions.

One respondent recommends two additional exceptions to the language at 3.1003, to make it clear that the new subpart is only applicable for new, open market, contract awards or agreements. Additional exceptions would include “delivery or task orders placed against GSA Federal Supply Contracts, using Part 8 procedures,” and “orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5, Indefinite Delivery Contracts.”

Another respondent recommends that research and development contracts issued to universities and other nonprofit organizations be exempt from the rule. Research institutions uniformly have business codes of conduct and internal controls to enable the reporting of improper conduct as well as disciplinary mechanisms (reference OMB Circular A-110). In addition, the National Science and Technology Council’s Committee on Science is currently developing voluntary compliance guidelines for recipients of Federal research funding from all agencies across the Federal Government, to help recipients address the prudent management and stewardship of research funds and promote common policies and procedures among the agencies.

Response: The rule is not applicable to existing contracts. Therefore, an exception for delivery or task orders placed against GSA Federal Supply Contracts or issued under existing Indefinite Delivery Contracts is not necessary.

While universities and other nonprofit organizations may have existing guidelines, policies and procedures for business codes of conduct, there are many benefits of including a clause in new solicitations and contracts. The rule will strengthen the requirements for corporate compliance systems and will promote a policy that is consistent throughout the Government. Therefore, the Councils have not made any changes to the rule in this regard, although the burden on small businesses has been reduced (see 52.203-13(c)).

6. Contractor program requirement.

a. Lack of specific guidelines.

Comments: Various respondents express the view that the rule should be more specific about the required programs.

- Some provided examples of what should be included.
- One was concerned that contractors have increased risk of False Claims Act because when seeking payments under fixed-price construction contracts, they would have to certify that they sought

compensation “only for performance in accordance with the specifications, terms, and conditions of the contract”, including the new and highly subjective requirements in the proposed rule.

- One recommended that the FAR rule should be held until GAO finishes its study of contractor ethics at DoD.

- Another recommended that the Councils should establish a Government-industry panel to develop a minimum suggested code of ethics and business conduct based upon the best practices many contractors already employ.

Response: This rule gives businesses flexibility to design programs. Many sample codes of business ethics are available on-line. The specific issues that should be addressed may vary depending on the type of business. To provide more specific requirements would require public comment. The new FAR Case 2007-006 will propose the imposition of a set of mandatory standards for an internal control system. The Councils will welcome suggestions for further FAR revisions when the GAO finishes its study.

b. Compliance.

Comment: Several respondents questions how the contracting officer would verify compliance with the requirements. There is no requirement for submission to the Government. The internal control system states what should be included. Are these mandatory requirements or is it the judgment of the contracting officer?

Response: The contracting officer is not required to verify compliance, but may inquire at his or her discretion as part of contract administrative duties. Review of contractors’ compliance would be incorporated into normal contract administration. The Government will not be routinely reviewing plans unless a problem arises. The Government does not need the code of ethics as a deliverable. What is important is that the Contractor develops the code and promotes compliance of its employees.

“Should” provides guidance and examples, rather than a mandatory requirement. The contracting officer does not judge the internal control system, but only verifies its existence.

c. Time limits.

Various suggestions were made about the time allotted to develop a code of ethics.

- One respondent recommends 180 days for the code.
- Another recommended an extension to 60 days after contract award.
- One respondent states that it takes significantly longer than 30 days to put a written code of conduct in place. In

order to be successful, the process should include an analysis of what should be in the code, drafting the code, stakeholder input, publication, and communication of the resulting code. This is difficult to accomplish in less than 6 months and usually requires at least a year to do well.

The same respondents also commented about whether 90 days is sufficient to develop a training program and internal control systems. For example, one respondent comments that compliance training programs must be well designed and relevant to be effective. Establishing an internal-control system also takes significantly more than 90 days. According to the respondent, the rule would yield “cookie-cutter” compliance, devoid of any real commitment to ethics and compliance.

Response: Although the Councils consider that the specified time periods are generally adequate, the Councils have revised the clause so that companies needing more time can request an extension from the contracting officer. The Councils also note that an initial code and program can be subject to further development over time, as experience with it suggests areas for improvement.

d. Internal Control Systems—mandatory disclosure and full cooperation.

Comments: Six respondents consider the requirements for the internal control system regarding disclosure to the Government and full cooperation with the Government to be problematic. Reporting suspected violations of law is troubling and requested more information on the trigger to the requirement. One respondent expresses concern with possible violations of constitutional rights associated with the disclosures.

Other respondents are concerned that “full cooperation” can force companies to relinquish or waive the attorney-client privilege. One respondent requests that the preamble state that full cooperation does not waive attorney-client privilege or attorney work product immunity.

Another respondent recommends expansion of the full cooperation requirement to cover audits. Information received by the OIG may precipitate an audit, rather than a criminal investigation.

Response: The Councils note that the most controversial paragraphs (paragraphs (c)(2)(v) and (vi) in the proposed rule) were not mandatory, but were listed as examples of what a contractor internal control system should include. The mandatory

disclosure requirement in paragraph (c)(1)(i) of the proposed rule was not clear about disclosure to whom. The Councils have removed the disclosure requirement at paragraph (c)(1)(i) of the proposed clause and the examples at (c)(2)(v) and (vi) from this final rule. These issues were included for further consideration in the proposed rule issued for public comment under FAR Case 2007-006.

7. Display of posters.

a. Agency posters.

i. Government posters are unnecessary, if the contractor has internal reporting mechanisms.

Comments: Several respondents do not agree that Government hotline posters should need to be displayed if the contractor has its own code of ethics and business conduct policy and processes already in place to conform to the DFARS rule.

One respondent cites DFARS 203.7001(b), which recognizes and permits companies to post their own internal hotline poster, in lieu of an agency Inspector General (IG) hotline poster, for employees to have an outlet to raise any issues of concern. The respondent believes this coverage is adequate and there is no need to impose an additional requirement to display agency IG hotline posters.

Another respondent states that the rule that requires all Federal contractors to post agency hotlines would deny such contractors the opportunity to funnel problems through their internal control systems and frustrate at least much of the purpose of establishing such systems. One respondent states that companies want an opportunity to learn about internal matters first and to be in the best position to take corrective action.

Another states that while the agencies currently all mandate that their contractors display a fraud hotline, none mandate that their contractors display a Government hotline. DoD, Veterans Administration, and Environmental Protection Agency currently require their contractors to post their agency hotlines unless they have "established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instruction that encourage employees to make such reports." Several other respondents recommend that the FAR Councils take the same approach.

Response: Although the proposed rule did not prevent contractors from posting their own hotline posters, the Councils have determined that it will fulfill the objective of the case to mirror DFARS 252.203-7002, Display of DoD Hotline Poster, *i.e.*, display of the Government

posters is not required if the contractor has established an internal reporting mechanism by which employees may report suspected instances of improper conduct along with instructions that encourage employees to make such reports.

ii. Too many posters are unnecessary and potentially confusing.

Comments: Several respondents believe that requiring all contractors to display the hotlines for all Federal agencies for which they are working—without regard to the number of such agencies, or the contractors' own efforts to encourage their employees to report any evidence of improper conduct—would have several negative and unintended consequences. Rather than facilitate reporting, multiple postings could confuse employees. To which agency should they report a particular problem? Adding agency-specific requirements to existing compliance programs dilutes the impact and message of the existing program and will likely lead to confusion among professionals. A bulletin board with myriad compliance references will be confusing at best.

Response: Each agency's IG may require specific requirements and information for posters. There is no central telephone number or website that serves as the hotline for all agency IGs. However, under the final rule, if the company has its own internal reporting mechanism by which employees may report suspected instances of improper conduct along with instructions that encourage employees to make such reports, there is no need to hang multiple agency posters.

iii. Responsibility for determining the need for displaying an agency IG Fraud Hotline Poster?

Comment: Several respondents note that the Inspector General Act of 1978 gives the agency's IG (not the agency) the responsibility for determining the need for, and the contents of, the fraud hotline poster.

Response: The Councils agree that it is not the agency that decides the need for the poster, but the agency IG. The Councils have made the requested change at FAR 3.1003(b).

b. Department of Homeland Security (DHS) Posters.

i. Only when requested by DHS?

Comment: One respondent states that in the **Federal Register** background and in the proposed language at 3.1003(d)(2) the guidance seems to imply that the display of the DHS poster is required for contracts funded with disaster assistance funds, when and only when so requested by DHS.

Response: This interpretation is correct. The final rule clarifies that it is the DHS Inspector General that requests use of the posters.

ii. Different poster for each event is not best approach.

Comment: One respondent believes that the contractor's own hotline, if one exists, is better suited to providing a mechanism for employees to report concerns than a different poster for each event.

Response: DHS Inspector General must determine whether to use event-specific or broad posters to cover multiple events. However, the Councils have revised the final rule to permit use of the Contractor's own hotline poster if the contractor has an adequate internal control system.

8. Remedies.

Comments: Four comments concerning proposed remedies were received. In general, two of the respondents questioned consistency in application, consistency, and due process, and two were generally opposed to the remedies.

- One respondent asks whether there "should be remedies for non-compliance when the contractor is not required to affirm or otherwise prove compliance, and when there is no adequate guidance for the CO regarding a determination of compliance?" Without guidance, contracting officers in different agencies may make different assessments of the same contractor.

- One respondent "cannot find any rational relationship between the proposed "remedies" and any damages or other losses that the Government might suffer from any breach of the new contractual requirements ethics codes and compliance programs." This respondent strongly recommends that the contractual remedies be limited to such equitable measures as may be necessary to bring the contractor into compliance with its contract obligations to implement certain procedures, and omit any monetary penalties.

- One respondent expressed a similar concern that the remedies "are improper, excessive and unwarranted."

- One respondent requests provision of due process with a proposal to include the following text; "Prior to taking action as described in this clause, the Contracting Officer will notify the Contractor and offer an opportunity to respond."

Response: The Councils have decided that remedies should not be specified in the clause. The FAR already provides sufficient remedies for breach of contract requirements.

9. Flowdown.

a. Objections to rule also apply to flowdown.

Naturally, those respondents that oppose the rule in general or in particular, will also oppose its flowdown in general or in particular. For example,

• *Comment:* One respondent recommends exempting this requirement for subcontracts less than one year in length, rather than 120 days.

Response: See discussion in paragraph 5.d. of this section.

• *Comment:* Another respondent states that this requirement will negatively impact universities, especially given the flow-down requirements for prime contracts. This respondent recommends that research and development contracts issued to universities and other nonprofit organizations should be exempt from this proposed rule.

Response: See discussion at paragraph 5.e. of this section.

• *Comment:* Another respondent states that the rule has not estimated the number of small business subcontractors that will be adversely impacted by this requirement.

Response: See discussion at paragraph 11. of this section.

b. Rationale for the flowdown.

Comment: One respondent states that there is no rationale provided for this troubling and perplexing flowdown requirement and would like it to be deleted from the rule. None of the agencies currently require any flowdown to subcontractors.

Response: The same rationale that supports application of the rule to prime contractors, supports application to subcontractors. Meeting minimum ethical standards is a requirement of doing business with the Government, whether dealing directly or indirectly with the Government. The rule does not apply to contracts/subcontracts less than \$5 million, exempts all commercial contracts/subcontracts, and the final rule reduces the burden on small business, whether prime or subcontractor.

c. Implementation.

Comment: One respondent has questions about the implementation of the flowdown. What is a subcontract—does it include purchase orders? The Government and the construction industry have a different concept of “subcontract.” They are concerned that the meaning of “subcontract” is therefore far from clear to general construction contractors and their subcontractors. Are prime contractors expected to distinguish subcontracts for commercial items from subcontracts for other goods and services?

Response: This issue is not specific to this case. Sometimes construction firms think that “subcontract” does not include purchase orders. The FAR does not make this distinction. The intent is that the flowdown applies to all subcontracts, including purchase orders. Prime contractors are expected to distinguish subcontracts for commercial items from subcontracts for other goods and services, not only for this rule but for many other FAR requirements (see FAR clause 52.244–6, Subcontracts for Commercial Items, which is included in all solicitation and contracts other than those for commercial items).

d. Enforcement.

Comment: Several respondents are concerned with how the flowdown requirement will be enforced. One respondent is concerned that prime contractors should not be responsible for subcontractors’ compliance with this requirement. Monitoring of subcontracts would impose a significant new cost on prime contractors. Another respondent requests that the rule be revised to clarify that primes are not responsible for monitoring subcontractor compliance. This respondent is particularly concerned about the impracticality of a small or medium-sized business supervising the compliance of major subcontractors.

Response: The contractor is not required to judge or monitor the ethics awareness program and internal control systems of the subcontractors—just check for existence. The difficulty of a small business concern monitoring a large business subcontractor is true with regard to many contract requirements, not just this one. The Councils plan to further address the issue of disclosure by the subcontractor under the new FAR Case 2007–006.

10. Clause prescriptions.

a. Extraneous phrase.

Comment: Several respondents note that something is wrong with the following phrase in 3.1004(a)(1)(i): “...or to address Contractor Code of Ethics and Business Conduct and the display of Federal agency Office of the Inspector General (OIG) Fraud Hotline Poster”.

Response: The extraneous phrase has been removed from the final rule.

b. Alternates.

Comment: One respondent says that what “triggers the insertion of Alternate I or II clause language is ambiguous in the text of the Policy and Procedures sections of the rule and the confusion is compounded when read with the language used in the clause.”

One respondent comments that if the contract period of performance is less than 120 days and the agency has not

established a requirement for posting at a lower dollar level, there is no requirement to include the clause; in this case Alternate II is never invoked. Another respondent recommends at 3.1004(c)(2) changing “at a lesser amount” to “for contracts valued at \$5 million or less”.

Response: The Councils have decided to use two separate clauses, rather than one clause with alternates. The conditions for use of the alternates were so diverse, that it was impossible to comply with the FAR drafting conventions that the prescription for the clause should include both the requirements for the basic clause and any alternates. Although the Councils do not agree with the respondent (because the conditions are connected by “or” rather than “and”), any ambiguity in the prescription for Alternate II has been eliminated by the use of two clauses. The language at 3.1004(c)(2)(now 3.1004(b)(3)(ii)) has been clarified.

11. Regulatory Flexibility Analysis.

a. Impact on small business requires regulatory flexibility analysis.

Comment: Several respondents note that the rule will have a substantial impact on small business. The SBA Chief Counsel for Advocacy commented that the Councils should therefore publish an Initial Regulatory Flexibility Analysis. The SBA Chief Counsel for Advocacy points out that the minimal set-up cost for the ethics program and internal control system would be \$10,000, according to one established professional organization; there would be further costs for maintaining the system, periodic training, and other compliance costs.

Another respondent asks how the finding that “ethics programs and hotline posters are not standard commercial practice” squares with the claim that the proposed rule “will not have a significant impact on a substantial number of small entities”. The respondent notes the absence of any cost estimate, or impact on competition for contracts and subcontracts. Mid-sized and small construction contractors would find the cost and complexity of restructuring their internal systems, and continuously providing the necessary training to employees scattered across multiple sites, to be very substantial, and might well exceed benefits of pursuing Federal work. (Another respondent echoes this.) The respondent recommends the Councils undertake a fresh data-driven analysis of how severely such mandates are likely to impact small businesses, including the level of small business participation in Federal work.

Another respondent comments that the rule may have an unduly burdensome impact on Government contractors, particularly smaller contractors. It may deter small and minority owned businesses from entering the Federal marketplace and from competing for certain contracts.

b. **Alternatives.** Several alternatives were presented for small business compliance with the regulation.

- Since small business size standards for the construction industry are well over \$5 million in annual revenue, the exclusion of contracts under \$5 million is not likely to insulate small business from the cost of compliance. Federal construction contracts typically exceed \$5 million, and small construction contractors regularly perform them. Instead of \$5 million, the requirements should be linked to the size standards the SBA established, and some proportion of the work that the contractor performs for the Federal Government. The construction industry size standard for general contractors is \$31 million in average annual revenue. The requirements should be imposed on only the firms that both exceed the standard and derive a large proportion of their revenue from Federal contracts.

- Delay the flow down requirement to small business subcontractors, pending review of data on impact on small business subcontractors (SBA Chief Counsel for Advocacy).

- Provide additional guidance for small businesses on a code of ethics commensurate with their size.

Response:

Exclusion of commercial items. The original Regulatory Flexibility Act statement as published did not identify the rule's exclusion for commercial items. The burdens of the clauses will not be imposed on Part 12 acquisitions of commercial items. This is of great benefit to small businesses.

Reduced burden for small businesses. The Councils acknowledge the difficulty and great expense for a small business to have a formal training program, and formal internal controls. The Councils also acknowledge that the public was confused about the proposed rule's flexible language for small business: "Such program shall be suitable to the size of the company."

The Councils have maintained the clause requirement for small businesses to have a business code of ethics and provide copies of this code to each employee. There are many available sources to obtain sample codes of ethics.

However, the Councils have made the clause requirements for a formal training program and internal control system inapplicable to small businesses

(see also paragraph 5.c.v. of this section).

Because the clause 52.203-13 is still included in the contract with small businesses, the requirements for formal training program and internal control systems will flow down to large business subcontractors, but not apply to small businesses.

The Councils note that if a small business subsequently finds itself in trouble ethically, the need for a training program and internal controls will likely be addressed by the Federal Government at that time, during a criminal or civil lawsuit or debarment or suspension.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not require use of the clause requiring contractors to have a written code of business ethics and conduct if the contract is—

- Valued at \$5 million or less;
- Has a performance period less than 120 days;
- Was awarded under Part 12; or
- Will be performed outside the United States.

Furthermore, after discussions with the Small Business Administration (SBA) Office of Advocacy, the Councils have made inapplicable to small businesses the clause requirement for a formal compliance awareness program and internal control system.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, and 52

Government procurement.

Dated: November 16, 2007.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b), in the definition "United States" by redesignating paragraphs (1) through (7) as paragraphs (2) through (8), respectively, and adding a new paragraph (1) to read as follows:

2.101 Definitions.

(b) * * *

United States * * *

(1) For use in Subpart 3.10, see the definition at 3.1001.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 3. Add Subpart 3.10 to read as follows:

Subpart 3.10—Contractor Code of Business Ethics and Conduct

Sec.

- 3.1000 Scope of subpart.
- 3.1001 Definitions.
- 3.1002 Policy.
- 3.1003 Mandatory requirements.
- 3.1004 Contract clauses.

Subpart 3.10—Contractor Code of Business Ethics and Conduct

3.1000 Scope of subpart.

This subpart prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.

3.1001 Definitions.

United States, as used in this subpart, means the 50 States, the District of Columbia, and outlying areas.

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such code of business ethics and conduct, contractors should have an employee business

ethics and compliance training program and an internal control system that—

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

3.1003 Mandatory requirements.

(a) *Requirements.* Although the policy in section 3.1002 applies as guidance to all Government contractors, the contractual requirements set forth in the clauses at 52.203–13, Code of Business Ethics and Conduct, and 52.203–14, Display of Hotline Poster(s), are mandatory if the contracts meet the conditions specified in the clause prescriptions at 3.1004.

(b) *Fraud Hotline Poster.* (1) Agency OIGs are responsible for determining the need for, and content of, their respective agency OIG fraud hotline poster(s).

(2) When requested by the Department of Homeland Security, agencies shall ensure that contracts funded with disaster assistance funds require display of any fraud hotline poster applicable to the specific contract. As established by the agency OIG, such posters may be displayed in lieu of, or in addition to, the agency's standard poster.

3.1004 Contract clauses.

Unless the contract is for the acquisition of a commercial item under part 12 or will be performed entirely outside the United States—

(a) Insert the clause at FAR 52.203–13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more.

(b)(1) Insert the clause at FAR 52.203–14, Display of Hotline Poster(s), if—

(i) The contract exceeds \$5,000,000 or a lesser amount established by the agency; and

(ii)(A) The agency has a fraud hotline poster; or

(B) The contract is funded with disaster assistance funds.

(2) In paragraph (b)(3) of the clause, the contracting officer shall—

(i) Identify the applicable posters; and

(ii) Insert the website link(s) or other contact information for obtaining the agency and/or Department of Homeland Security poster.

(3) In paragraph (d) of the clause, if the agency has established policies and

procedures for display of the OIG fraud hotline poster at a lesser amount, the contracting officer shall replace “\$5,000,000” with the lesser amount that the agency has established.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add sections 52.203–13 and 52.203–14 to read as follows:

52.203–13 Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004(a), insert the following clause:

CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Provide a copy of the code to each employee engaged in performance of the contract.

(2) The Contractor shall promote compliance with its code of business ethics and conduct.

(c) *Awareness program and internal control system for other than small businesses.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract. The Contractor shall establish within 90 days after contract award, unless the Contracting Officer establishes a longer time period—

(1) An ongoing business ethics and business conduct awareness program; and

(2) An internal control system.

(i) The Contractor's internal control system shall—

(A) Facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) For example, the Contractor's internal control system should provide for—

(A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting;

(B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(C) Internal and/or external audits, as appropriate; and

(D) Disciplinary action for improper conduct.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts

that have a value in excess of \$5,000,000 and a performance period of more than 120 days, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

52.203–14 Display of Hotline Poster(s).

As prescribed in 3.1004(b), insert the following clause:

DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).*

Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
_____	_____

(Contracting Officer shall insert— (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

[FR Doc. 07–5800 Filed 11–21–07; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Docket FAR—2007—0002, Sequence 7]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–22;
Small Entity Compliance Guide**AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Small Entity Compliance Guide.**SUMMARY:** This document is issued
under the joint authority of the
Secretary of Defense, the Administrator
of General Services and the
Administrator of the National
Aeronautics and Space Administration.
This *Small Entity Compliance Guide* has
been prepared in accordance with
Section 212 of the Small Business
Regulatory Enforcement Fairness Act of
1996. It consists of a summary of rules
appearing in Federal Acquisition
Circular (FAC) 2005–22 which amendthe FAR. An asterisk (*) next to a rule
indicates that a regulatory flexibility
analysis has been prepared. Interested
parties may obtain further information
regarding these rules by referring to FAC
2005–22 which precedes this document.
These documents are also available via
the Internet at [http://
www.regulations.gov](http://www.regulations.gov).**FOR FURTHER INFORMATION CONTACT**
Laurieann Duarte, FAR Secretariat, (202)
501-4225. For clarification of content,
contact the analyst whose name appears
in the table below.**LIST OF RULES IN FAC 2005–22**

Item	Subject	FAR case	Analyst
I	Implementation of Section 104 of the Energy Policy Act of 2005	2006–008	Clark.
II	Contractor Code of Business Ethics and Conduct	2006–007	Woodson.

SUPPLEMENTARY INFORMATION:Summaries for each FAR rule follow.
For the actual revisions and/or
amendments to these FAR cases, refer to
the specific item number and subject set
forth in the documents following these
item summaries.FAC 2005–22 amends the FAR as
specified below:**Item I—Implementation of Section 104
of the Energy Policy Act of 2005 (FAR
Case 2006–008)**This final rule implements Section
104 of the Energy Policy Act of 2005.
Section 104 requires that all
acquisitions of energy consuming-
products and all contracts that involve
the furnishing of energy-consuming
products require acquisition of ENERGYSTAR® or Federal Energy Management
Program (FEMP) designated products.
The final rule provides a clause for the
Contracting Officer to insert in
solicitations and contracts to ensure that
suppliers and service and construction
contractors recognize when energy-
consuming products must be ENERGY
STAR® or FEMP-designated.**Item II—Contractor Code of Business
Ethics and Conduct (FAR Case 2006–
007)**This final rule amends Federal
Acquisition Regulation (FAR) Parts 2, 3,
and 52 to address the requirements for
a contractor code of business ethics and
conduct and the display of Federal
agency Office of the Inspector General
(OIG) Fraud Hotline Posters. In responseto public comments, this final rule
reduces the burden on small entities by
making the requirements for a formal
training program and internal control
system inapplicable to small businesses.
If a small business subsequently finds
itself in trouble ethically during the
performance of a contract, the need for
a training program and internal controls
will likely be addressed by the Federal
Government at that time, during a
criminal or civil lawsuit or debarment
or suspension.

Dated: November 16, 2007.

Al Matera,*Director, Office of Acquisition Policy.*

[FR Doc. 07–5797 Filed 11–21–07; 8:45 am]

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REMINDERS

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.

RULES GOING INTO EFFECT NOVEMBER 23, 2007**COMMODITY FUTURES TRADING COMMISSION**

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Future farm programs; cash and share lease provisions; comments due by 11-27-07; published 9-28-07 [FR 07-04755]

AGRICULTURE DEPARTMENT**Farm Service Agency**

Program regulations:
Future farm programs; cash and share lease provisions; comments due by 11-27-07; published 9-28-07 [FR 07-04755]

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Caribbean, Gulf, and South Atlantic fisheries—

Southern Atlantic states; for-hire fishery control date; comments due by 11-26-07; published 10-26-07 [FR E7-21099]

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Hazardous waste combustors; comments due by 11-27-07; published 10-18-07 [FR E7-20596]

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Nevada; comments due by 11-30-07; published 10-31-07 [FR E7-21449]

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**HEALTH AND HUMAN SERVICES DEPARTMENT
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**HEALTH AND HUMAN SERVICES DEPARTMENT
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Bombardier; comments due by 11-29-07; published 10-30-07 [FR E7-21178]

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McCauley Propeller Systems; comments due by 11-27-07; published 9-28-07 [FR E7-19194]

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Boeing Model 767 series airplanes; comments due by 11-28-07; published 10-29-07 [FR E7-21240]
Boeing Model 787 series airplanes; comments due by 11-28-07; published 10-29-07 [FR E7-21243]

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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 "PLUS" (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. 2602/P.L. 110-118

To name the Department of Veterans Affairs medical facility in Iron Mountain, Michigan, as the "Oscar G. Johnson Department of Veterans Affairs Medical Facility". (Nov. 16, 2007; 121 Stat. 1346)

S.J. Res. 7/P.L. 110-119

Providing for the reappointment of Roger W. Sant as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 16, 2007; 121 Stat. 1347)

S. 2206/P.L. 110-120

To provide technical corrections to Public Law 109-116 (2 U.S.C. 2131a note) to extend the time period for the Joint Committee on the Library to enter into an agreement to obtain a statue of Rosa Parks, and for other purposes. (Nov. 19, 2007; 121 Stat. 1348)

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