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Washington, DC 20002

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Contents

Federal Register

Vol. 73, No. 40

Thursday, February 28, 2008

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service

Animal and Plant Health Inspection Service
NOTICES
Availability of a Final Environmental Assessment and Finding of No Significant Impact:
Imported Fire Ant, 10739

Antitrust Division
NOTICES
National Cooperative Research and Production Act:
Semiconductor Test Consortium, Inc., 10807
Proposed Final Judgment and Competitive Impact Statement:
Bain Capital, LLC, Thomas H. Lee Partners, LP., and Clear Channel Communications, Inc., 10808–10824

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 10745

Defense Department
RULES
Federal Acquisition Regulation:
CAS Administration, FAR Case 2005-027, FAR Part 30, 10965–10967
Common Security Configurations, FAR Case 2007-004, 10967–10968
Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission, 10943–10959
Introduction, Federal Acquisition Circular 2005-24, 10942–10943
New Designated Countries-Dominican Republic, Bulgaria, and Romania, FAR Case 2006-028, 10964–10965
Numbered Notes for Synopses, FAR Case 2006-016, 10960–10962
Small Entity Compliance Guide, Federal Acquisition Circular 2005-24, 10968–10969
Trade Agreements-New Thresholds, FAR Case 2007-016, 10962–10964

Employment and Training Administration
NOTICES
Rural Industrialization Loan and Grant Program; Request for Certification of Compliance, 10824–10825

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10745–10746

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Maryland; Revised Definition of Volatile Organic Compound, 10673–10675
Virginia; Amendments to Existing Regulation Provisions Concerning Reasonably Available Control Technology, 10670–10673
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Maryland; Revised Definition of Volatile Organic Compound, 10730–10731
Virginia; Amendments to Existing Regulation Provisions Concerning Reasonably Available Control Technology, 10731–10732
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10765–10766
Meetings:
Framework for Determining a Mutagenic Mode of Action for Carcinogenicity, 10766–10767
National Advisory Council for Environmental Policy and Technology Environmental Technology Subcommittee, 10767–10768
Proposed CERCLA Agreement and Covenant Not to Sue the State of Montana, 10768
Proposed CERCLA Settlement Agreement for Recovery:
McLaren Tailings Site; Cooke City, Park County, Montana, 10768–10769

Executive Office of the President
See National Drug Control Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Model A319, A320, and A321 Series Airplanes, 10660–10662
ATR Model ATR42 and ATR72 Airplanes, 10652–10655
BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146 RJ Airplanes, 10643–10644
Boeing Model 737 300, 400, and 500 Series Airplanes, 10649–10650
Boeing Model 767 200, 300, 300F, and 400ER Series Airplanes, 10645–10646
Bombardier Model DHC 8 102, DHC 8 103, DHC 8 106, DHC 8 201, DHC 8 202, DHC 8 301, DHC 8 311, and DHC 8 315 Airplanes, and Model DHC 8 400 Series Airplanes, 10658–10659
Embraer Model EMB-120, 120ER, 120FC, 120QC, and 120RT Airplanes, 10655–10658
Fokker Model F.28 Mark 0070 and 0100 Airplanes, 10650–10652
General Electric Co., 10647–10649
Drug Enforcement Assistance, 10662–10668
PROPOSED RULES
Airworthiness Directives:
Boeing Model 777 200 et al., 10698–10701

Re-registration and Renewal of Aircraft Registration, 10701–10715
NOTICES
Aeronautical Land-Use Assurance; Waivers:
Cartersville Airport, GA, 10855
Louisville International Airport, KY, 10854–10855

Federal Communications Commission
RULES
Leased Commercial Access, 10675–10696
Radio Broadcasting Services:
Davis-Monthan Air Force Base, Sells, and Willcox, AZ, 10675
PROPOSED RULES
Leased Commercial Access, 10732–10738
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10769–10774
Petition for Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services, etc., 10775–10776

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10747–10748
Application Accepted for Filing etc.:
BPUS Generation Development LLC, 10748–10749
Hydro Green Energy, LLC, 10749–10752
PPL Holtwood, LLC, 10752–10753
Blanket Certificate:
Northern Natural Gas Company, 10753–10754
Combined Notice of Filings, 10754–10755
Compliance Filing:
Niagara Mohawk Power Corp., 10755
Electric Quarterly Reports; Technical Conference, 10755–10756
Environmental Assessment, Intent:
Columbia Gas Transmission; Ohio Storage Expansion Project, 10756–10757
Hi Fields Lateral Project; Southeast Supply Header, LLC, 10758–10759
Tennessee Gas Pipeline Co.; Concord Lateral Expansion Project, 10759–10761
Tennessee Gas Pipeline Co.; Fitchburg Expansion Project, 10761–10763
Filing; Cranberry Pipeline Corp., 10763
Intent to File License Application:
Erie Boulevard Hydropower, L.P., 10763–10764
Reliability Pricing Model of its Open Access Transmission Tariff:
PJM Interconnection, L.L.C., 10764

Federal Highway Administration
NOTICES
Environmental Impact Statement:
Los Angeles County, CA, 10855–10856

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety Companies Acceptable on Federal Bonds:
Rockwood Casualty Insurance Company, 10856–10857

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Canada Lynx; Revised Critical Habitat for Contiguous United States Distinct Population Segment, 10860–10896
NOTICES
Endangered Species Permits Applications, 10801–10802

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10740–10741

Foreign Assets Control Office
NOTICES
Additional Designation of Individual Pursuant to Executive Order 13460, 10857
Additional Designation of Individuals and Entities Pursuant to Executive Order 12978, 10857–10858

Forest Service
NOTICES
Environmental Impact Statement, Intent:
Caribou-Targhee National Forest, ID; Cancellation, 10741
Sierra National Forest, CA; Kings River Project, 10741–10742

General Services Administration
RULES
Federal Acquisition Regulation:
CAS Administration, FAR Case 2005-027, FAR Part 30, 10965–10967
Common Security Configurations, FAR Case 2007-004, 10967–10968
Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission, 10943–10959
Introduction, Federal Acquisition Circular 2005-24, 10942–10943
New Designated Countries-Dominican Republic, Bulgaria, and Romania, FAR Case 2006-028, 10964–10965
Numbered Notes for Synopses, FAR Case 2006-016, 10960–10962
Small Entity Compliance Guide, Federal Acquisition Circular 2005-24, 10968–10969
Trade Agreements-New Thresholds, FAR Case 2007-016, 10962–10964

Health and Human Services Department
See Indian Health Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10776–10780
Meetings:
Presidential Advisory Council on HIV/AIDS, 10780

Homeland Security Department
See U.S. Citizenship and Immigration Services
NOTICES
Privacy Act; Systems of Records, 10793–10798

Indian Health Service
NOTICES
Grants:
Division of Epidemiology and Disease Prevention; Urban Indian Communities, 10780–10785

Health Professions Preparatory, Health Professions Pregraduate, and Indian Health Professions Scholarship Programs, 10785–10789
Privacy Act; Systems of Records, 10789–10792

Industry and Security Bureau
RULES
Expanded Authorization for Temporary Exports and Reexports of Tools of Trade to Sudan, 10668–10670
NOTICES
Meetings:
Materials Processing Equipment Technical Advisory Committee, 10742–10743

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Guidance Regarding Foreign Base Company Sales Income, 10716–10730

International Trade Administration
NOTICES
Carbon and Certain Alloy Steel Wire Rod from Canada; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 10743
Light-Walled Rectangular Pipe and Tube from Mexico; Postponement of Final Antidumping Duty Determination and Extension of Provisional Measures, 10743–10744

International Trade Commission
NOTICES
Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2007 Review of Competitive Need Limit Waivers; Hearing Cancellation, 10807
Meetings; Sunshine Act, 10807

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10824

Land Management Bureau
NOTICES
Intent to Prepare a Resource Management Plan:
Upper Snake Field Office of the Idaho Falls District in eastern Idaho, 10802–10803
Meetings:
McInnis Canyons National Conservation Area Advisory Council, 10803–10804
Resource Advisory Council Call for Nominations, 10804–10805

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation:
CAS Administration, FAR Case 2005-027, FAR Part 30, 10965–10967
Common Security Configurations, FAR Case 2007-004, 10967–10968
Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission, 10943–10959
Introduction, Federal Acquisition Circular 2005-24, 10942–10943
New Designated Countries-Dominican Republic, Bulgaria, and Romania, FAR Case 2006-028, 10964–10965
Numbered Notes for Synopses, FAR Case 2006-016, 10960–10962
Small Entity Compliance Guide, Federal Acquisition Circular 2005-24, 10968–10969
Trade Agreements-New Thresholds, FAR Case 2007-016, 10962–10964

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10825
Meetings:
Public Interest Declassification Board, 10825–10826

National Credit Union Administration
PROPOSED RULES
Mergers, Conversion From Credit Union Charter, and Account Insurance Termination; Extension of Comment Period, 10697

National Drug Control Policy Office
NOTICES
Designation of Twenty-Six Counties as High Intensity Drug Trafficking Areas, 10826

National Oceanic and Atmospheric Administration
NOTICES
Marine Mammals Permits, 10744
Meetings:
North Pacific Fishery Management Council, 10744–10745

National Park Service
PROPOSED RULES
Meetings:
Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management for Cape Hatteras National Seashore, 10730
NOTICES
Meetings:
Chesapeake and Ohio Canal National Historical Park Advisory Commission, 10805
Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting, 10805–10806
Gettysburg National Military Park Advisory Commission, 10806
Remaining 2008 Meetings of the Big Cypress National Preserve Off-road Vehicle (ORV), 10806

Office of National Drug Control Policy
See National Drug Control Policy Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Debt Bureau
See Fiscal Service

Reclamation Bureau
NOTICES
Northwest Area Water Supply Project, ND, 10806–10807

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 10828
NETS Trust, et al.; Application, 10828–10835
Progress Report of the SEC Advisory Committee on Improvements to Financial Reporting, 10898–10939
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC, 10835–10837
Chicago Board Options Exchange, Inc., 10837–10846
Chicago Stock Exchange, Inc., 10846–10848
The Depository Trust Co., 10849–10852
The Depository Trust Company, 10848–10849
The NASDAQ Stock Market LLC, 10852–10854

Small Business Administration
PROPOSED RULES
Women-Owned Small Business Federal Contract Assistance Procedures, 10697–10698

Social Security Administration
PROPOSED RULES
Compassionate Allowances for Cancers; Office of the Commissioner, Hearing, 10715–10716

State Department
NOTICES
Meetings:
International Telecommunication Advisory Committee, 10854

Surface Transportation Board
NOTICES
Union Pacific Railroad Co.; Trackage Rights Exemption:
BNSF Railway Co., 10856

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences (GSP):
Import Statistics Relating to Competitive Need Limitations (CNLs); Invitation for public comment, etc., 10826–10828

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Foreign Assets Control Office
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 10798–10800

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 10860–10896

Part III
Securities and Exchange Commission, 10898–10939

Part IV
Defense Department; General Services Administration; National Aeronautics and Space Administration, 10942–10969

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR

Proposed Rules:

708a 10697
708b 10697

13 CFR

Proposed Rules:

121 10697
125 10697
127 10697
134 10697

14 CFR

39 (9 documents) 10643, 10645, 10647, 10649, 10650, 10652, 10655, 10658, 10660
47 10662
61 10662
63 10662
65 10662

Proposed Rules:

39 10698
47 10701

15 CFR

740 10668

20 CFR

Proposed Rules:

404 10715
405 10715
416 10715

26 CFR

Proposed Rules:

1 10716

36 CFR

Proposed Rules:

7 10730

40 CFR

52 (2 documents) 10670, 10673

Proposed Rules:

52 (2 documents) 10730, 10731

47 CFR

73 10675
76 10675

Proposed Rules:

76 10732

48 CFR

Ch. 1 (2 documents) 10942, 10968
2 10943
5 10960
6 10960
7 10943
10 10960
12 (2 documents) 10943, 10960
22 (2 documents) 10962, 10964
25 (4 documents) 10943, 10960, 10962, 10964
30 10965
39 10967
52 (4 documents) 10943, 10962, 10964, 10965

50 CFR

Proposed Rules:

17 10860

Rules and Regulations

Federal Register

Vol. 73, No. 40

Thursday, February 28, 2008

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29337; Directorate Identifier 2007–NM–150–AD; Amendment 39–15388; AD 2008–04–16]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. * * *

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55122). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. This AD mandates inspections necessary to address the identified unsafe condition.

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. Corrective actions include repetitive detailed visual inspections for corrosion, pitted fasteners, or pillowing of the APU heat shield and surrounding skin and, if applicable, removal of the heat shield and repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 1 product of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $160, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–16 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15388. Docket No. FAA–2007–29337; Directorate Identifier 2007–NM–150–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes; certificated in any category; all models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Corrosion has been reported beneath the heat shield which is located around the APU (auxiliary power unit) exhaust outlet. Such corrosion could result in the fuselage being unable to sustain horizontal and vertical stabiliser loads. This is considered as potentially hazardous/catastrophic. This AD mandates inspections necessary to address the identified unsafe condition.

The unsafe condition is that the horizontal or vertical stabilizer might collapse under excessive load, resulting in loss of control of the airplane. Corrective actions include repetitive detailed visual inspections for corrosion, pitted fasteners, or pillowing of the APU heat shield and surrounding skin and, if applicable, removal of the heat shield and repair.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD and thereafter at intervals not to exceed 24 months, perform a detailed visual inspection of the APU heat shield and surrounding skin, in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006.

(2) If any corrosion, pitted fastener, or pillowing is found during any detailed visual inspection required by paragraph (f)(1) of this AD, before the next flight, remove the APU heat shield and repair the affected area in accordance with paragraph 2.D. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006.

(3) For any airplane modified in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.53–193–60732A, dated November 1, 2006, the repetitive interval specified in paragraph (f)(1) of this AD may be extended to 48 months.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0075, dated March 20, 2007; BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006; and BAE Systems (Operations) Limited Modification Service Bulletin SB.53–193–60732A, dated November 1, 2006; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–191, dated October 25, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

(3) 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 February 13, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3395 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0203; Directorate Identifier 2007–NM–105–AD; Amendment 39–15384; AD 2008–04–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, –300F, and –400ER Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires reworking the surface of the ground stud bracket of the left and right transformer rectifier units (TRUs) and the airplane structure mounting surface, and measuring the resistance from the bracket to the structure and the ground lugs to the bracket using a bonding meter. This new AD revises the applicability of the existing AD to include additional airplanes and requires, among other actions, installation of a new ground stud bracket using faying surface bonding. This AD results from a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the TRUs/main battery charger (MBC) and the structure. We are issuing this AD to prevent depletion of the main battery while in flight, resulting from the loss of both TRUs and the MBC, and consequent loss of all DC power, which could impact the safe flight and landing of the airplane due to the loss of function or malfunction of essential/critical systems and displays in the cockpit.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 3, 2008.

On December 1, 2004 (69 FR 67043, November 16, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004.

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulous, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–23–14, amendment 39–13869 (69 FR 67043, November 16, 2004). The existing AD applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on November 19, 2007 (72 FR 64964). That NPRM proposed to require reworking the surface of the ground stud bracket of the left and right transformer rectifier units (TRUs) and the airplane structure mounting surface, and measuring the resistance from the bracket to the structure and the ground lugs to the bracket using a bonding meter. That NPRM also proposed revising the applicability of the existing AD to include additional airplanes and to require, among other actions, installation of a new ground stud bracket using faying surface bonding.

Comments

We provided the public the opportunity to participate in the development of this AD. We considered the comment that has been received on the NPRM. Boeing, the single commenter, supports the NPRM.

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are 932 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Rework and Measurement (required by AD 2004–23–14).	1	$80	$4	$84	262	$22,008.
New actions	1 or 2 [1]	80	208	$288 or $368 [1]	412	$118,656 or $151,616.[1]

[1] Depending on the airplane configuration.

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 this AD:

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

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

(3) 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 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 39–13869 (69 FR 67043, November 16, 2004) and by adding the following new airworthiness directive (AD):

2008–04–12 Boeing: Amendment 39–15384. Docket No. FAA–2007–0203; Directorate Identifier 2007–NM–105–AD.

Effective Date

(a) This AD becomes effective April 3, 2008.

Affected ADs

(b) This AD supersedes AD 2004–23–14.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006.

Unsafe Condition

(d) This AD results from a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the left and right transformer rectifier unit (TRUs)/main battery charger (MBC) and the structure. We are issuing this AD to prevent depletion of the main battery while in flight, resulting from the loss of both TRUs and the MBC, and consequent loss of all DC power, which could impact the safe flight and landing of the airplane due to the loss of function or malfunction of essential/critical systems and displays in the cockpit.

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 2004–23–14

Rework and Measure Resistance

(f) For Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004; on which the actions of Boeing Service Bulletin 767–24–0119, dated May 14, 1998, and/or Revision 1, dated December 16, 1999, have been done: Within 45 days after December 1, 2004 (the effective date of AD 2004–23–14), rework the ground stud bracket of the TRUs and structure mounting surface, and measure the resistance from the bracket to the structure and the grounding lug to the bracket using a bonding meter, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004, except as provided by paragraph (g) of this AD.

(g) Step 4, Sheet 3 of Figure 1 in the Accomplishment Instructions of the service bulletin only specifies to install one collar with part number (P/N) BACC30M6. However, a collar with P/N BACC30BL6 (as listed in paragraph 2.C., ''Parts Necessary For Each Airplane'' of the service bulletin) may be used as an alternative method of compliance (AMOC).

New Actions Required by This AD

Rework, Installation, Measurement, as Applicable

(h) For all airplanes: Within 36 months after the effective date of this AD, rework the existing ground stud bracket of the TRUs/MBC, measure the resistance, and install a new ground stud bracket of the TRUs by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006.

AMOCs

(i)(1) The Manager, Seattle Aircraft Certification Office, 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.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004; and Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–24A0162, dated May 30, 2006, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 1, 2004 (69 FR 67043, November 16, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004.

(3) 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 February 13, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3394 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29001; Directorate Identifier 2007–NE–36–AD; Amendment 39–15395; AD 2008–05–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1/–8C5/–8C5B1/–8E5/–8E5A1, and CF34–10E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–8C1/–8C5/–8C5B1/–8E5/–8E5A1, and CF34–10E series turbofan engines with certain part number (P/N) and serial number (SN) fuel metering units (FMU) installed. This AD requires a onetime test of the FMU for a miswired (reversed polarity) condition of the input wires to the overspeed solenoid. This AD results from the discovery of miswired FMU overspeed solenoids in the field. We are issuing this AD to prevent the engine from failing to shutdown during an overspeed which may lead to uncontained engine failure.

DATES: This AD becomes effective April 3, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 3, 2008.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov*; telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF34–8C1/–8C5/–8C5B1/–8E5/–8E5A1, and CF34–10E series turbofan engines with certain P/N and SN fuel metering units installed. We published the proposed AD in the **Federal Register** on September 7, 2007 (72 FR 51384). That action proposed to require a onetime test of the FMU for a miswired (reversed polarity) condition of the input wires to the overspeed solenoid.

Examinig the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request to Reference the Latest GE Service Bulletin Revisions

One commenter, GE, requests that we reference the latest GE service bulletin (SB) revisions, which are SB No. CF34–8C–AL S/B 73–0030, Revision 3, dated November 1, 2007, SB No. CF34–8E–AL S/B 73–0015, Revision 3, dated November 1, 2007, and SB No. CF34–10E S/B 72–0067, Revision 2, dated August 28, 2007.

We agree. We made that change in the AD.

Request to Modify the Discussion Paragraph

One commenter, Woodward Governor Company, requests that we modify the Discussion paragraph of the proposed AD by deleting the statement ''If the solenoid is miswired, the engine will fail to shut down as commanded''. The commenter interprets this statement as meaning that if the engine can be shut down normally, the AD is not required.

We partially agree. The statement is needed to explain that the AD is required by stating that shutdown failure is tied to overspeed in the unsafe condition statement in this AD. However, we deleted ''as commanded'' from the unsafe condition statements in the AD.

Request to Include 13 Additional FMU Serial Numbers

Woodward Governor Company requests that we include 13 additional FMU serial numbers, that were discovered to be affected since we issued the NPRM.

We agree. We changed the SN range of WYG94939 through WYGB4222 to WYG89156 through WYGB4222 in the AD and added the costs for them to the Cost section.

Request to Clarify Costs of Compliance

Woodward Governor Company requests that in the Costs of Compliance paragraph we clarify the statement ''We estimate that about 2 percent of the inspected solenoids are defective, and it will cost about $5,000 to replace each FMU'' to ''We estimate that about 2 percent of the inspected solenoids are defective, and it will cost about $5,000 to replace each FMU solenoid.''

We agree. We clarified the Cost statement in the AD.

Request to Extend the Compliance Time

One commenter, Mesa Airlines, requests that we extend the compliance time from 2,200 flight hours to 4,000 flight hours, due to potentially longer repair turn around times of failed FMUs from the manufacturer.

We do not agree. Our compliance interval includes anticipated repair turn-around times. We did not change the AD.

Removal of Reporting Requirement

We removed the reporting requirement from the AD, since we determined it was unnecesary.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 1,055 engines installed on airplanes of U.S. registry. We also estimate that it will take about 0.25 work-hour per engine to perform the FMU inspections, and that the average labor rate is $80 per work-hour. We estimate that about 2 percent of the inspected solenoids are defective. Replacement solenoids will cost about $5,000 each. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $126,600. Our cost estimate is exclusive of possible warranty coverage.

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 this AD:

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

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

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2008–05–01 General Electric Company: Amendment 39–15395. Docket No. FAA–2007–29001; Directorate Identifier 2007–NE–36–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to:

(1) General Electric Company (GE) CF34–8C1/–8C5/–8C5B1/–8E5/–8E5A1 turbofan engines, with GE fuel metering unit (FMU) part number (P/N) 4120T01P02, serial numbers (SNs) WYG89156 through WYGB4222, and Woodward Governor FMU Vendor Identification Number (VIN) 8061–926, SNs 11954378 through 15140071.

(2) GE CF34–10E series turbofan engines, with GE FMU P/N 2043M10P05, SNs WYGA3251 through WYGB4085, and Woodward Governor FMU VIN 8063–884, SNs 13335695 through 15028283.

(3) CF34–8C1/–8C5/–8C5B1 turbofan engines are installed on, but not limited to, Bombardier Inc. Model CL–600–2C10 (CRJ–700 & –701), and CL–600–2D24/–2D15 (CRJ–900) airplanes.

(4) CF34–8E5/–8E5A1 turbofan engines are installed on, but not limited to, Embraer ERJ 170–100/ –200 series airplanes.

(5) CF34–10E series turbofan engines are installed on, but not limited to, Embraer ERJ 190–100/–200 series airplanes.

Unsafe Condition

(d) This AD results from the discovery of miswired FMU overspeed solenoids in the field. We are issuing this AD to prevent the engine from failing to shutdown during an overspeed which may lead to uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within 2,200 flight hours after the effective date of this AD, but not to exceed 24 months after the effective date of this AD, unless the actions have already been done.

Onetime Test of the FMU

(f) Perform a onetime test of the FMU for a miswired (reversed polarity) condition of the input wires to the overspeed solenoid.

(g) Use paragraph 3A of the Accomplishment Instructions of GE Service Bulletin (SB) No. CF34–8C–AL S/B 73–0030, Revision 3, dated November 1, 2007, SB No. CF34–8E–AL S/B 73–0015, Revision 3, dated November 1, 2007, or SB No. CF34–10E S/B 72–0067, Revision 2, dated August 28, 2007, as applicable, to do the test.

(h) If the FMU fails the test, remove the FMU.

Previous Credit

(i) If you performed the actions specified in paragraphs (f) through (h) of this AD using the inspection procedures in the following SBs, before the effective date of this AD, you satisfied the requirements of this AD.

(1) GE SB No. CF34–8C–AL S/B 73–0030, dated May 25, 2007, Revision 1, dated July 19, 2007, or Revision 2, dated August 28, 2007.

(2) GE SB No. CF34–8E–AL S/B 73–0015, dated June 1, 2007, Revision 1, dated July 19, 2007, or Revision 2, dated August 28, 2007.

(3) GE SB No. CF34–10E S/B 72–0067, dated June 7, 2007 or Revision 1, dated July 26, 2007.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov*; telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) You must use the service information specified in Table 1 of this AD to perform the testing required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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*.

TABLE 1.—INCORPORATION BY REFERENCE

GE Service Bulletin No.	Page	Revision	Date
CF34–8C–AL S/B 73–0030, Total Pages: 11	ALL	3	November 1, 2007.

TABLE 1.—INCORPORATION BY REFERENCE—Continued

GE Service Bulletin No.	Page	Revision	Date
CF34–8E–AL S/B 73–0015, Total Pages: 11	ALL	3	November 1, 2007.
CF34–10E S/B 72–0067, Total Pages: 10	ALL	2	August 28, 2007.

Issued in Burlington, Massachusetts, on February 15, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–3462 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0226; Directorate Identifier 2007–NM–187–AD; Amendment 39–15393; AD 2008–04–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires repetitive inspections for cracking of the body buttock line (BBL) 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of cracking in the BBL 0.07 floor beam. We are issuing this AD to prevent failure of the main deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression of the airplane.

DATES: This AD is effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2008.

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on November 26, 2007 (72 FR 65901). That NPRM proposed to require repetitive inspections for cracking of the body buttock line 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing supports the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are 1,961 airplanes of the affected design in the worldwide fleet. This AD affects 599 airplanes of U.S. registry. The required inspections take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the required AD for U.S. operators is $191,680, or $320 per airplane, per inspection cycle.

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

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 this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–21 Boeing: Amendment 39–15393. Docket No. FAA–2007–0226; Directorate Identifier 2007–NM–187–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–57–1210, Revision 2, dated June 13, 2007.

Unsafe Condition

(d) This AD results from reports of cracking in the body buttock line (BBL) 0.07 floor beam. We are issuing this AD to prevent failure of the main deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression 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.

Inspections and Related Investigative/Corrective Actions

(f) Before the accumulation of 20,000 total flight hours, or within 7,000 flight cycles after the effective date of this AD, whichever occurs later: Do the detailed inspections for cracking of the BBL 0.07 floor beam between body station (BS) 651 and BS 676 and between BS 698 and BS 717, and do all the applicable related investigative and corrective actions before further flight, by accomplishing all of the applicable actions specified in paragraphs B.2. and B.4. of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, except as provided by paragraph (g) of this AD. Repeat the inspections thereafter at intervals not to exceed 7,000 flight cycles. Installing a repair in accordance with paragraphs B.2. and B.4. of the Accomplishment Instructions of the service bulletin, or doing the modification in accordance with paragraph (h) of this AD, terminates the repetitive inspections for the applicable area only.

Exception to Corrective Action

(g) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Optional Terminating Action

(h) If no cracking is found during the detailed inspection and related investigative action required by paragraph (f) of this AD: Accomplishing the modification of the BBL 0.07 floor beam between BS 651 and BS 676 and between BS 698 and BS 717, as applicable, in accordance with paragraphs B.2. and B.4., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1210, excluding Appendix A, Revision 2, dated June 13, 2007, terminates the repetitive inspections for the applicable area only.

Alternative Methods of Compliance (AMOCs)

(i)(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.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 737–57–1210, Revision 2, dated June 13, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) You may review copies of the service information incorporated by reference 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3461 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0300; Directorate Identifier 2007–NM–191–AD; Amendment 39–15394; AD 2008–04–22]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

www.regulations.gov or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 11, 2007 (72 FR 70249). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. [The aileron pulleys on Model F.28 Mark 0070 airplanes are identical to those installed on the Model F.28 Mark 0100 airplanes. Therefore, those Model F.28 Mark 0070 airplanes may be subject to the unsafe condition revealed on the Model F.28 Mark 0100 airplanes.] This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. Since an unsafe condition has been identified that is likely to exist or develop on other aircraft of the same type design, this Airworthiness Directive requires the inspection of the wing-to-fuselage fairings and, if necessary, the accomplishment of appropriate corrective action(s).

The inspection is intended to find indications of incorrect fit, damage, or wear. Corrective actions include a related investigative action (inspecting for incorrect fit, damage, or wear of the aerodynamic seal of the fairings, and inspecting for damage or wear of the abrasion resistant coating on the mating surface of the fuselage skin), restoring damaged abrasion-resistant coatings, correcting fairing positions, and replacing damaged fairing seals. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 12 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $960, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–22 Fokker Services B.V.: Amendment 39–15394. Docket No. FAA–2007–0300; Directorate Identifier 2007–NM–191–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Reports have been received from Fokker 100 (F28 Mark 0100) operators where the crew experienced difficulties with roll control. Analysis suggests that these phenomena are due to frozen water on the aileron pulleys that are installed on the Center Wing Spar and located in the Main Landing Gear (MLG) wheel bays. Investigation has confirmed that improper closure of the aerodynamic seals of the wing-to-fuselage fairings above the MLG wheel bays can cause rainwater, wash-water or de-icing fluid to leak onto the affected aileron pulleys. [The aileron pulleys on Model F.28 Mark 0070 airplanes are identical to those installed on the Model F.28 Mark 0100 airplanes. Therefore, those Model F.28 Mark 0070 airplanes may be subject to the unsafe condition revealed on the Model F.28 Mark 0100 airplanes.] This condition, if not corrected, can lead to further incidents of frozen water on aileron pulleys during operation of the aircraft, resulting in restricted roll control and/or higher control forces. Since an unsafe condition has been identified that is likely to exist or develop on other aircraft of the same type design, this Airworthiness Directive requires the inspection of the wing-to-fuselage fairings and, if necessary, the accomplishment of appropriate corrective action(s).

The inspection is intended to find indications of incorrect fit, damage, or wear. Corrective actions include a related investigative action (inspecting for incorrect fit, damage, or wear of the aerodynamic seal of the fairings, and inspecting for damage or wear of the abrasion resistant coating on the mating surface of the fuselage skin), restoring damaged abrasion-resistant coatings, correcting fairing positions, and replacing damaged fairing seals, as applicable.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD, inspect the wing-to-fuselage fairings for indications of incorrect fit, damage or wear, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–101, dated September 30, 2005.

(i) If no indications of incorrect fit, damage or wear are found, no further action is required by this AD.

(ii) If any incorrect fit, damage or wear is found, before next flight, do related investigative actions and applicable corrective actions in accordance with the Accomplishment Instructions of the service bulletin.

(2) When incorrect fit, damage or wear is found, within 30 days after the inspection or within 30 days after the effective date of the AD, whichever occurs later, report the findings to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Dutch Airworthiness Directive NL–2005–013, dated October 17, 2005, and Fokker Service Bulletin SBF100–53–101, dated September 30, 2005, for related information.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100–53–101, dated September 30, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands.

(3) 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 February 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3460 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD; Amendment 39–15391; AD 2008–04–19]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 and ATR72 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55113). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulations) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Change Made to This AD

For standardization purposes, we have revised paragraph (f)(4) of this AD to specify that no alternative inspections, inspection intervals, or CDCCLs may be used unless they are part of a later approved revision of ATR 42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable; or unless they are approved as an alternative method of compliance. Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 84 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,720, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the

Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–19 ATR—GIE Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–15391. Docket No. FAA–2007–29332; Directorate Identifier 2007–NM–172–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all ATR Model ATR42–200, –300, –320, and –500 airplanes; and all ATR Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: The date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 3 months after the effective date of this AD, or before December 16, 2008, whichever occurs first, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Task 28.10.00 ''Fuel Tank—General,'' and Task 28.20.00 ''Distribution,'' of the Certification Maintenance Requirements (CMR) Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report (MRBR), Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable. For all tasks identified in the applicable MRBR, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, except as provided by paragraphs (f)(3) and (g) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in the applicable MRBR.

(i) The effective date of this AD.

(ii) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(2) Within 3 months after the effective date of this AD, or before December 16, 2008, whichever occurs first, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Section 4., ''Critical Design Configuration Control List,'' of the Airworthiness Limitations Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(3) For the task titled ''Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids'' (CMR task reference 28.10.00–1): The initial compliance time is the later of the times specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this AD. Thereafter, the task titled ''Detailed visual inspection of the fuel tanks and associated equipment, wiring, piping and braids'' must be accomplished at the repetitive interval specified in Section 4., ''Critical Design Configuration Control List,'' of the Airworthiness Limitations Section of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; the ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or the ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable.

(i) Within 144 months since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

(ii) Within 72 months or 20,000 flight hours after the effective date of this AD, whichever occurs first.

(4) After accomplishing the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of the ATR 42–200/–300/–320 MRBR, Revision 7, dated March 31, 2006; ATR 42–400/–500 MRBR, Revision 6, dated March 26, 2007; or ATR 72 MRBR, Revision 8, dated March 26, 2007; as applicable; that is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent); or unless the inspections,

intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) AMOCs: The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2006–0219R1, dated June 29, 2007, and the service information identified in Table 1 of this AD, for related information.

TABLE 1.—SERVICE INFORMATION

Document	Revision level	Date
Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report	7	March 31, 2006.
Time Limits Section of Part 1 of the ATR 42–400/–500 Maintenance Review Board Report	6	March 26, 2007.
Time Limits Section of Part 1 of the ATR 72 Maintenance Review Board Report	8	March 26, 2007.

Material Incorporated by Reference

(i) You must use the service information specified in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Document	Revision level	Date
Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report	7	March 31, 2006.
Time Limits Section of Part 1 of the ATR 42–400/–500 Maintenance Review Board Report	6	March 26, 2007.
Time Limits Section of Part 1 of the ATR 72 Maintenance Review Board Report	8	March 26, 2007.

The missing page number for the ''List of Effective Pages'' of the Time Limits Section of Part 1 of the ATR 42–200/–300/–320 Maintenance Review Board Report is 1–LEP. The ''List of Effective Pages'' for the Time Limits Section of Part 1 of the ATR 42–400/–500 Maintenance Review Board Report contains a typographical error: The date for Page 3 should read March 2007. The first page of the ''Reasons for Revisions'' section of the Time Limits Section of Part 1 of the ATR 72 Maintenance Review Board Report is incorrectly identified as Page 2–RFR; that page should be identified as Page 1–RFR.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

(3) 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 February 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3401 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0075; Directorate Identifier 2007–NM–171–AD; Amendment 39–15390; AD 2008–04–18]

RIN 2120–AA64

Airworthiness Directives; EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).

* * * * *

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 23, 2007 (72 FR 59967). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).
>
> Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Changes to This AD

For standardization purposes, we have revised this AD in the following ways:

- We revised the language in Note 1 of this AD to correspond to the language contained in the same note in similar ADs.
- We revised paragraph (f)(4) of this AD to specify that no alternative inspections, inspection intervals, or CDCCLs may be used unless they are part of a later approved revision of certain documents specified in this AD, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 109 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,720, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–15390. Docket No. FAA–2007–0075; Directorate Identifier 2007–NM–171–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).

Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 1 month after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Tasks 15 to 18 of Section 6—''Part E—Fuel System Limitations,'' EMBRAER Temporary Revision No. 22–1, dated November 18, 2005, of the EMBRAER EMB–120 Brasilia Maintenance Review Board Report (MRBR), MRB–HI–200. For all tasks identified in the MRBR, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the MRBR, except as provided by paragraphs (f)(3) and (g)(1) of this AD.

(i) The effective date of this AD.

(ii) The date of issuance of the original Brazilian standard airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness.

(2) Within 1 month after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs to include items (1) and (2), dated March 22, 2005, of Section 6—''Part D—Critical Design Configuration Control Limitation,'' of the EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200.

(3) For the functional checks and detailed visual inspections, Tasks 15 to 18 of Section 6—''Part E—Fuel System Limitations,'' EMBRAER Temporary Revision No. 22–1, dated November 18, 2005, of the EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200: The initial compliance time is within 4,000 flight hours or 48 months after the effective date of this AD, whichever occurs first. Thereafter those tasks must be accomplished at the repetitive interval specified in Section 6—''Part E—Fuel System Limitations,'' EMBRAER Temporary Revision No. 22–1, dated November 18, 2005, of the EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200.

(4) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200, dated March 22, 2005, that is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent); or unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (g)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–05–02, effective June 6, 2007; EMBRAER Temporary Revision No. 22–1, dated November 18, 2005, of the EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200; and Section 6—''Part D—Critical Design Configuration Control Limitation,'' of the EMBRAER EMB–120 Brasilia MRBR, MRB–HI–200; for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Temporary Revision No. 22–1, dated November 18, 2005, of the EMBRAER EMB–120 Brasilia Maintenance Review Board Report, MRB–HI–200; and pages 6.III.1 and 6.III.2, dated March 22, 2005, of Section 6—''Part D—Critical Design Configuration Control Limitation,'' of the EMBRAER EMB–120 Brasilia Maintenance Review Board Report, MRB–HI–200; to do the actions required by this AD, unless the AD specifies otherwise. EMBRAER EMB–120 Brasilia Maintenance Review Board Report, MRB–HI–200, contains the following effective pages:

Page No.	Date shown on page
List of Effective Pages:	
Pages III–VII	December 1, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

(3) 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 February 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3399 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0213; Directorate Identifier 2007–NM–233–AD; Amendment 39–15389; AD 2008–04–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, DHC–8–202, DHC–8–301, DHC–8–311, and DHC–8–315 Airplanes, and Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Several cases have been reported where the pilot, co-pilot or observer utility light system has failed, resulting in a burning smell within the cockpit. An investigation has revealed that, due to the orientation and location of the carbon molded potentiometers used to control the intensity of the light, the potentiometers can fail and overheat in such a way that burning of the ceiling panel and the associated insulation blanket could occur. This could lead to the presence of smoke in the cockpit, requiring that the pilots carry out the appropriate emergency procedure.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 21, 2007 (72 FR 65476). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several cases have been reported where the pilot, co-pilot or observer utility light system has failed, resulting in a burning smell within the cockpit. An investigation has revealed that, due to the orientation and location of the carbon molded potentiometers used to control the intensity of the light, the potentiometers can fail and overheat in such a way that burning of the ceiling panel and the associated insulation blanket could occur. This could lead to the presence of smoke in the cockpit, requiring that the pilots carry out the appropriate emergency procedure.

Corrective actions include replacing the affected carbon molded resistive element potentiometers with wire-wound type potentiometers for the pilot, co-pilot, and, if applicable, observer utility lights. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 186 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $44,640, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–17 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15389. Docket No. FAA–2007–0213; Directorate Identifier 2007–NM–233–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, DHC–8–202, DHC–8–301, DHC–8–311, and DHC–8–315 airplanes, serial numbers 003 through 639; and Model DHC–8–400 series airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4149; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 33: Lights.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several cases have been reported where the pilot, co-pilot or observer utility light system has failed, resulting in a burning smell within the cockpit. An investigation has revealed that, due to the orientation and location of the carbon molded potentiometers used to control the intensity of the light, the potentiometers can fail and overheat in such a way that burning of the ceiling panel and the associated insulation blanket could occur. This could lead to the presence of smoke in the cockpit, requiring that the pilots carry out the appropriate emergency procedure.

Corrective actions include replacing the affected carbon molded resistive element potentiometers with wire-wound type potentiometers for the pilot, co-pilot, and, if applicable, observer utility lights.

Actions and Compliance

(f) Within 18 months after the effective date of this AD, unless already done, do the following actions.

(1) For Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, DHC–8–202, DHC–8–301, DHC–8–311, and DHC–8–315 airplanes: Install Bombardier Modsum 8Q101603 to replace the affected carbon molded resistive element potentiometers with wire-wound type potentiometers for both the pilot and co-pilot utility lights, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–33–53, Revision A, dated March 14, 2007.

(2) For Model DHC–8–400 series airplanes: Install Bombardier Modsum 4–126381 to replace the affected carbon molded resistive element potentiometers with wire-wound type potentiometers for the pilot, co-pilot, and observer utility lights, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–33–10, Revision A, dated March 14, 2007.

(3) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 8–33–53 or 84–33–10, both dated December 1, 2006, as applicable, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No difference.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–11, dated August 9, 2007; Bombardier Service Bulletin 8–33–53, Revision A, dated March 14, 2007; and Bombardier Service Bulletin 84–33–10, Revision A, dated March 14, 2007; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 8–33–53, Revision A, dated March 14, 2007; or Bombardier Service Bulletin 84–33–10, Revision A, dated March 14, 2007; as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

(3) 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 February 13, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3397 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0337; Directorate Identifier 2007–NM–111–AD; Amendment 39–15392; AD 2008–04–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N°1, inside the Right Hand (RH) inboard dry bay.

It was discovered that [certain] access panels * * * had been omitted from the access requirements of the associated AMM (airplane maintenance manual) task (AMM 05–25–40) until the August 2001 revision.

The result is that some * * * inspections may have not been fully accomplished due to non-removal of [certain] panels * * *.

If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 3, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2008.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 17, 2007 (72 FR 71284). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N°1, inside the Right Hand (RH) inboard dry bay.

It was discovered that access panels 540CZ, 540DZ, 640CZ and 640DZ had been omitted from the access requirements of the associated AMM (airplane maintenance manual) task (AMM 05–25–40) until the August 2001 revision.

The result is that some ZL–540–02–1 or ZL–540–02 (or ZL–540–02 and ZL–640–02) inspections may have not been fully accomplished due to non-removal of panels 540CZ, 540DZ, 640CZ and 640DZ.

If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. The corrective actions include an inspection for corrosion in the wing tank dry bay, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 103 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $32,960, or $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–04–20 Airbus: Amendment 39–15392. Docket No. FAA–2007–0337; Directorate Identifier 2007–NM–111–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 series airplanes, certificated in any category, all certified models, all serial numbers, on which Airbus A318/A319/A320/A321 Maintenance Review Board Report (MRBR) zonal tasks ZL–540–02 and ZL–640–02 (for MRBR up to Revision 7) or MRBR zonal task ZL–540–02–1 or ZL–540–02–2 (for MRBR since Revision 8) have already been performed before the effective date of this AD, and for which it cannot be substantiated that access panels 540CZ, 540DZ, 640CZ and 640DZ were removed for inspection. This AD does not apply to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which zonal tasks ZL–540–02–1 and ZL–540–02–2 (or ZL–540–02 and ZL–640–02) have been performed in accordance with Airbus A318/A319/A320/A321 Airplane Maintenance Manual (AMM) 05–25–40 at August 2001 revision or later revision.

(2) Airplanes on which one of the following Airbus A318/A319/A320/A321 Airworthiness Limitation Items (ALI)/MRBR tasks have been performed: 572004–01–X, 572004–03–X; 572020–01–X, 572020–02–X; 572027–01–X, 572027–03–X; 572053–01–X, 572053–02–X; 572060–02–X; or 572061–02–X; where X represents the task applicability index.

(3) Airplanes delivered after March 27, 2007.

Note 1: Up to Airbus A318/A319/A320/A321 MRBR Revision 7, ZL–540–02 covered Zone 540 and ZL–640–02 covered Zone 640. Since Airbus A318/A319/A320/A321 MRBR Revision 8, ZL–540–02–1 or ZL–540–02–2 also cover the corresponding RH wing zone (Zone 640).

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N°1, inside the Right Hand (RH) inboard dry bay.

It was discovered that access panels 540CZ, 540DZ, 640CZ and 640DZ had been omitted from the access requirements of the associated AMM task (AMM 05–25–40) until the August 2001 revision.

The result is that some ZL–540–02–1 or ZL–540–02–2 (or ZL–540–02 and ZL–640–02) inspections may have not been fully accomplished due to non-removal of panels 540CZ, 540DZ, 640CZ and 640DZ.

If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. The corrective actions include an inspection for corrosion in the wing tank dry bay, and repair if necessary.

Actions and Compliance

(f) Unless already done, do the following actions. Within 14 months after the effective date of this AD, perform a detailed visual inspection of the wing tank dry bay to detect corrosion and if any corrosion is found, before further flight, contact Airbus for repair instructions and repair. Do all applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1121, dated October 9, 2002. Another approved method for doing the detailed inspection and applicable corrective actions is the accomplishment of one of the following Airbus A318/A319/A320/A321 ALI/MRBR tasks: 572004–01–X, 572004–03–X; 572020–01–X, 572020–02–X; 572027–01–X, 572027–03–X; 572053–01–X, 572053–02–X; 572060–02–X; or 572061–02–X; and ZL–540–02–X if panels 540CZ, 540DZ, 640CZ, and 640DZ have been removed; where X represents the task applicability index.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Transport Airplane Directorate, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0064R1, dated September 21, 2007, and Airbus Service Bulletin A320–57–1121, dated October 9, 2002, for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320–57–1121, dated October 9, 2002, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) 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 February 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3404 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47, 61, 63, and 65

[Docket No. FAA–2006–26714; Amendment Nos. 47–28, 61–118, 63–36, and 65–51]

RIN 2120–AI43

Drug Enforcement Assistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is implementing changes to its airmen certification and aircraft registration requirements. Two years after this rule becomes effective, paper pilot certificates may no longer be used to exercise piloting privileges. Five years after this rule becomes effective, certain other paper airmen certificates, such as those of flight engineers and mechanics, may no longer be used to exercise the privileges authorized by those certificates. To exercise the privileges after those respective dates, the airmen must hold upgraded, counterfeit-resistant plastic certificates. Student pilot certificates, temporary certificates, and authorizations are not affected. In addition, those who transfer ownership of U.S.-registered aircraft have 21 days from the transaction to notify the FAA Aircraft Registry. Those who apply for aircraft registration must include their printed or typed name with their signature. These changes are responsive to concerns raised in the FAA Drug Enforcement Assistance Act. The purpose of the changes is to upgrade the quality of data and documents to assist Federal, State, and local agencies to enforce the Nation's drug laws.

DATES: These amendments become effective on March 31, 2008. Affected parties, however, do not have to comply with the information collection requirements of this rule until the OMB approves the FAA's request for this information collection requirement. The FAA will publish a separate document notifying you of the OMB Control Number and the compliance date(s) for the information collection requirements of this rule.

FOR FURTHER INFORMATION CONTACT: John Bent, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169, telephone (405) 954–4331.

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

Pilot Identification and Certification

The FAA Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690) (the DEA Act) amended 49 U.S.C. 44703 to direct the FAA to modify the system for issuing airman certificates to pilots to make the system more effective in serving the needs of pilots and officials responsible for enforcement of laws relating to the regulation of controlled substances. The DEA Act identified a number of deficiencies and abuses that the modifications must address, including the use of counterfeit and stolen airman certificates by pilots and the submission of unidentifiable names of individuals on applications for registration of aircraft. The DEA Act also amended section 44703 to require the FAA to prescribe regulations to address the abuses and deficiencies. Additional background information appears in the notice of proposed rulemaking (72 FR 489, Jan. 5, 2007).

In 2002, the FAA revised the pilot certificate requirements of part 61 to require a person to carry photo identification when exercising the privileges of the pilot certificate and to present photo identification when requested by law enforcement officials. *See* 67 FR 65858, October 28, 2002. These changes address security and law enforcement concerns regarding the identification of pilots. Also, in July 2003, the Civil Aviation Registry (the Registry) discontinued issuing paper airman certificates and began issuing permanent airman certificates that incorporate a number of security features. The new certificates are made of high-quality plastic card stock and include micro printing, a hologram, and an ultraviolet-sensitive layer that contains certain words and phrases. These new certificates greatly reduce the ability to create counterfeit airman certificates.

This final rule provides that the holder of a paper pilot certificate, other than a temporary pilot certificate or a student pilot certificate, may not exercise the privileges of the paper certificate after two years from the date of adoption of this final rule. After the two-year period, only an FAA-issued plastic pilot certificate may be used to exercise piloting privileges. The final rule does not revoke or otherwise cancel a paper certificate. It simply requires, after this final rule becomes effective, that the pilot have the plastic certificate to exercise the attendant privileges.

Two years is a reasonable time to allow for the replacement of pilot certificates by those who want to act as a pilot after the two-year period without interruption. (A person who holds an older-style paper pilot certificate may apply for a plastic certificate after the two-year period, but he or she would not be able to exercise piloting privileges until he or she obtained the plastic certificate.) We are assuming that applications for the plastic replacement certificate would be evenly spread out through the two-year period. If all pilots wait until close to the end of the two-year period to apply for the replacement certificate, there would undoubtedly be delays in processing and receipt of the new certificate. The two-year period balances our ability to receive and process applications for replacement certificates, to maintain our existing range of services, and to reduce the risk of counterfeiting of paper certificates.

To effect this change, we are adopting new paragraph (h) in 14 CFR 61.19 ''Duration of pilot certificates,'' as proposed. Readers should note that this final rule does not require a holder of a paper pilot certificate to surrender the certificate when getting the new plastic certificate. The paper certificate would not authorize the holder to exercise piloting privileges, but those who wish to retain it may do so. Currently, the fee for replacing an existing paper certificate is $2.00. This nominal fee defrays part of the Registry's cost of replacing the existing paper pilot certificates. At the same time, the $2.00 fee will not be an undue burden on individuals. To make the replacement process as quick and easy as possible, the Registry has recently set up a system that allows a certificate holder to request a replacement certificate using the Internet. Certificate holders may access this system by going to the following address: *https://amsrvs.registry.faa.gov/amsrvs.*

This final rule does not apply to student pilot certificates or flight instructor certificates. Under existing regulations, these certificates expire 24 calendar months from the month in which they are issued or renewed. *See* 14 CFR 61.19(b) and (d).

This final rule also provides that ground instructors, flight crewmembers other than pilots (regulated under 14 CFR part 63), and airmen other than flight crewmembers (regulated under 14 CFR part 65) who hold paper airmen certificates (other than temporary certificates) may not exercise the privileges of the paper certificates after five years from the effective date of the

final rule. After the five-year period, only an FAA-issued plastic airmen certificate could be used to exercise these privileges. This rule does not revoke or otherwise cancel a paper certificate. It simply requires the airman to have the plastic certificate to exercise the attendant privileges.

Although the DEA Act only addressed pilot certificates, we are adopting a parallel change for these other airmen certificates under the FAA's general rulemaking authority. Ground instructors and part 63 and part 65 airmen play an essential role in the functioning of the civil aviation system. We must address any potential problems associated with accurate identification of these airman certificate holders. A mechanic or flight engineer would have access to aircraft and have opportunities to participate in drug smuggling activities, such as concealment of drugs on the aircraft.

To effect these changes, we are adopting the revisions to existing 14 CFR 61.19(e) and new 14 CFR 63.15(d) and 65.15(d) as proposed. Replacement of these certificates will cost the holder $2.00. To make the replacement process as quick and easy as possible, the Registry has recently set up a system that allows a certificate holder to request a replacement certificate using the Internet. Certificate holders may access this system by going to the following address: *https://amsrvs.registry.faa.gov/amsrvs.* Readers should note that a plastic airman certificate issued under this final rule to replace a paper certificate will also contain the language proficiency endorsement needed for international operations under the International Civil Aviation Organization's Annex 1.

Aircraft Registration

The DEA Act authorizes the FAA to modify the system for registering and recording conveyances to make the system more effective in serving the needs of buyers and sellers of aircraft and of officials responsible for enforcement of laws relating to the regulation of controlled substances. See 49 U.S.C. 44111. The DEA Act identified a number of deficiencies, including the submission of unidentifiable names of individuals on applications for registration of aircraft. The DEA Act also authorized the FAA to prescribe regulations to address the deficiencies. The FAA has undertaken a number of non-regulatory actions to address the deficiencies outlined in the DEA Act. A discussion of these actions appears in the notice of proposed rulemaking (72 FR 489, Jan. 5, 2007) and the notice withdrawing the 1990 notice of proposed rulemaking (70 FR 72403, Dec. 5, 2005).

Notwithstanding the many improvements made by the Registry, we still have a concern about the accuracy of ownership information contained in the Registry. Those who transfer ownership of U.S.-registered aircraft do not always notify the Registry of the transfer in a timely fashion. The effectiveness of the Registry's document index and aircraft registry database depends on the accuracy and timeliness of the information they contain. For this reason, we are amending 14 CFR 47.41(b) to require the person selling, or otherwise transferring ownership of, a U.S.-registered aircraft to return the certificate of aircraft registration to the Registry within 21 days of sale or transfer.

We had proposed to require reporting of aircraft sale within five days of sale or transfer, but are adopting a 21-day period in response to comments, discussed below. Twenty-one days is a reasonable amount of time to complete the reverse side of the certificate and ensure its arrival at the Registry. It achieves a balance between the need to have accurate, up-to-date information in the Registry for the use of law enforcement agencies and our desire not to unduly burden individuals.

To address the problem of the submission of illegible names of individuals on applications for registration of aircraft, we are requiring each applicant to provide a printed or typed name with his or her signature. The Registry has already included this requirement in the instructions for completing the aircraft registration application. We are adding it to our regulations to bolster our authority to reject applications that contain illegible names. To effect this change, we are adopting changes to a previously undesignated portion of 14 CFR 47.31 that appeared between paragraphs (a) and (b) as proposed. Currently, the FAA rejects an application if it is not completed or if the name and signature on the application are not the same throughout. Under this final rule, the currently undesignated provision becomes new 14 CFR 47.31(b) and includes the requirement for a printed or typed name under the signature. Existing paragraphs (b) and (c) are redesignated as paragraphs (c) and (d).

Temporary Paper Certificates and Authorizations

The FAA did not specifically address in the NPRM temporary certificates issued under §§ 61.17, 63.13, and 65.13. The process of temporary certification was not addressed in the proposal, and we received no comments on this issue. The FAA will continue to issue paper temporary certificates as part of the FAA's established certification process. The final rule includes language in §§ 61.19, 63.15, and 65.15 to clarify that temporary certificates are not required to be plastic to allow the individual to exercise the privileges of these certificates.

The limited duration (120 days) of the temporary certificates is one reason that the FAA does not believe that the issuance of paper temporary certificates is a significant issue. Moreover, in the case of a pilot airman, the additional privilege accorded by a temporary certificate typically is attached to an existing pilot certificate. For example, adding a category, class, instrument or type rating to an existing pilot certificate means that the individual already holds a pilot certificate. At the point that the rule requires that the pilot certificate be plastic, the temporary paper certificate covering the new privileges will be associated with an existing plastic certificate. In addition, the FAA recognizes that airmen who have earned an additional privilege have a justifiable interest in immediately exercising that privilege.

There are two other paper documents, one issued under part 61 and the other issued under part 65, that provide authority to engage in certain aeronautical activities. These documents are not issued by the Civil Aviation Registry. The first document is a special purpose pilot authorization issued under § 61.77. This limited authorization is issued by letter to an individual to permit acting as a pilot aboard an aircraft of U.S. registry in foreign air commerce, subject to a variety of limitations and requirements. The FAA will continue to issue § 61.77 authorizations in letter format.

The second document is the inspection authorization issued under § 65.92. An inspection authorization is not an airman certificate per se, and to hold and exercise the privileges of the authorization, the individual must hold a current mechanics certificate with both an airframe rating and a powerplant rating. Thus, like temporary certificates that are related to an underlying pilot certificate, an inspection authorization will always be based on an FAA airman certificate. At the point under this rule when a plastic certificate is required for airmen other than pilots, the holder of an inspection authorization also will have to hold a plastic mechanics certificate that supports the inspection authorization authority.

Finally, the FAA will continue the practice of issuing paper student pilot certificates in the context of obtaining a medical certificate from an aviation medical examiner. This is consistent with the NPRM where we specifically excluded student pilot certificates from the proposed change. For the purposes of addressing the concerns of the DEA Act, the FAA concluded that changes to the student pilot certification process are not necessary.

Related Rulemaking Activities

This final rule addresses issues related to the FAA Drug Enforcement Assistance Act. The FAA will address the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458) in a future rulemaking. IRTPA requires, among other things, the inclusion of a digital photograph on pilots' certificates. The FAA is currently evaluating its options with regard to the best method to meet this requirement while continuing to evaluate other changes to improve data quality of the Registry. The FAA is actively considering whether to propose a rule to require the periodic registration of aircraft. In a post-9/11 environment, there are important security and other benefits that would result from a more up-to-date and accurate aircraft Registry.

Discussion of Comments

General

The notice of proposed rulemaking (NPRM) was published on January 5, 2007, and the comment period closed on March 6, 2007 (72 FR 489). A total of 48 comments were received from commenters representing air transportation operators and their associations, pilots and pilot associations, aircraft owners and aircraft owners associations, and other individuals.

Several commenters opposed the proposals based on the incorrect notion that additional fees would be part of the rule. Some commenters were generally supportive of the changes proposed by the NPRM, but others did not see benefits from the proposed changes. With regard to the 5-day sale reporting proposal, some commenters objected to the short time period (5 days), but not to the concept of establishing a time certain.

The following discussion of comments includes the substantive issues raised by commenters.

User Fees

Of the 48 comments, there were 15 that opposed the NPRM because of their belief that the NPRM contained new user fees. These commenters thought that this NRPM would implement additional fees for aircraft registration and the submission of the Form 337 that is used to report major repairs and alterations to aircraft. There were also some comments that establishing a user-fee system would add significant overhead costs.

These commenters read the NPRM incorrectly. We did not propose and are not adopting new or increased fees for aircraft registration and the submission of the Form 337. Nor does this final rule establish a user-fee system. The only fee associated with this final rule is the existing $2 fee for replacing an airman certificate. Under the final rule, this is a one-time fee incurred when the paper certificate is replaced by plastic.

Return of Aircraft Registration Certificate

Some opposition to the NPRM centered on the proposed requirement that a person selling or otherwise transferring ownership of a U.S.-registered aircraft return the certificate of aircraft registration to the Registry within 5 days of sale or transfer. One commenter felt that the FAA should consider the fact that business transfers of ownership may involve securing of financial interests and financing and recommended increasing the time period to 14 business days. The National Air Transportation Association stated that aircraft transactions are complicated and frequently occur at sites away from the principals' primary residence or place of business and proposed a 10-day period. It also requested that the deadline be measured against the postmark or shipment date, not the delivery date. The National Business Aviation Association suggested a more reasonable time frame would be 14 days given the complex nature of most business aircraft transactions and the global travels of those involved in the transactions. Northwest Airlines requested we allow up to 21 days to return the old registration because the owner of an aircraft may not have immediate access to the old registration at the time of sale.

After considering the comments, we find that we do not disagree with the idea of allowing more than 5 days to report an aircraft sale or transfer. Although 5 days may be sufficient in relatively simple transactions, we do not wish to promulgate a regulation that may ensnare otherwise law-abiding entities in a violation. For this reason, of the alternatives proposed by the commenters, 10 days measured from shipping date, 14 ''business'' days, 14 days, and 21 days, we have chosen to adopt a 21-day period. Thus, the final rule requires reporting of aircraft sale or transfer within 21 days from the date of sale to the date we receive the aircraft registration certificate. This is fair to the commenter who requested we measure the 10-day time interval from the shipping date since a 21-day interval should easily encompass any lag between the shipping date and the delivery date. We chose not to express the time interval in ''business'' days because none of our other regulatory time frames make a distinction between ''business'' days and other days. See, for example, existing 14 CFR 47.15(f), 47.31(b), and 47.41(a)(6). We also note that 21 days (3 weeks) essentially corresponds to 14 ''business'' days.

The National Business Aviation Association recommended that we create a reasonable alternate means of compliance for fractional aircraft programs due to the potential increased volume of changes for aircraft in fractional programs.

Fractional aircraft programs can involve situations where there are large numbers of aircraft owners and where the ownership is constantly changing. Whenever an owner enters or leaves a fractional program, the event must be reported to the Registry through an application for an updated aircraft registration. The NPRM did not propose any change to the requirement to report changes in aircraft ownership; it simply proposed to establish a time frame in which the return of the registration certificate must be accomplished. For this reason, the change recommended by the National Business Aviation Association is beyond the scope of this rulemaking.

Replacing Paper Airmen Certificates With Plastic Certificates

A number of individual commenters expressed the view that the change from paper to plastic certificates will have no benefit on drug enforcement or improving aviation security. They opposed the expense, however modest, as an additional fee without a benefit. A smaller number of individual commenters supported the enhanced certificates, as did the Airline Pilots Association and the Aircraft Owners and Pilots Association.

The FAA is convinced that the plastic certificates provide a significantly higher level of integrity. The security features of the plastic certificates are significant. The out-of-pocket costs of two dollars coupled with the ability to easily obtain the new certificate through the Internet, makes this a significant improvement with minimal impact.

Some individual commenters, as well as the National Air Transportation Association and the Regional Airlines Association, suggested that this rulemaking be held in abeyance until such time that the FAA moves forward to address the requirement of IRTPA to add photographs to pilot certificates. They objected to the cost and inconvenience of obtaining a plastic certificate only to have to take another action related to a later rulemaking soon thereafter to implement IRTPA.

The initiative to address IRTPA, including requiring photographs on pilot certificates, will require additional rulemaking. It typically takes several years to complete a rulemaking project, and in the case of the photo ID requirement, we have not yet issued a proposal for public comment. Meanwhile, we have already issued plastic certificates to nearly 60 percent of pilots. The replacement of the remaining paper certificates with new plastic ones is a low-cost, easy way to improve the quality of certificates in the near term. In addition, the FAA currently has in place regulations that require pilots to provide a form of third-party photo identification to exercise the privileges of the airman certificate.

We are currently evaluating our options with regard to the best method of complying with the remaining IRTPA mandates, including putting a digital photo on pilot certificates. The FAA does intend ultimately to establish a digital photo requirement for pilot certificates. The rulemaking to implement additional security features on pilot certificates will give interested parties an opportunity to comment.

Properties of Existing Plastic Certificates

There were comments that the current plastic certificates would be as easy to counterfeit as the paper certificates.

The FAA disagrees with these comments as there a number of features of the new certificates that make them difficult to duplicate. Some of these features are the use of micro-printing, holograms, and an ultraviolet layer.

There were also comments that the printing on the plastic certificates could be easily rubbed off and replaced with false information.

The plastic certificates currently being issued have been enhanced with a protective layer on top of the printing that precludes this possibility. The FAA believes that the properties of the current plastic certificates make them difficult to counterfeit.

Applicability to Repairmen

An individual commenter asked if the proposed change would have the same impact for repairmen as for certificated mechanics. In the commenter's view, the proposal did not address certificates issued under part 65 for repairmen.

The commenter must have misunderstood the proposal. The proposal included new § 65.15(d), which would apply to the holder of a paper certificate issued under part 65. Part 65 applies to airmen other than flight crew members, including air traffic control tower operators, aircraft dispatchers, mechanics, repairmen, and parachute riggers. However, § 65.15(d) does not apply to inspection authorizations issued under § 65.91 since an inspection authorization is not a certificate under § 61.15(d).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not collect or sponsor the collection of information, nor may it impose an information requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

As required by the Act, we submitted a copy of the new information requirements to OMB for their review when we published the NPRM. Additionally, in the NPRM, we solicited comments from the public on the proposed new information collection requirements. No comments relating to the proposed new information collection requirements were received. Affected parties, however, do not have to comply with the information collection requirements of this rule until the OMB approves the FAA's request for this information collection requirement. The FAA will publish a separate document notifying you of the OMB Control Number and the compliance date(s) for the information collection requirements of this rule.

Under this final rule, two years after the final rule becomes effective, paper pilot certificates may no longer be used to exercise piloting privileges. Five years after the final rule becomes effective, certain other paper airmen certificates, such as those of flight engineers and mechanics, may no longer be used to exercise the privileges authorized by those certificates. To exercise the privileges after those respective dates, the airmen would have to replace their paper certificates with upgraded, counterfeit-resistant plastic certificates. The FAA estimates that there are 900,000 active airmen, of which 450,000 are pilots.

Each airman having a paper certificate would need to provide the FAA, the Airmen Certification Branch at the Civil Aviation Registry, with the appropriate paperwork. This can be done either through the mail or electronically. The fee for this new replacement certificate is $2. The FAA assumes that it will take no more than five minutes for each airman to process the paperwork; the total cost to each airman would be about $5. Five-year costs range from $1.51 million ($1.31 million, discounted) for the low-cost scenario to $3.45 million ($2.96 million, discounted) for the high-cost scenario.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, FAA's policy is to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail

read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Regulatory Evaluation Summary

Analysis of Costs

The FAA assumes that an equal number of paper airmen certificates will be replaced each year. The FAA projects that there will be about 335,800 pilots who still hold paper certificates, so the FAA assumes that about 167,900 will get their new plastic certificate in 2008 and in 2009. Excluding the certified flight instructors, about 399,600 other individuals with airman certificates will need to replace their certificates over a 5 year period, or about 79,900 a year.

The FAA has considered two cost scenarios. The first, low cost scenario, assumes that since some airmen have been replacing their paper certificates with the new plastic certificates, either because they have requested replacement certificates or because they have received new certificates after attaining additional ratings, they will continue to do so without the rule. The cost that these pilots will incur to replace their certificates cannot be considered a cost of the final rule, since they would have replaced their certificates without the rule. The second, high cost scenario, assumes that no pilots or airmen will replace their paper certificates with plastic certificates unless the rule required them to do so.

Pilot and Airmen Costs

Each airman having a paper certificate will need to provide the FAA's Airmen Certification Branch at the Civil Aviation Registry with the appropriate paperwork. This can be done either through the mail or electronically. The fee for this new replacement certificate is $2. The FAA assumes that it will take no more than 5 minutes for each airman to process the paperwork; the total cost to each airman will be about $5. Five-year costs range from $1.51 million ($1.31 million, discounted) for the low-cost scenario to $3.45 million ($2.96 million, discounted) for the high-cost scenario.

Government Costs

There are several steps involved with the FAA processing a request for a duplicate airman certificate. These steps include federal employees at two different grade levels as well as several contractors, including those who will preprocess and scan the images, index the image, review the certificate for accuracy, and print and mail the certificates. The total costs per new certificate sum to about $4.50; 5-year costs range from $1.45 million ($1.26 million, discounted) for the low-cost scenario to $3.30 million ($2.83 million discounted) for the high-cost scenario. The lower cost represents the low cost scenario, while the higher cost represents the high cost scenario.

Total costs, over 5 years, to replace the existing paper certificates range from $2.96 million ($2.57 million, discounted), the low cost scenario, to $6.75 million ($5.79 million, discounted), the high cost scenario.

Analysis of Benefits

Congress has determined that the smuggling of drugs into the United States by general aviation aircraft is a major contributing factor in the illegal drug crisis facing the nation. As a result of that determination, the Congress expanded the mission of the FAA to include assisting law enforcement agencies in the enforcement of laws regulating controlled substances, to the extent consistent with aviation safety.

The Congress has stated in the Drug-Free America Policy of the Drug Enforcement Assistance Act of 1988 that the total cost of drug use to the economy is estimated to be over $100 billion annually. Were this rule to reduce society's economic cost of drug use by approximately 1/74,000th for the high cost scenario or 1/169,000th for the low cost scenario over 5 years, that achievement will more than equal the estimated cost to society of these regulatory changes. The FAA believes that such a reduction is achievable. Congress, which reflects the will of the American public, has determined that this action is in the best interest of the nation.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule affects aircraft owners, through part 47, and pilots, through parts 61, 63, and 65. The change to part 47 will affect all aircraft owners. However, as stated above, they have always been required to send in the registration package upon purchase of a new aircraft; this rule does not impose any new requirements on new aircraft owners. Accordingly, there are no additional costs for these owners.

The changes to parts 61, 63, and 65 will impose an estimated $5 in compliance costs on pilots applying for certificate reissuances. This cost covers the costs for the postage, applicant's time, and the $2 reissuance fee charged to pilots. However, pilots are not small entities and are not covered by the Regulatory Flexibility Act. The FAA recognizes that there are one-man businesses that provide aviation services; however, the cost of this final rule to them will be negligible and, therefore, not significant.

Therefore as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any

standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Federal eRulemaking portal at *http://www.regulations.gov;*

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 63

Aircraft, Airmen, Alcohol abuse, Drug abuse, Navigation (air), Reporting and recordkeeping requirements.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing the Federal Aviation Administration is amending Chapter I of Title 14 Code of Federal Regulations as follows:

PART 47—AIRCRAFT REGISTRATION

■ 1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44111, 44703–44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

■ 2. Amend § 47.31 to redesignate existing paragraphs (b) and (c) as (c) and (d) and designate the undesignated text following paragraph (a)(3) as a new paragraph (b) and revise it to read as follows:

§ 47.31 Application.

* * * * *

(b) The FAA rejects an application when—(1) Any form is not completed;

(2) The name and signature of the applicant are not the same throughout; or

(3) The applicant does not provide a legibly printed or typed name with the signature in the signature block.

* * * * *

■ 3. Amend § 47.41 by revising paragraph (b) to read as follows:

§ 47.41 Duration and return of Certificate.

* * * * *

(b) The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the FAA Aircraft Registry—

(1) Within 21 days in the case of registration under the laws of a foreign country, by the person who was the owner of the aircraft before foreign registration;

(2) Within 60 days after the death of the holder of the certificate, by the administrator or executor of his estate, or by his heir-at-law if no administrator or executor has been or is to be appointed; or

(3) Within 21 days of the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 4. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 5. Amend § 61.19 by:

■ A. Revising paragraph (e); and

■ B. By adding new Paragrah (h) to read as follows:

§ 61.19 Duration of pilot and instructor certificates.

* * * * *

(e) *Ground instructor certificate.* (1) A ground instructor certificate issued under this part is issued without a specific expiration date.

(2) Except for temporary certificates issued under § 61.17, the holder of a paper ground instructor certificate issued under this part may not exercise the privileges of that certificate after March 31, 2013.

* * * * *

(h) *Duration of pilot certificates.* Except for a temporary certificate issued under § 61.17 or a student pilot certificate issued under paragraph (b) of this section, the holder of a paper pilot certificate issued under this part may not exercise the privileges of that certificate after March 31, 2010.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 7. Amend § 63.15 by adding new paragraph (d) to read as follows:

§ 63.15 Duration of certificates.

* * * * *

(d) Except for temporary certificate issued under § 63.13, the holder of a paper certificate issued under this part may not exercise the privileges of that certificate after March 31, 2013.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 8. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 9. Amend § 65.15 by adding new paragraph (d) to read as follows:

§ 65.15 Duration of certificates.

* * * * *

(d) Except for temporary certificates issued under § 65.13, the holder of a paper certificate issued under this part may not exercise the privileges of that certificate after March 31, 2013.

Issued in Washington, DC, on February 6, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–3827 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 071129776–7777–01]

RIN 0694–AE20

Expanded Authorization for Temporary Exports and Reexports of Tools of Trade to Sudan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule increases the number of end-uses for which certain ''tools of trade'' may be exported temporarily to Sudan under a license exception. It also makes more types of commodities eligible under the category ''tools of trade'' for purposes of this license exception and authorizes reexports under this provision to the same extent as exports are authorized.

DATES: *Effective Date:* This rule is effective February 28, 2008.

ADDRESSES: Comments may be submitted by e-mail to the Federal eRulemaking site *www.regulations.gov,* by e-mail directly to BIS at *publiccomments@bis.doc.gov;* by fax to (202) 482–3355; or on paper to—Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694–AE20 in all comments. Comments on the information collection contained in this rule should also be sent to David Rostker, Office of Management and Budget Desk Officer; by e-mail to *david_rostker@omb.eop.gov*; or by fax to (202) 395–7285. Refer to RIN 0694–AE20 in all comments.

FOR FURTHER INFORMATION CONTACT: Eric Longnecker, Office of Nonproliferation and Treaty Compliance, tel. (202) 482–5537, e-mail *elongnec@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 740.9 of the Export Administration Regulations provides inter alia an exception to export and reexport license requirements for certain temporary exports and reexports. One category of such exports and reexports is entitled ''tools of trade.'' In February 2005, BIS revised § 740.9 to allow temporary exports, but not reexports, to Sudan of certain computers, communications devices, and global satellite positioning devices by employees and staff of certain organizations engaged in humanitarian work in Sudan (70 FR 8257, February 18, 2005 and 70 FR 9703, February 28, 2005). The experiences of the organizations using this provision, the increase in computer performance levels since that rule was published, the implementation of the Comprehensive Peace Agreement and the Darfur Peace Agreement, the passage of the Darfur Peace and Accountability Act, the issuance of Executive Order 13412, the implementation of that Act and that Executive Order by the Department of the Treasury, and the changing nature of the assistance being provided in Sudan by non-governmental organizations have led BIS to conclude that changes to this provision are warranted.

Specific Changes Made by This Rule

This rule modifies § 740.9(a)(2)(i)(B) of the EAR, which sets forth the provisions that apply specifically to Sudan for temporary exports and reexports of tools of trade under License Exception TMP. This rule breaks that paragraph into further subparagraphs to make the provisions easier to follow and cite.

This rule adds reexports to the types of transactions authorized by § 740.9(a)(2)(i)(B).

This rule adds certain support activities to relieve human suffering or to implement the Darfur Peace Agreement or the Comprehensive Peace Agreement by an organization authorized by the Department of the Treasury, and certain support activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412, to the purposes for which § 740.9(a)(2)(1)(B) authorizes sending tools of trade under License Exception TMP to Sudan.

This rule allows exports and reexports to an eligible user in Sudan by a method reasonably calculated to assure delivery

to the permissible user. Prior to publication of this rule, § 740.9(a)(2)(i)(B) required that shipments accompany a traveler to Sudan.

This rule raises the adjusted peak performance (APP) of computers controlled under Export Control Classification Number (ECCN) 4A994.b eligible under § 740.9(a)(2)(1)(B) from 0.0015 weighted teraFLOPS (WT) to 0.008 WT.

This rule makes disk drives controlled under ECCN 4A991.d, input/output control units controlled under ECCN 4A994.e (other than industrial controllers for chemical processing), graphics accelerators controlled under 4A994.g and color displays and monitors controlled under 4A994.h eligible for export and reexport under § 740.9(a)(2)(i)(B).

This rule authorizes export or reexport of software to be used solely for servicing or in-kind replacement of software legally exported or reexported pursuant to § 740.9(a)(2)(i)(B). Prior to this rule all such software had to be loaded on to the hardware prior to sending the hardware to Sudan.

Reasons for the Changes Made by This Rule

BIS is making these changes for several reasons. The increase in the performance level of the computers authorized by this rule is needed because few, if any, computers with an APP of 0.0015 WT level are easily available at retail outlets. The additional commodities are peripheral equipment to computers that are used for routine business tasks such as word processing, spreadsheets and Web browsing. Allowing reexports of such items and removing the requirements that the items accompany a traveler to Sudan and that software be loaded prior to arrival of the hardware in Sudan will allow persons working for non-governmental organizations engaged in humanitarian or development efforts in Sudan to procure items subject to the EAR outside the United States and send them to Sudan more easily. Since 2005, when BIS last amended § 740.9(a)(2)(1)(B), the nature of the activities of U.S.-supported NGOs in Sudan has evolved from humanitarian assistance and efforts to relieve human suffering to include not only those goals but some development assistance as well. This rule allows support of that broader scope of activities consistent with the Darfur Peace Agreement, the Comprehensive Peace Agreement, the Darfur Peace and Accountability Act and Executive Order 13412.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will have no material effect on the burden imposed by that collection.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable.

List of Subjects in 15 CFR Part 740

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

■ For the reasons set forth in the preamble, the Export Administration Regulations (15 CFR 730–799) are amended as follows:

PART 740—AMENDED

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Revise § 740.9(a)(2)(i)(B) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(B) *Sudan.* Exports or reexports of tools of trade may be made to Sudan as authorized by this paragraph.

(*1*) *Permissible users of this provision.* A non-governmental organization or an individual staff member, employee or contractor of such organization traveling to Sudan at the direction or with the knowledge of such organization may export or reexport under this paragraph.

(*2*) *Authorized purposes.* Any tools of trade exported or reexported under this paragraph must be used to support activities to implement the Darfur Peace Agreement or the Comprehensive Peace Agreement, to provide humanitarian or development assistance in Sudan to support activities to relieve human suffering in Sudan by an organization registered by the Department of the Treasury, Office of Foreign Assets Control (OFAC) pursuant to 31 CFR 538.521, to support the actions in Sudan for humanitarian or development purposes by an organization authorized by OFAC to take such actions that would otherwise would be prohibited by the Sudanese Sanctions Regulations (31 CFR part 538), or to support the activities to relieve human suffering in Sudan in areas that are exempt from the Sudanese Sanctions Regulations by virtue of the Darfur Peace and Accountability Act and Executive Order 13412.

(*3*) *Method of export and maintenance of control.* The tools of trade must accompany (either hand carried or as checked baggage) a traveler who is a permissible user of this provision or be shipped or transmitted to an eligible user of this provision by a method reasonably calculated to assure delivery to the permissible user of this provision. The permissible user of this provision must maintain ''effective control'' (*See* § 772.1 of the EAR) of the tools of trade while in Sudan.

(*4*) The only tools of trade that may be exported to Sudan under this paragraph (a)(2)(i)(B) are:

(*i*) Commodities controlled under ECCNs 4A994.b (not exceeding an adjusted peak performance of 0.008 weighted teraFLOPS), 4A994.d, 4A994.e (other than industrial controllers for chemical processing), 4A994.g and 4A994.h and ''software'' controlled

under ECCNs 4D994 or 5D992 to be used on such commodities. Software must be loaded onto such commodities prior to export or reexport or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such commodities while in Sudan;

(*ii*) Telecommunications equipment controlled under ECCN 5A991 and ''software'' controlled under ECCN 5D992 to be used in the operation of such equipment. Software must be loaded onto such equipment prior to export or be exported or reexported solely for servicing or in-kind replacement of legally exported or reexported software. All such software must remain loaded on such equipment while in Sudan;

(*iii*) Global positioning systems (GPS) or similar satellite receivers controlled under ECCN 7A994; and

(*iv*) Parts and components that are controlled under ECCN 5A992, that are installed with, or contained in, commodities in paragraphs (a)(2)(i)(B)(*4*) (*i*) and (*ii*) of this section and that remain installed with or contained in such commodities while in Sudan.

* * * * *

Dated: February 21, 2008.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E8–3808 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1169; FRL–8532–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions pertain to administrative amendments to the Commonwealth regulation governing source-specific nitrogen oxides (NO_X) reasonable available control technology (RACT). EPA is approving these revisions to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 28, 2008 without further notice, unless EPA receives adverse written comment by March 31, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1169 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2007–1169, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–1169. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of the SIP Revision

On September 28, 2006, the Commonwealth of Virginia submitted a revision to its State Implementation Plan. The revision consists of administrative amendments to Virginia's Regulation A99 pertaining to RACT for the control of NO_X emissions from major stationary sources. The amendments consist of administrative wording changes, removal of surplus definitions, and the paragraph renumbering of a particular section.

II. Description of SIP Revision and EPA Review

These SIP revisions consist of the following changes:

1. Administrative wording changes to Regulations 9 VAC 5–40–240, 9 VAC 5–40–250, and 9 VAC 5–40–311B.

2. Removal of definitions ''Combustion unit,'' ''Fuel burning equipment installation,'' and ''Total capacity'' in section 9 VAC 5–40–311B.3. Section 9 VAC 5–40–311B.1 establishes that the definitions in section 9 VAC 5–40–311B.3 apply only to section 9 VAC 5–40–311. Although EPA had approved these revisions on April 28, 1999 (64 FR 22789), these three terms are used only in regulatory provisions which are not part of the approved Virginia SIP.

3. Renumbering of 9 VAC 5–40–311C.3.b., d., e., f., and g. to 9 VAC 5–40–311C.3.a., through e. respectively.

EPA views the revisions to 9 VAC 5–40–240, 9 VAC 5–40–250, and 9 VAC 5–

40–311B., as administrative changes. EPA also views the renumbering of 9 VAC 5–40–311C.3.b., d., e., f., and g. to 9 VAC 5–40–311C.3.a., through e. as an administrative re-codification. EPA considers these revisions non-substantive, as they do not affect the scope of the currently approved Virginia SIP, and consequently, cannot interfere with timely attainment or progress toward attainment of a national ambient air quality standard (NAAQS), nor interfere with any other provision of the Clean Air Act (CAA).

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since (no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Commonwealth of Virginia SIP revision to make the administrative changes to 9 VAC 5–40–240, 9 VAC 5–40–250, and 9 VAC 5–40–311, which was submitted on September 28, 2006. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 28, 2008 without further notice unless EPA receives adverse comment by March 31, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 28, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to amendments to the Commonwealth of Virginia regulations governing source-specific NO_X RACT may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 12, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Chapter 40, Sections 5–40–240, 5–40–250, and 5–40–311 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 40 Existing Stationary Sources				
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 4 General Process Operations (Rule 4–4)				
5–40–240	Applicability and designation of affected facility.	1/1/02	02/28/08 [Insert page number where the document begins].	
5–40–250	Definitions	1/1/02	02/28/08 [Insert page number where the document begins].	
*	*	*	*	*
5–40–311	Reasonably available control technology guidelines for stationary sources of nitrogen oxides.	1/1/02	02/28/08 [Insert page number where the document begins].	Removal of definitions ''Combustion unit,'' ''Fuel burning equipment installation'' and ''Total capacity'' in 9 VAC 5–40–311B.3. Exception: 311D.
*	*	*	*	*

* * * * *

[FR Doc. E8–3388 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1157; FRL–8532–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Revised Definition of Volatile Organic Compound (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revision allows Maryland to incorporate prospectively EPA's definition of ''Volatile organic compounds (VOC)'' as amended. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 28, 2008 without further notice, unless EPA receives adverse written comment by March 31, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number R03–OAR–2007–1157 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov*

C. *Mail:* EPA–R03–OAR–2007–1157, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–1157. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108, or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revisions

On October 24, 2007, the State of Maryland submitted a formal revision (#07–11) to its SIP. The SIP revision consists of a revised reference to the Federal definition of ''Volatile organic compounds (VOC)'' at 40 CFR 51.100(s) which is found at COMAR 26.11.01.01B(53), Maryland's definition for ''Volatile organic compound (VOC)''. These regulatory revisions became effective on October 8, 2007.

II. Description of the SIP Revision

Maryland has revised COMAR 26.11.01.01B(53) to incorporate by reference the EPA definition of VOC found at 40 CFR 51.100(s), as amended. Maryland's current SIP definition of VOC specifically references the 2004 edition of 40 CFR 51.100(s). This wording change allows Maryland to incorporate by reference the current and all future revisions of 40 CFR 51.100(s) into COMAR 26.11.01.01B(53) without requiring a regulatory change to the Maryland rule. Maryland states that it can incorporate this Federal rule prospectively as a result of a change to section 7–207(a)(3)(iii)2, State Government Article, Annotated Code of Maryland, which the State enacted in 2005.

III. Final Action

EPA is approving the amendment to COMAR 26.11.01.01B(53) as a revision to the Maryland SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 28, 2008 without further notice unless EPA receives adverse comment by March 31, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 28, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's revised definition of ''Volatile organic compound (VOC)'' may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds

Dated: February 12, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.01.01B(53) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
26.11.01.01 General Administrative Provisions				
*	*	*	*	*
26.11.01.01B(53)	Definitions-definition of Volatile organic compound (VOC).	.....	02/28/08 [Insert page number where the document begins].	Definition reflects the current version of 40 CFR 51.100(s), as amended.
*	*	*	*	*

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[FR Doc. E8–3392 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–275; MB Docket No. 02–376; RM–10617, RM–10690]

Radio Broadcasting Services; Davis-Monthan Air Force Base, Sells, and Willcox, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The staff denied a petition for reconsideration filed by Lakeshore Media, LLC of a *Report and Order* in this proceeding, which had denied Lakeshore's counterproposal and granted a mutually exclusive allotment of Channel 285A at Sells, Arizona. The staff determined the counterproposal was properly denied because the proposed ''backfill'' of two new FM allotments at Willcox were not adequate substitutes for the creation of sizeable ''white'' and ''gray'' service loss areas that would be caused by the downgrade and reallotment of Lakeshore's Station KWCX–FM from Willcox to Davis-Monthan Air Force Base.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MB Docket No. 02–376, adopted January 30, 2008 and released February 1, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The *Memorandum Opinion and Order* agreed that the *Report and Order* had properly applied the Commission's policy of not permitting ''backfill'' vacant allotments to the facts of this case. See 69 FR 71386 (December 9, 2004). Specifically, the proposed relocation of Lakeshore's station KWCX–FM would result in the loss of all radio service for 2,846 persons (*i.e.*, a ''white'' area) and the reduction from two to one full-time reception service for 1,022 persons (*i.e.*, a ''gray'' area). Although Lakeshore argued that its counterproposal does not create ''white'' area, as a matter of law, because the Commission considers a vacant allotment to prevent the creation of ''white'' area, the *Memorandum Opinion and Order* disagreed, finding that the policy of no longer permitting ''backfill'' allotments has necessarily modified, to some extent, the calculation of ''white'' or ''gray'' areas in cases of operating, as opposed to unbuilt, stations. As a result, the potential service from new ''backfill'' allotments, existing vacant allotments, or unbuilt construction permits will no longer be considered in calculating the loss of service by the reallotment of operating stations. By way of contrast, the traditional test of considering the potential service from ''backfill'' or existing vacant allotments would continue to apply in cases involving reallotments and changes of community of license for unbuilt stations because existing on-air service is not being lost.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the petition for reconsideration was denied.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–3703 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–42; FCC 07–208]

Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies the leased access rate formula; adopts customer service obligations that require minimal standards and equal treatment of leased access programmers with other programmers; eliminates the requirement for an independent accountant to review leased access rates; requires annual reporting of leased access statistics; adopts expedited time frames for resolution of complaints and modifies the discovery process.

DATES: The amendments contained in this final rule are effective as follows:

Revised § 76.970 is effective May 28, 2008 except for paragraph (j)(3) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document announcing the effective date upon OMB approval of those collection requirements.

Section 76.972 is effective March 31, 2008 except for paragraphs (a), (b), (c), (d), (e) and (g) which contain information collection requirements that have not been approved by OMB and paragraph (f) which contains requirements related to those information collection requirements. The Federal Communications Commission will publish a document announcing the effective date upon OMB approval of those collection requirements.

Amendments to § 76.975 are effective March 31, 2008 except for paragraphs (d), (e), (g), and (h)(4) which contain information collection requirements that have not been approved by OMB and paragraphs (b), (c), and (f) which contain requirements related to those information collection requirements. The Federal Communications Commission will publish a document announcing the effective date upon OMB approval of those collection requirements.

Section 76.978, as added in this rule, contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document announcing the effective date upon OMB approval of those collection requirements.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*. For additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov*; Katie Costello, *Katie.Costello@fcc.gov*; or

David Konczal, *David.Konczal@fcc.gov*; of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (''*Order*''), FCC 07–208, adopted on November 27, 2007, and released on February 1, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

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

Paperwork Reduction Act of 1995 Analysis

This document contains new and modified information collection requirements. The Commission will send the requirements to OMB for review. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we sought specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and we find that these requirements will benefit many companies with fewer than 25 employees by facilitating the use of leased access channels and by promoting the fair and expeditious resolution of leased access complaints.

Summary of the Report and Order

I. Introduction

1. In this Report and Order, we modify the Commission's leased access rules. With respect to leased access, we modify the leased access rate formula; adopt customer service obligations that require minimal standards and equal treatment of leased access programmers with other programmers; eliminate the requirement for an independent accountant to review leased access rates; and require annual reporting of leased access statistics. We also adopt expedited time frames for resolution of complaints and improve the discovery process. Finally, we seek comment in a Further Notice of Proposed Rulemaking on whether we should apply our new rate methodology to programmers that predominantly transmit sales presentations or program length commercials.

II. Commercial Leased Access Rules

A. Background

2. The commercial leased access requirements are set forth in Section 612 of the Communications Act of 1934, as amended (''Communications Act''). The statute and corresponding leased access rules require a cable operator to set aside channel capacity for commercial use by unaffiliated video programmers. In implementing the statutory directive to determine maximum reasonable rates for leased access, the Commission adopted a maximum rate formula for full-time carriage on programming tiers based on the ''average implicit fee'' that other programmers are implicitly charged for carriage to permit the operator to recover its costs and earn a profit. The Commission also adopted a maximum rate for a la carte services based on the ''highest implicit fee'' that other a la carte services implicitly pay, and a prorated rate for part-time programming.

B. Customer Service Standards and Equitable Contract Terms

3. In this Order, we adopt uniform customer service standards to address the treatment of leased access programmers and potential leased access programmers by cable system operators. In order to make the leased access carriage process more efficient, we adopt new customer service standards, in addition to the existing standards. These standards are designed to ensure that leased access programmers are not discouraged from pursuing their statutory right to the designated commercial leased access channels, to facilitate communication of these rights and obligations to potential programmers, and to ensure a smooth process for gaining information about a cable system's available channels. We require cable system operators to maintain a contact name, telephone number and e-mail address on its website, and make available by telephone, a designated person to respond to requests for information about leased access channels. We also require cable system operators to maintain a brief explanation of the leased access statute and regulations on its website. Within three business days of a request for information, a cable system operator shall provide the prospective leased access programmers with the following information: (1) The process for requesting leased access channels; (2) The geographic levels of service that are technically possible; (3) The number and location and time periods available for each leased access channel; (4) Whether the leased access channel is currently being occupied; (5) A complete schedule of the operator's statutory maximum full-time and part-time leased access rates; (6) A comprehensive schedule showing how those rates were calculated; (7) Rates associated with technical and studio costs; (8) Electronic programming guide information; (9) The available methods of programming delivery and the instructions, technical requirements and costs for each method; (10) A comprehensive sample leased access contract that includes uniform terms and conditions such as tier and channel placement, contract terms and conditions, insurance requirements, length of contract, termination provisions and electronic guide availability; and (11) Information regarding prospective launch dates for the leased access programming. In addition to the customer service standards, we adopt penalties for ensuring compliance with these standards. We emphasize that the leased access customer service standards adopted herein are ''minimum'' standards. We cannot anticipate each and every instance of interaction between cable operators and leased access programmers.

4. *Maintenance of Contact Information.* We require every cable system operator to maintain, on its website, a contact name, telephone number, and e-mail of an individual designated by the cable system operator to respond to requests for information about leased access channels. One of the more basic elements necessary to permit potential programmers reasonable access to cable systems is ready availability of a contact name, telephone number, and e-mail address of a cable system operator that the programmer can use to reach the appropriate person in the cable system to begin the process for requesting access to the system. While the physical location of a person designated as the leased access contact should not be critical in the relationship between the potential programmer and the cable system operator, the identity of that person and the ease of access to him are critical. Other aspects of the rules we adopt here deal with expeditious and full responses to leased access requests. The fact that the designated person is located some distance away should not affect the timeliness and substance of responses.

5. *Timing for Response.* We amend our rules to require a cable system operator to respond to a request for information from a leased access programmer within three business days. We retain the 30-day response period currently provided in Section 76.970(i)(2) of the Commission's rules for cable systems that have been granted small system special relief. The identity of a designated person by the cable system operator who the potential programmer can contact is important only if that person replies quickly and fully to the requests of the programmer. Our current rules provide for a 15 day response by cable system operators to a request by a potential programmer. That response must include information on channel capacity available, the applicable rates, and a sample contract if requested. That response time is unnecessarily long and, as discussed below, the information is inadequate. Cable operators must have leased access channel information available in order to be able to comply with the statute and our rules. It does not take 15 days to provide a copy of that information to a potential leased access programmer. Three business days to reply to a request for such information is more than adequate. Accordingly, we are amending the response time permitted a cable system operator to three business days. We are also providing a more detailed list of information the operator must provide upon request within that time period. All of the information required to be provided is necessary for a potential leased access programmer to be able to file a *bona fide* request for carriage. There is no reason to delay providing the leased access programmer with the information it needs to take the necessary steps to obtain access.

6. *Process for Requesting Leased Access Channels.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with the process for requesting leased access channels. One element of the information the cable system operator must make available to the potential programmer within three business days of a request is an explanation of the cable system operator's process for requesting leased access channels. Accordingly, we are requiring that the cable system operator include an explanation of the operator's process and procedures for requesting leased access channels.

7. *Geographic Levels of Service that Are Technically Possible.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with the geographic levels of service that are technically possible. Commenters complain that cable system operators make available only limited levels of service. Typically, the service offered is defined by the size of the headend. We will not require, at this time, the operator to allow the leased access programmer to serve discrete communities smaller than the area served by a headend if they are not doing the same with other programmers. We acknowledge that with the consolidation of headends, programmers may be forced to purchase larger areas at higher costs than they would prefer. We will monitor developments in this area, and may revisit this issue if circumstances warrant. However, we will require cable system operators to clearly set out in their responses to programmers what geographic and subscriber levels of service they offer.

8. *Number, Location, and Time Periods Available for Each Leased Access Channel.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with the number, location, and time periods available for each leased access channel. Our current leased access channel placement standards provide that programmers be given access to tiers that have subscriber penetration of more than 50 percent. 47 CFR 76.971(a)(1) We will not change that requirement, but we will expand on the current requirement relating to capacity in Section 76.970(i) to require cable system operators to provide, in their replies to requests from programmers, the specific number and location and time periods available for each leased access channel. This greater degree of certainty should assist programmers in their evaluations.

9. *Explanation of Currently Available and Occupied Leased Access Channels.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with an explanation of currently available and occupied leased access channels. Section 612 of the Communications Act imposes specific requirements on cable operators with regard to leased access. 47 U.S.C. 532. It is inherent in these obligations to be able to provide timely and accurate information to prospective leased access programmers. Within three business days of a request by a current or potential leased access programmer, a cable operator shall provide information documenting: (1) The number of channels that the cable operator is required to designate for commercial leased access use pursuant to Section 612(b)(1); (2) the current availability of those channels for leased access programming on a full- or part-time basis; (3) the tier on which each leased access channel is located; (4) the number of customers subscribing to each tier containing leased access channels; (5) whether those channels are currently programmed with non-leased access programming; and (6) how quickly leased access channel capacity can be made available to the prospective leased access programmer. We believe this information is vital to enable leased access programmers to make an informed decision regarding whether to pursue leased access negotiations with a cable operator. Provision of this information will also benefit cable operators by timely informing leased access programmers of current leased access timing and availability, and thereby eliminating leased access requests that cannot be accommodated by existing leased access availability.

10. *Schedule and Calculation of Leased Access Rates.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with a schedule and calculation of its leased access rates. As with information regarding available and occupied leased access channels, we believe Section 612 imposes on cable operators the obligation to provide a timely and accurate explanation of its leased access

rates to prospective leased access programmers. Accordingly, within three business days of a request by a current or potential leased access programmer, a cable operator shall provide information documenting the schedule of all leased access rates (full- and part-time) available on the cable system. Cable operators must attach to this schedule a separate calculation detailing how each rate was derived pursuant to the revised rate formula adopted herein. This information will assist leased access programmers in determining whether leased access capacity on a given cable system is economically feasible. In addition, the rate calculations will further assist leased access programmers in determining whether particular cable operators are complying with their leased access obligations.

11. *Explanation of Any Rates Associated with Technical or Studio Costs.* Included in the customer standards we are adopting today is a requirement that a cable operator provide a prospective leased access programmer, within three business days of a request, with a list of fees for providing technical support or studio assistance to the leased access programmer along with an explanation of such fees and how they were calculated. We note that our rules require leased access providers to reimburse cable operators ''for the reasonable cost of any technical support the operators actually provide.'' 47 CFR 76.971(c) Further, our rate calculation includes technical costs common to all programmers so that cable operators may not impose a separate charge for technical support they already provide to non-leased access programmers. *Second Report and Order,* 12 FCC Rcd at 5324, para. 114. At this time, we will not prescribe an hourly rate for technical support, but instead will monitor the effectiveness of the new customer standards that require that cable operators list up front any technical fees along with an explanation of the fee calculation. If leased access programmers have continued problems with high technical or studio cost, we will consider implementing a more specific solution.

12. *Programming Guide Information.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with all relevant information for obtaining carriage on the program guide(s) provided on the operator's system. Moreover, we expressly require that, if a cable operator does not charge non-leased access programmers for carriage of their program information on a programming guide, the cable operator cannot charge leased access programmers for such service. Because of the dynamic nature of leased access programming, we believe that it would be impracticable to impose a requirement on cable operators to include all leased access listings in their programming guides. However, we believe that, in situations where time permits and the leased access programming information is submitted as reasonably required by the cable operators, cable operators must ensure that leased access programming information is incorporated in its program guide to the same extent that it does so for non-leased access programmers. In order to accomplish this, cable operators are required to provide potential leased access programmers with all relevant information for obtaining carriage on the program guide(s) provided on the operator's system. This information shall include the requirements necessary for a leased access programmer to have its programming included in the programming guide(s) that serve the tier of service on which the leased access provider contracts for carriage. At a minimum, the cable operator must provide: (1) The format in which leased access programming information must be provided to the cable operator for inclusion in the appropriate programming guide; (2) the content requirements for such information; (3) the time by which such programming information must be received for inclusion in the programming guide; and (4) the additional cost, if any, related to carriage of the leased access programmer's information on the programming guide. We expressly require that, if a cable operator does not charge non-leased access programmers for carriage of their program information on a programming guide, the cable operator cannot charge leased access programmers for such service.

13. *Methods of Programming Delivery.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with available information regarding all acceptable, standard methods for delivering leased access programming to the cable operator. Because of the variable circumstances experienced by each cable system, we cannot establish a list of acceptable, standard delivery methods for leased access programming applicable to all cable systems. However, we believe that it incumbent upon a cable operator to provide prospective leased access programmers with sufficient information to be able to gauge the relative difficulty and expense of delivering its programming for carriage by the cable operator. A cable operator must make available information to leased access programmers regarding all acceptable, standard methods for delivering leased access programming to the cable operator. For each method of acceptable, standard delivery, the cable operator shall provide detailed instructions for the timing of delivery, the place of delivery, the cable operator employee(s) responsible for receiving delivery of leased access programming, all technical requirements and obligations imposed on the leased access programmer, and the total cost involved with each acceptable, standard delivery method that will be assessed by the cable operator. We clarify, however, that cable operators must give reasonable consideration to any delivery method suggested by a leased access programmer. A leased access programmer that is denied the opportunity to deliver its programming via a reasonable method may file a complaint with the Commission. In such complaint proceeding, the burden of proof shall be on the cable operator to demonstrate that its denial was reasonable given the unique circumstances of its cable system.

14. *Comprehensive Sample Leased Access Carriage Contract.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with a comprehensive sample leased access carriage contract. We also require a cable system operator in its leased access carriage contract to apply the same uniform standards, terms, and conditions to leased access programmers as it applies to its other programmers.

15. We do not intend by this requirement to infringe the freedom of contract of either party and expressly clarify that neither the cable operator nor the prospective leased access programmer need abide by any of the terms and conditions set forth in the sample contract. Instead, we believe that the provision of such agreements by cable operators serve to inform leased access programmers of terms and conditions that are generally acceptable to the cable operator and will be a useful first step in the initiation of leased access negotiations. Accordingly, within three business days of a request by a current or potential leased access programmer, a cable operator shall provide a copy of a sample leased access carriage contract setting forth what the cable operator considers to be the

standard terms and conditions for a leased access carriage agreement.

16. As discussed below, we also require cable system operators to apply the same uniform standards, terms, and conditions to leased access programmers as it applies to its other programmers. Rather than dictate specific reasonable terms and conditions, we require that cable system operators apply the same uniform standards, terms, and conditions to leased access programmers as it applies to its other programmers.

17. The Commission has stated in the past that the reasonableness of specific terms and conditions will be determined on a case-by-case basis, but set broad guidelines for tier placement and a general standard of reasonableness for contract terms and conditions.

18. We will continue to address complaints about specific contract terms and conditions on a case-by-case basis. We emphasize that in all cases, the Commission will evaluate any complaints pursuant to a reasonableness standard. We also clarify that a cable system operator may not continue to include terms and conditions in new contracts that previously have been held to be unreasonable by the Commission. Not only are our orders binding on the affected parties to a leased access complaint, but unless and until an order is stayed or reversed by the Commission, a cable system operator is under an obligation to follow the Commission's rules and precedent in setting its practices, terms, and conditions.

19. Because we do not think that every potential leased access programmer should be required to file a complaint to determine if every term in its contract is reasonable, we will require the cable operator to provide, along with its standard leased access contract, an explanation and justification, including a cost breakdown, for any terms and conditions that require the payment or deposit of funds. This includes insurance and deposit requirements, any fees for handling or delivery, and any other technical or equipment fees, such as tape insertion fees. This will allow the leased access programmer to determine whether the cost is reasonable and expedite any review by the Commission. We believe that requiring a cable operator to provide an explanation and justification for such a fee will encourage cable operators to impose only reasonable fees or, at least, facilitate the filing of a leased access complaint demonstrating that such a fee is unreasonable.

20. With regard to non-monetary terms and conditions, such as channel and tier placement, targeted programming, access to electronic program guides, VOD, etc., we similarly require the cable operator to provide, along with its standard leased access contract, an explanation and justification of its policy. For example, with regard to the geographic scope of carriage, if a leased access programmer requests to have its programming targeted to a finite group of subscribers based on community location, unless the operator agrees to the request, it must not provide such limited carriage to other programmers or channels. To the extent the cable operator denies the request for limited carriage, the cable operator must provide an explanation as to why it is technically infeasible to provide such carriage. If limited carriage is technically feasible, the cable operator must provide a fee and cost breakdown for such carriage for comparison with similar coverage provided for non-leased access programmers.

21. Similarly, with regard to tier placement and channel location, we require the cable operator to provide, along with its standard leased access contract, an explanation and justification of its policy regarding placement of a leased access programmer on a particular channel as well as an explanation and justification for the cable operator's policy for relocating leased access channels. To the extent a request for a particular channel is denied, the cable operator must provide a detailed explanation and justification for its decision.

22. *Launch Date.* We require a cable system operator within three business days of a request to provide a prospective leased access programmer with information regarding prospective launch dates for the leased access programmer. Moreover, we require cable operators to launch leased access programmers within a reasonable amount of time. We consider 35–60 days after the negotiation is finalized to be a reasonable amount of time for launch of a programmer, unless the parties come to a different agreement. We note that this time frame affords cable operators sufficient time to satisfy the requirement, if applicable, to provide subscribers with 30-days written notice in advance of any changes in programming services or channel positions.

C. Response to Bona Fide Proposals for Leased Access

23. We adopt rules to ensure that cable system operators respond to proposals for leased access in a timely manner and do not unreasonably delay negotiations for leased access. To address this concern, after the cable system operator provides the information requested above, in order to be considered for carriage on a leased access channel, we require a leased access programmer to submit a proposal for carriage by submitting a written proposal that includes the following information: (1) The desired length of a contract term; (2) The tier, channel and time slot desired; (3) The anticipated commencement date for carriage; (4) The nature of the programming; (5) The geographic and subscriber level of service requested; and (6) Proposed changes to the sample contract. The cable system operator must respond to the proposal by accepting the proposed terms or offering alternative terms within 10 days. This same response deadline will apply until an agreement is reached or negotiations fail.

24. Failure to provide the requested information will result in the issuance of a notice of apparent liability (''NAL'') including a forfeiture in the amount of $500.00 per day. A potential leased access programmer need not file a formal leased access complaint pursuant to Section 76.975 of the Commission's rules in order to bring a violation of our customer service standards to our attention. Rather, the programmer may notify the Commission either orally or in writing, and where necessary the Commission will submit a Letter of Inquiry (''LOI'') to the cable operator to obtain additional information. A cable system which is found to have failed to respond on time with the required information will be issued an NAL. The same process and forfeiture amount will apply for the failure to timely respond to a proposal as for the failure to comply with an information request. We rely on our general enforcement authority under Section 503 of the Communications Act to impose forfeitures in appropriate cases. *See* 47 U.S.C. 503

D. Leased Access Rates

1. Maximum Rate for Leasing a Full Channel

25. *Background.* The Commission's current rules calculate leased access rates for all tiers that have subscriber penetration of more than 50 percent. Upon request, cable operators generally must place leased access programmers on such a tier. To determine the average implicit fee for a full-time channel on a tier with a subscriber penetration over 50 percent, an operator first calculates the total amount it receives in subscriber revenue per month for the

programming on all such tiers, and then subtracts the total amount it pays in programming costs per month for such tiers (the ''implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) is used to determine how much of the total will be recovered from a particular tier. To calculate the average implicit fee per channel, the implicit fee for the tier is divided by the number of channels on the tier. The final result is the rate per month that the operator may charge the leased access programmer for a full-time channel on that tier. Where the leased access programmer agrees to carriage on a tier with less than 50 percent penetration, the average implicit fee is determined using subscriber revenues and programming costs for only that tier. The implicit fee for full-time channel placement as an a la carte service is based upon the revenue received by the cable operator for non-leased access a la carte channels on its system.

26. In this Order we modify the method for determining the leased access rate for full-time carriage on a tier. We harmonize the rate methodology for carriage on tiers with more than 50% subscriber penetration and carriage on tiers with lower levels of penetration by calculating the leased access rate based upon the characteristics of the tier on which the leased access programming will be placed. Cable operators will calculate a leased access rate for each cable system on a tier-by-tier basis which will adequately compensate the operator for the net revenue that is lost when a leased access programmer displaces an existing program channel on the cable system. In addition, the Order sets a maximum allowable leased access rate of $0.10 per subscriber per month to ensure that leased access remains a viable outlet for programmers. At this time we leave the method for calculating rates for a la carte carriage unchanged.

27. As an initial matter, we conclude that we will not apply this new rate methodology to programmers that predominantly transmit sales presentations or program length commercials. These programmers often ''pay'' for carriage—either directly or through some form of revenue sharing with the cable operator. In our previous Order, we set the leased access rate for a la carte programmers at the ''highest implicit fee'' partly out of a concern that lower rates would simply lead these programmers to migrate to leased access if it were less expensive than what they are currently ''paying'' for carriage. Such a migration would not add to the diversity of voices and would potentially financially harm the cable system. Similarly, we do not wish to set the leased access rates at a point at which programmers that predominantly transmit sales presentations or program length commercials simply migrate to leased access because it is less expensive than their current commercial arrangements. We will seek comment in the Further Notice of Proposed Rulemaking on whether leased access is affordable at current rates to programmers that predominantly transmit sales presentations or program length commercials and whether reduced rates would simply cause migration of existing services to leased access.

2. The Marginal Implicit Fee

28. The purposes of Section 612 are ''to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.'' Because Section 612 also requires that the price, terms and conditions for leased access be ''at least sufficient to assure that such use will not adversely affect the operation, financial condition or market development of the cable system,'' the Commission is faced with balancing the interests of leased access programmers with those of cable operators. We believe that our method provides a cable operator with a leased access rate that will allow the operator to replace an existing channel from its cable system with a leased access channel without experiencing a loss in net revenue. While we do not believe that our method for determining leased access rates will result in cable operators experiencing any loss in net revenue, the relevant statutory provision does not require such a finding. As explained above, Section 612(c)(1) provides that the ''prices, terms and conditions'' of use must be ''at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.'' We interpret this provision to restrict ''prices, terms, and conditions'' of leased access use that materially affect the financial health of a cable system. We do not interpret the provision to require that cable operators experience no loss in revenue whatsoever as a result of leased access use. Thus, even if we were to conclude that our method for determining leased access rates would have some impact on cable operators' revenue, we would still adopt this method because we are confident that any impact on operators'' revenue would not be of sufficient magnitude to materially affect the financial health of cable systems. In addition, since we are required to balance the revenue requirement of cable operators and that of leased access programmers, we will assume that the cable operator will elect to replace a channel which does not generate a significant amount of the total net revenue of the system. We refer to this channel as the marginal channel and use the marginal implicit fee to determine leased access rates. Our method was intended to promote the goals of competition and diversity of programming sources while doing so in a manner consistent with growth and development of cable systems.

29. Based on the wide variance between the actual use of leased access and the goals stated in the law, it appears that the current ''average implicit fee'' formula for tiered leased access channels yields fees that are higher than the statute mandates, resulting in an underutilization of leased access channels. According to the Commission's most recent annual cable price survey, cable systems on average carry only 0.7 leased access channels. Because our Rules are not achieving their intended purpose, we are revisiting decisions made in the *Second Report and Order* establishing the maximum leased access rates in order to make the leased access channels a more viable outlet for programming. Throughout its implementation of Section 612, the Commission has recognized that the Rules adopted would need refinement as specifics regarding how the leased access rules were functioning became available.

30. Due to the variances in channel line-ups and tier prices of cable systems, in most instances, a flat rate would either over- or undercompensate cable operators. As discussed below, however, we will set a cap on the maximum rate that cable operators may charge in order to prevent the construction of tiers in a manner that makes leased access rates excessively high.

31. We agree with Shop NBC's assertion that the average implicit fee overcompensates cable operators because it reflects the *average* value of a channel to the cable operator instead of the value of the channel replaced. We will make adjustments to the rate calculations that should lower prices by using the marginal implicit fee rather than the average. The result is intended to promote the goals of leased access by providing more affordable opportunities

for programmers without creating an artificially low rate.

32. The legislative history provides that the leased access provisions are ''aimed at assuring that cable channels are available to enable program suppliers to furnish programming when the cable operator may elect not to provide that service as part of the program offerings he makes available to subscribers'' To promote this legislative purpose the Commission should set the leased access rates as low as possible consistent with the requirement to avoid any negative financial impact on the cable operator. One may assume that the cable operator, faced with a requirement to free up a channel for leased access, would have its own incentives to elect to replace one of the channels with the lowest implicit fee. But even if this is not the case, the discussion above suggests that the Commission should set its rules to encourage such a result. This dictates, at least in principle, the use of the lowest implicit fee, which we refer to as the ''marginal implicit fee.'' And it supports the conclusion that the current ''average implicit fee'' criterion for tiered channels is higher than warranted by the statute and may be impeding, rather than promoting, the goals of competition and diversity of programming sources. These rules provide cable operators a higher return for lost channel capacity than the value the cable operator would have received if the channel was not used for leased access programming. The ''average implicit fee'' is calculated based on the average value of all of the channels in a tier instead of the value of the channels most likely to be replaced. We will adopt a method which eliminates this excess recovery. This method remains faithful to the statutory requirements while more appropriately balancing the interests of cable operators and leased access programmers.

3. The Cable Operator's Net Revenue From a Cable Channel

33. Cable channels are sold in bundles of channels known as tiers. It is therefore not possible to directly observe the revenue per subscriber a cable operator earns from carrying an individual channel included in a tier. We therefore approximate the revenue earned by those channels on the tier. To do so we assume that the revenue generated by each channel is directly proportional to the per subscriber affiliation fee paid by the cable operator to the programmer. The first step in the calculation is to determine this factor of proportionality which we refer to as the mark-up. To do so, the cable operator will take the total subscriber revenue for the programming tier at issue and divide by the total of the affiliation fees that the cable operator pays to the programmers for the channels on that tier. For the purposes of defining the price of a tier and the channels on the tier we adopt the incremental approach in cases where the cost and channels of one tier are implicitly incorporated into larger tiers. For example, when the expanded basic tier incorporates the basic tier, the expanded basic tier price is the retail price of the expanded basic tier less the retail price of the basic tier and the channels on the expanded basic tier are those that are not available on the basic tier. A similar adjustment is required of other tiers which are not sold on an incremental basis. This calculation will generate the mark-up of channels that are sold on the tier. The gross revenue per subscriber due to carriage of a specific channel on the tier is then simply the per subscriber affiliation fee paid to the programmer for the specific channel multiplied by the mark-up. It is our understanding that some programming contracts specify a single rate for a group, or bundle, of channels. In these cases, for the purposes of determining the per subscriber affiliation fee for one of the bundled channels, the fee in the contract shall be allocated in its entirety to the highest rated network in the bundle. The net revenue per subscriber earned by the cable operator from the channel is the difference between the gross revenue per subscriber and the per subscriber affiliation fee paid by the cable operator. This value represents the implicit fee for the channel.

4. The Net Revenue of the Marginal Channel

34. The net revenue per subscriber is the reduction in profit a cable operator would experience if it did not carry the channel in question. In our previous method for calculating leased access rates the calculation was based the average net revenue of all channels carried by the cable operator. In our new method, we base the leased access rate on the net revenue of the least profitable channels voluntarily carried by the cable operators on the tier where the leased access programming will be carried. We do so because this represents an approximation of the minimum net revenue a network must generate in order for the cable operator to consider carrying it on the tier. As mentioned, we examine the net revenue of channels that are voluntarily carried by the cable operator. From this calculation we exclude channels whose carriage is mandated by statute, regulation, or franchise agreement. These mandated channels consist of broadcast stations that are subject to the must-carry rules as well as public, educational, and governmental (''PEG'') channels that are carried pursuant to a franchise agreement. In addition, broadcaster's multi-cast channels are also excluded from the marginal channels. Our goal is to base the leased access rate on the net revenue of channels which are subject to free market negotiations over the carriage decision and affiliation fee. It is the net revenue of these types of channels which provides an indication of the net revenue that would be forgone when a cable operator devotes channel capacity to a leased access programmer since the cable operator would be unable to displace a broadcast station or PEG channel.

35. We identify the least profitable, or marginal, channels using the fraction of activated channels that a cable operator is statutorily required to make available for commercial leased access. The leased access rate is the mean value of net revenue earned by the lowest earning channels on the tier, up to the designated leased access fraction of qualifying channels on the tier. For example, in the case of a cable system with 100 activated channels and 40 channels on the expanded basic tier, the mean value of the net revenue of the 6 channels with the lowest net revenue will be the leased access rate for carriage on the expanded basic tier. We use the mean rather than the minimum value because use of the minimum would undercompensate the cable operator if more than one leased access channel was carried because, presumably, all channels other than the minimum earn higher net revenues. Use of the mean ensures that if the cable operator carries the statutory maximum number of leased access channels by displacing the lowest earning channels on its system, the cable operator will be fully compensated for lost revenue.

36. Appendix B of this Order presents an example of the calculation of the leased access rates for a hypothetical cable system.

5. Determining the Maximum Allowable Leased Access Rate

37. We recognize that our tier-based calculation method may lead to inequitable results in situations when a tier carries only a few non-mandated programming networks in combination with a large amount of mandated programming. This may create incentives among cable operators to design programming tiers that are unaffordable for leased access

programmers. Such an outcome would contravene our statutory directive. Therefore we institute a maximum allowable rate based upon industry-wide cable operator programming costs and revenues. This will ensure that leased access programmers can reach consumers in all areas of the country. We will permit cable operators to seek a waiver of the maximum allowable rate to ensure no unreasonable financial burden is put on any cable operator. The maximum allowable leased access rate will apply to carriage on any tier in which the operator-specific leased access rate for the tier exceeds the maximum allowable rate.

38. We take several approaches to calculating this maximum rate. For example, we calculate the maximum rate utilizing a methodology based on per-subscriber affiliation fees that compensates systems that must vacate a channel in order to provide capacity to a commercial leased access programmer. We also calculate the maximum allowable leased access rate using a method that follows the one used to calculate the system-specific rates. In both cases, maximum rates for each of the analog and digital tiers are no greater than $0.10 per subscriber per month. The methods are detailed in Appendix B. Therefore, the maximum leased access rate will not exceed $0.10 per subscriber per month for any cable system.

39. Cable operators may petition the Commission to exceed the maximum allowable leased access rates. A petition for relief must present specific facts justifying the system's specific leased access rate and provide an alternative rate which equitably balances the revenue requirements of the cable operator with the public interest goals of the leased access statute. Our presumption is that the mean value of the net revenue of the marginal networks, including those currently earning no license fee, provides the most reasonable approximation of the revenue which is forgone when a cable operator carries leased access programming.

6. Effective Date of New Rate Regulations

40. We recognize that the industry should receive an appropriate amount of time to review and to take steps to comply with the new rate regulations set forth above. Section 76.970(j)(3), which contains new or modified information collection requirements that have not been approved by the Office of Management and Budget (OMB), is effective upon OMB approval. Section 76.970 is effective May 28, 2008 or upon OMB approval of § 76.970(j)(3), whichever is later. After OMB approval is received, the Commission will publish a document in the **Federal Register** announcing the effective date of the rules requiring OMB approval and those whose effective date was delayed pending OMB approval of other rules.

E. Expedited Process

41. As explained below, we do not change the current pleading cycle for leased access complaints set forth in Section 76.975 of the Commission's rules, which requires the complaint to be filed with the Commission within 60 days of any alleged violation and the cable operator to submit a response within 30 days from the date of the complaint. The Media Bureau will resolve all leased access complaints within 90 days of the close of the pleading cycle, obtaining additional discovery from the parties as necessary to quickly resolve complaints. Finally, we eliminate the requirement that a complainant alleging that a leased access rate is unreasonable must first receive a determination of the cable operator's maximum permitted rate from an independent accountant.

42. *Discussion.* We retain our existing pleading cycle for resolution of leased access complaints set forth in Section 76.975 of the Commission's rules, which requires the complaint to be filed with the Commission within 60 days of any alleged violation and the cable operator to submit a response within 30 days from the date of the complaint. We find that our current pleading cycle is not too lengthy, as it is imperative that we receive all the necessary information to resolve the dispute. Although we retain the existing time limits on filing of complaints, we add an exception that the time limit on filing complaints will be suspended if the complainant files a notice with the Commission prior to the expiration of the filing period, stating that it seeks an extension of the filing deadline in order to pursue active negotiations with the cable operator. The cable operator must agree to the extension.

43. The Media Bureau will resolve all leased access complaints within 90 days of the close of the pleading cycle, obtaining additional discovery from the parties as necessary to quickly resolve complaints. As part of the remedy phase of the leased access complaint process, the Media Bureau will have discretion to request that the parties file their best and final offer proposals for the prices, terms, or conditions in dispute. The Commission will have the discretion to adopt one of the proposals or choose to fashion its own remedy. We believe that this expedited process will help to resolve leased access disputes quickly and efficiently and create a body of precedent to encourage private negotiations and the settlement of disputes. If the Media Bureau concludes that the complainant is entitled to access a leased access channel, the Media Bureau's resolution of the complaint will include a launch date for the programming.

44. *Elimination of Independent Accountant Requirement.* We eliminate the requirement for a complainant alleging that a leased access rate is unreasonable to first obtain a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission. While the Commission adopted the independent accountant requirement as a means to ''streamline'' the leased access complaint process, the record reflects that this requirement has not worked as intended. We conclude that the expense, delay, and uncertainty for leased access programmers resulting from the requirement to obtain a determination from an independent accountant are not what the Commission envisioned in attempting to ''streamline'' the leased access complaint process. Furthermore, we believe the new rate methodology we have adopted, along with the requirement to provide rate information and an explanation of how rates were calculated, will result in a simpler and transparent process for leased access rates. We also believe the expedited complaint process and expanded discovery we adopt herein provide leased access programmers with a more efficient process for challenging the commercial leased access rates charged by cable operators. While cable operators argue that the use of an independent accountant is important to protect commercially sensitive financial information, the Protective Order we adopt below will sufficiently safeguard such information.

F. Discovery

45. As discussed below, we adopt expanded discovery rules for leased access complaints to improve the quality and efficiency of the Commission's resolution of these complaints. We amend our discovery rules pertaining to leased access complaints to require respondents to attach to their answers copies of any documents that they rely on in their defense; find that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either

requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute, subject to the protection of confidential material. We emphasize that the Commission will use its authority to issue default orders granting a complaint if a respondent fails to comply with reasonable discovery requests. The respondent shall have the opportunity to object to any request for documents. Such request shall be heard, and determination made, by the Commission. The respondent need not produce the disputed discovery material until the Commission has ruled on the discovery request. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

46. Under the current rules, a leased access complainant is entitled, either as part of its complaint or through a motion filed after the respondent's answer is submitted, to request that Commission staff order discovery of any evidence necessary to prove its case. *See* 47 CFR 76.7(e), (f). Respondents are also free to request discovery. We believe that expanded discovery will improve the quality and efficiency of the Commission's resolution of leased access complaints. Accordingly, we find that it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute. In reaching this finding, we agree that evidence detailing how the cable operator calculated its leased access rate, as well as the availability of certain contracts for carriage of leased access programming, subject to confidential treatment, are essential for determining whether the cable operator has violated the Commission's leased access rules. The Commission's Rules allow the Commission staff to order production of any documents necessary to the resolution of a leased access complaint. *See* 47 CFR 76.7(e), (f). The subject discovery may require the production of confidential material, including evidence detailing how the cable operator calculated its leased access rate as well as carriage contracts, subject to our confidentiality rules. While we retain this process for the Commission to order the production of documents and other discovery, we will also allow parties to a leased access complaint to serve requests for discovery directly on opposing parties.

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

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

49. We understand that this approach requires the submission of confidential and extremely competitively-sensitive information. Accordingly, in order to appropriately safeguard this confidential information we believe it is necessary to utilize the protective order adopted for use in our program access proceedings (''Protective Order''), which we attach hereto as Appendix A.

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

G. Annual Reporting of Leased Access Statistics

51. We adopt an annual reporting requirement for cable operators to submit information pertaining to leased access rates, usage, channel placement, and complaints, among other leased access matters. In the NPRM, we sought comment on various questions regarding the status of commercial leased access, such as the extent to which programmers are making use of commercial leased access channels, whether cable operators have denied requests for commercial leased access, whether cable operators use commercial leased access channels for their own purposes, and the effectiveness of the complaint process.

52. We did not receive a large number of comments containing industry-wide data regarding use of leased access. As described below, to ensure that we have sufficient up-to-date information on the status of leased access programming in the future, we adopt an annual reporting requirement for cable operators.

53. *Discussion.* We adopt an annual reporting requirement for cable operators pertaining to leased access rates, usage, channel placement, and complaints, among other leased access matters. We find that gathering up-to-date information and statistics on an annual basis pertaining to leased access is critical to our efforts to track trends in commercial leased access rates and usage as well as to monitor any efforts by cable operators to impede use of commercial leased access channels. This information will allow us to determine whether further modifications to the commercial leased access rules we adopt herein are needed based on a more concrete factual setting. The Annual Report will require each cable system to provide the following information:

- List the number of commercial leased access channels provided by the cable system.
- List the channel number and tier applicable to each commercial leased access channel.
- Provide the rates the cable system charges for full-time and part-time leased access on each leased access channel.

• Provide the calculated maximum commercial leased access rate and actual rates.

• List programmers using each commercial leased access channel and state whether each programmer is using the channel on a full-time or part-time basis.

• List number of requests received for information pertaining to commercial leased access and the number of *bona fide* proposals received for commercial leased access.

• Describe whether you have denied any requests for commercial leased access and, if so, explain the basis for the denial.

• Describe whether a complaint has been filed against the cable system with the Commission or with a Federal district court regarding a commercial leased access dispute.

• Describe whether any entity has sought arbitration with the cable system regarding a commercial leased access dispute.

• Describe the extent to which and for what purposes the cable system uses commercial leased access channels for its own purposes.

• Describe the extent to which the cable system impose different rates, terms, or conditions on commercial leased access programmers (such as with respect to security deposits, insurance, or termination provisions). Explain any differences.

• List and describe any instances of the cable system requiring an existing programmer to move to another channel or tier.

54. Each cable system must submit this report with the Commission by April 30th of each year. The report will request information for the preceding calendar year. We anticipate that any burdens associated with this annual reporting requirement will be limited, as the information requested should be readily available to cable operators.

55. We provide leased access programmers and other interested parties with an opportunity to file comments on a voluntary basis with the Commission responding to the cable operators' annual leased access reports. These comments should be filed by May 15th of each year. We invite commercial leased access programmers to provide information such as the following in these comments:

• List the number of commercial leased access channels leased on each cable system. Indicate the channel number and tier applicable to each commercial leased access channel.

• Describe whether a cable operator has denied any request for commercial leased access and, if so, explain the basis for the denial.

• Describe whether cable operators have responded to requests for information pertaining to leased access within three business days, as required by the Commission's rules.

• Describe whether the programmer has filed any complaints with the Commission or a Federal district court against a cable operator regarding a commercial leased access dispute.

• Describe whether the programmer has sought arbitration with a cable operator regarding a commercial leased access dispute.

• Describe any difficulties the programmer has faced in trying to obtain access to a commercial leased access channel.

III. Constitutional Issues

56. The revisions to the leased access rules we adopt herein withstand constitutional scrutiny. The leased access provision of the 1992 Cable Act has survived a facial First Amendment challenge in *Time Warner Entertainment Co., L.P.* v. *FCC,* 93 F.3d 957 (DC Cir. 1996) (''Time Warner''). The DC Circuit has already decided that the leased access provision of the 1992 Cable Act is not content-based. The leased access provision does not favor or disfavor speech on the basis of the ideas contained therein; rather, it regulates speech based on affiliation with a cable operator. The court held in *Time Warner* that the provisions of the Cable Act that regulate speech based on affiliation with a cable operator are subject to intermediate scrutiny and are constitutional if the government's interest is important or substantial and the means chosen to promote that interest do not burden substantially more speech than necessary to achieve the aim. The *Time Warner* court found that there is a substantial government interest in promoting diversity and competition in the video programming marketplace. We find that this substantial government interest remains today. While MVPDs argue that there are more outlets today for independent programmers, such as the Internet, they fail to demonstrate that these alternative outlets can be considered sufficient to conclude that Congress's goals of promoting competition and diversity in passing the leased access provisions of the 1992 Cable Act have been achieved. The rules we adopt today simply implement the statutory requirements enacted by Congress.

57. We also reject the claim that the leased access rules deprive cable operators of the value of their property (*i.e.*, channel capacity) without just compensation in violation of the Fifth Amendment. The Fifth Amendment ''takings'' clause requires ''just compensation'' for a government ''taking'' of private property. Moreover, the leased access provision of the 1992 Cable Act, as well as our rules implementing that provision, provide just compensation to cable operators for use of their channel capacity. We conclude that leased access rules satisfy requirements that there must be an ''essential nexus'' between the taking and a legitimate state interest as well as a ''rough proportionality'' between the taking and the magnitude of the government objective. As the DC Circuit previously held, there is a substantial government interest in promoting competition and diversity in the video programming marketplace, and the provisions of the 1992 Cable Act regulating cable-affiliated programming are narrowly tailored to achieve those goals. Thus, there is no ''taking'' within the meaning of the Fifth Amendment.

58. We also reject the argument that the NPRM failed to provide the specificity required under the Administrative Procedure Act (''APA'') and that the Commission must issue another notice before adopting final rules. Section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rule making that includes ''either the terms or substance of the proposed rule or a description of the subjects and issues involved'' and to give interested parties an opportunity to submit comments on the proposal. *See* 5 U.S.C. 553(b), (c). The notice ''need not specify every precise proposal which [the agency] may ultimately adopt as a rule''; it need only ''be sufficient to fairly apprise interested parties of the issues involved.'' *See Nuvio Corp.* v. *FCC,* 473 F.3d 302, 310 (DC Cir. 2006) (internal quotations omitted). In particular, the APA's notice requirements are satisfied where the final rule is a ''logical outgrowth'' of the actions proposed. *See Public Service Commission of the District of Columbia* v. *FCC,* 906 F.2d 713, 717 (DC Cir. 1990). The questions raised in the NPRM, as well as the concerns mentioned in the Adelphia Order which resulted in the NPRM, regarding the adequacy of the current leased access regimes, including the complaint process, were sufficient to put interested parties on notice that the Commission was considering how to revise the leased access rules to effectuate the intent of Congress. *See* NPRM, 22 FCC Rcd 11222, para. 1 (citing Adelphia Order, 21 FCC Rcd 8203, 8277, para. 165; 8367 (Statement of Commissioner

Copps); 8371 (Statement of Commissioner Adelstein)); *See also* Adelphia Order, 21 FCC Rcd at paras. 99, 109, 114, 165, 190–91, 298. Because parties could have anticipated that the rules ultimately adopted herein were possible, it is a ''logical outgrowth'' of the original proposal, and adequate notice was provided under the APA. *See Northeast Maryland Waste Disposal Authority* v. *EPA,* 358 F.3d 936, 951 (DC Cir. 2004) (discussing APA notice requirements and the ''logical outgrowth'' test).

IV. Procedural Matters

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

60. *Effective Date.* Sections 76.975(h)(1),(2) and (3) and (i) are effective March 31, 2008. Sections 76.970(j)(3), 76.972(a), (b), (c), (d), (e), and (g); 76.975(d), (e), (g) and (h)(4); and 76.978, which contain new or modified information collection requirements that have not been approved by the Office of Management and Budget (OMB), are effective upon OMB approval. Section 76.970 is effective May 28, 2008 or upon OMB approval of § 76.970(j)(3), whichever is later. The effective date of Sections 76.972 (f) and 76.975 (b), (c) and (f) is delayed until OMB approval of the aforementioned rule sections. After OMB approval is received, the Commission will publish a document in the **Federal Register** announcing the effective date of the rules requiring OMB approval and those whose effective date was delayed pending OMB approval of other rules.

61. 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 Notice of Proposed Rulemaking (''NPRM'') in MB Docket No. 07–42. The Commission sought written public comment on the proposals in the Notice of Proposed Rulemaking, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

A. Need for, and Objectives of, the Rules Adopted

62. The commercial leased access requirements set forth in Section 612 of the Communications Act of 1934 require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the cable operator. The purposes of Section 612 are ''to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.''

63. In the Order, the Commission concludes that its rules governing commercial leased access have impeded the use of leased access channels by programmers, including smaller entities, thereby undermining the goals of Section 612. The Order adopts several rules to address this concern. Regarding commercial leased access rates, the Commission concludes that its current formula for calculating leased access rates yields fees charged by cable operators that are higher than the statute mandates, resulting in an underutilization of leased access channels. To address this concern, the Order modifies the Commission's formula used to calculate commercial leased access rates, which will result in making these channels a more viable outlet for leased access programming. The Order also provides that the maximum leased access rate will not exceed $0.10 per subscriber per month for any cable system. Cable operators may petition the Commission to exceed the maximum allowable leased access rates. A petition for relief must present specific facts justifying the system's specific leased access rate and provide an alternative rate which equitably balances the revenue requirements of the cable operator with the public interest goals of the leased access statute. The Order does not apply the new rate methodology or the maximum allowable leased access rate of $0.10 per subscriber to programmers that predominantly transmit sales presentations or program length commercials.

64. To address poor customer service practices of cable system operators with regard to potential leased access programmers, the Order requires a cable system operator to meet uniform customer service standards; to maintain a contact name, telephone number, and e-mail address on its website; to make available by telephone a designated person to respond to requests for information about leased access channels; and to maintain a brief explanation of the leased access statute and regulations on its website. In response to concerns raised by commercial leased access programmers that contract terms and conditions imposed by cable operators are often unfair, unreasonable, onerous, and overly burdensome, the Order requires cable operators to apply the same uniform standards, terms, and conditions for all of its leased access programmers as it applies to its other programmers. The Order also specifies the information that a leased access programmer must provide to a cable system operator in order to be considered for carriage, and requires the cable system operator to respond to the proposal by accepting the proposed terms or offering alternative terms within 10 days.

65. Regarding leased access complaint procedures, the Order adopts an expedited process which requires the Media Bureau to resolve leased access complaints within 90 days of the close of the pleading cycle and eliminates the requirement for a leased access complainant alleging that a rate is unreasonable to first obtain a determination of the cable operator's maximum permitted rate from an independent accountant. The Order revises rules to provide that, as part of the remedy phase of a leased access complaint process, the Media Bureau will have the discretion to request that the parties file their best and final offer for the prices, terms, or conditions in dispute, and the Media Bureau will have the discretion to adopt one of the best and final offers or to choose to fashion its own remedy. The Order also amends the Commission's discovery rules pertaining to leased access complaints by requiring respondents to attach to their answers copies of any documents that they rely on in their defense; finding that in the context of a complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute, subject to the protection of confidential material; and emphasizing that the Commission will use its authority to issue default orders granting a complaint if a respondent fails to comply with its discovery requests.

66. Moreover, in order to ensure that the Commission has sufficient up-to-date information on the status of leased access programming in the future, the Order adopts a reporting requirement for cable operators that requires cable operators to file annual reports on leased access rates, channel usage, and complaints, among other matters pertaining to leased access. Leased access programmers will have an opportunity to file comments with the Commission in response to these reports.

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

67. There were no comments filed specifically in response to the IRFA.

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

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

69. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' (2007 NAISC code 517110) to include the following three classifications which were listed separately in the 2002 NAICS: Wired Telecommunications Carriers (2002 NAICS code 517110), Cable and Other Program Distribution (2002 NAICS code 517510), and Internet Service Providers (2002 NAISC code 518111). The 2007 NAISC defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all firms having 1,500 employees or less. According to Census Bureau data for 2002, there were a total of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC code 517110) that operated for the entire year; 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC code 517510) that operated for the entire year; and 3,408 firms in the Internet Service Providers category (2002 NAISC code 518111) that operated for the entire year. Of these totals, 25,374 of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC code 517110) had less than 100 employees; 5,496 of 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC code 517510) had less than 100 employees; and 3,303 of the 3,408 firms in the Internet Service Providers category (2002 NAISC code 518111) had less than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

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

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

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

73. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, three operators provide DBS service, which requires a great investment of capital for operation: DIRECTV, EchoStar (marketed as the DISH Network), and Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). All three currently offer subscription services. Two of these

three DBS operators, DIRECTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion's Sky Angel service, serves fewer than one million subscribers and provides 20 family and religion-oriented channels. Dominion does not report its annual revenues. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we recognize the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

74. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communications operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are approximately 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs may qualify as small entities.

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

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

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

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

79. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to LMDS. The Commission has also defined small LMDS entities in the context of Commission license auctions. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved

by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

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

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

82. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year. Of this total, 7,685 firms had annual receipts of under $24,999,999 and 45 firms had annual receipts of between $25,000,000 and $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated.

83. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 377 firms in this category that operated for the entire year. Of this total, 365 firms had annual receipts of under $24,999,999 and 7 firms had annual receipts of between $25,000,000 and $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated.

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

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

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

all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

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

D. Description of Reporting, Recordkeeping and Other Compliance Requirements

88. The rules adopted in the Report and Order will impose additional reporting, recordkeeping, and other compliance requirements on cable system operators and leased access programmers. The Order requires a respondent in a leased access complaint proceeding that expressly relies upon a document in asserting a defense to include the document as part of its answer. The Order finds that in the context of a leased access complaint proceeding, it would be unreasonable for a respondent not to produce all the documents either requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute. The Order requires the parties to a leased access complaint proceeding to enter into a Protective Order to protect pleading or discovery material that is deemed by the submitting party to contain confidential information. The Order requires cable system operators to submit annual reports on leased access rates, channel usage, and complaints. The Order requires cable system operators to provide prospective leased access programmers with certain information within three business days of the date on which a request for leased access information is made. A longer period for small systems to respond has been retained. The Order requires cable system operators to meet uniform customer service standards with respect to their dealings with leased access programmers and to apply uniform contract terms and conditions to all leased access programmers as applied to other programmers. The Order requires cable systems to maintain a contact name, telephone number, and e-mail address on their Web site and to make available by telephone a designated person to respond to requests for information about leased access channels. The Order requires a cable system operator to maintain a brief explanation of the leased access statute and regulations on its Web site. The Order specifies the information that a leased access programmer must provide to a cable system operator in order to be considered for carriage and requires the cable system operator to respond to the proposal by accepting the proposed terms or offering alternative terms within 10 days.

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

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

90. As discussed in Section A, the decision to modify the leased access rules will facilitate the goals of Section 612 of the Communications Act ''to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.'' The decision confers benefits upon the variety of leased access programmers, most of which are smaller entities. Thus, the decision to modify the leased access rules benefits smaller entities as well as larger entities. The alternative of retaining the current leased access rules would hinder achieving the goals of competition and diversity as envisioned by Congress. Moreover, the alternative of requiring only certain cable operators to comply with these new rules, such as only large cable operators, would similarly impede achieving the goals of competition and diversity as envisioned by Congress. However, a longer period for small systems to respond to certain requests for information has been retained.

F. Report to Congress

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

V. Ordering Clauses

92. Accordingly, *it is ordered,* pursuant to the authority found in Sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532, this *Report and Order and Further Notice of Proposed Rulemaking is adopted.*

93. *It is ordered* that, pursuant to the authority found in Sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532, the Commission's Rules *are hereby amended* as set forth in the Rule Changes.

94. *It is further ordered* that, Sections 76.975(h)(1), (2) and (3) and (i) are effective March 31, 2008. Sections 76.970(j)(3), 76.972(a), (b), (c), (d), (e), and (g); 76.975(d), (e), (g) and (h)(4); and

76.978, which contain new or modified information collection requirements that have not been approved by the Office of Management and Budget (OMB), are effective upon OMB approval. Section 76.970 is effective May 28, 2008 or upon OMB approval of § 76.970(j)(3), whichever is later. The effective date of Sections 76.972 (f) and 76.975 (b), (c) and (f) is delayed until OMB approval of the aforementioned rule sections. After OMB approval is received, the Commission will publish a document in the **Federal Register** announcing the effective date of the rules requiring OMB approval and those whose effective date was delayed pending OMB approval of other rules.

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

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

List of Subjects in 47 CFR Part 76

Administrative practice and procedure and Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

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

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

■ 2. Revise § 76.970 to read as follows:

§ 76.970 Commercial leased access rates.

(a) Cable operators shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the requirement of 47 U.S.C. 532. For purposes of 47 U.S.C. 532(b)(1)(A) and (B), only those channels that must be carried pursuant to 47 U.S.C. 534 and 535 qualify as channels that are required for use by Federal law or regulation. For cable systems with 100 or fewer channels, channels that cannot be used due to technical and safety regulations of the Federal Government (e.g., aeronautical channels) shall be excluded when calculating the set-aside requirement.

(b) In determining whether an entity is an ''affiliate'' for purposes of commercial leased access, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(c) Attributable interest shall be defined by reference to the criteria set forth in Notes 1–5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(d) The maximum commercial leased access rate that a cable operator may charge to programmers that predominantly transmit sales presentations or program length commercials for full-time channel placement on a tier exceeding a subscriber penetration of 50 percent is the average implicit fee for full-time channel placement on all such tier(s).

(e) The average implicit fee identified in paragraph (d) of this section for a full-time channel on a tier with a subscriber penetration over 50 percent shall be calculated by first calculating the total amount the operator receives in subscriber revenue per month for the programming on all such tier(s), and then subtracting the total amount it pays in programming costs per month for such tier(s) (the ''total implicit fee calculation''). A weighting scheme that accounts for differences in the number of subscribers and channels on all such tier(s) must be used to determine how much of the total implicit fee calculation will be recovered from any particular tier. The weighting scheme is determined in two steps. First, the number of subscribers is multiplied by the number of channels (the result is the number of ''subscriber-channels'' ') on each tier with subscriber penetration over 50 percent. For instance, a tier with 10 channels and 1,000 subscribers would have a total of 10,000 subscriber-channels. Second, the subscriber-channels on each of these tiers is divided by the total subscriber-channels on all such tiers. Given the percent of subscriber-channels for the particular tier, the implicit fee for the tier is computed by multiplying the subscriber-channel percentage for the tier by the total implicit fee calculation. Finally, to calculate the average implicit fee per channel, the implicit fee for the tier must be divided by the corresponding number of channels on the tier. The final result is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that particular tier. The average implicit fee shall be calculated by using all channels carried on any tier exceeding 50 percent subscriber penetration (including channels devoted to affiliated programming, must-carry and public, educational and government access channels). In the event of an agreement to lease capacity on a tier with less than 50 percent penetration, the average implicit fee should be determined on the basis of subscriber revenues and programming costs for that tier alone. The license fees for affiliated channels used in determining the average implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The average implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(f) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement as an a la carte service is the highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service.

(g) The highest implicit fee on an aggregate basis for full-time channel placement as an a la carte service shall be calculated by first determining the total amount received by the operator in subscriber revenue per month for each non-leased access a la carte channel on its system (including affiliated a la carte channels) and deducting the total amount paid by the operator in programming costs (including license and copyright fees) per month for programming on such individual channels. This calculation will result in implicit fees determined on an aggregate basis, and the highest of these implicit fees shall be the maximum rate per month that the operator may charge the

leased access programmer for placement as a full-time a la carte channel. The license fees for affiliated channels used in determining the highest implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The highest implicit fee shall be based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services). Any subscriber revenue received by a cable operator for an a la carte leased access service shall be passed through to the leased access programmer.

(h) The maximum commercial leased access rate that a cable operator may charge for part-time channel placement shall be determined by either prorating the maximum full-time rate uniformly, or by developing a schedule of and applying different rates for different times of the day, provided that the total of the rates for a 24-hour period does not exceed the maximum daily leased access rate.

(i) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement, except to programmers that predominantly transmit sales presentations or program length commercials, is the lower of the marginal implicit fee for a full-time channel placement on the tier where the leased access programming will be placed or $0.10 per subscriber per month.

(j)(1)(i) The marginal implicit fee identified in paragraph (i) of this section for a full-time channel shall be calculated by first determining the mark-up of the tier where the leased access programming will be placed. The mark-up is calculated by determining the total amount the operator receives in subscriber revenue per month for the tier, and dividing by the total amount it pays in affiliation fees for the channels located on the tier. The resulting figure is the mark-up. In cases where the cost and channels of one tier are implicitly incorporated into a larger tier, the larger tier price is equal to the larger tier price minus the smaller tier price and the channels on the larger tier are those that are not available on the smaller tier.

(ii) The monthly gross subscriber revenue per channel is obtained by multiplying the monthly per subscriber affiliation fee for each channel by the mark-up for the tier. The net subscriber revenue per channel per month for each channel is the difference between the monthly gross subscriber revenue per channel and the monthly per subscriber affiliation fee paid for that channel by the cable operator. This value represents the implicit fee for the individual channel.

(iii) To determine the marginal channels on the tier for systems with 55 or more activated channels, multiply the number of non-mandated channels on the tier by 0.15 and round to the nearest number. To determine the marginal channels on the tier for systems with 54 or less activated channels, multiply the number of non-mandated channels on the tier by 0.10 and round to the nearest number. That is the number of marginal channels. Next identify the channels with the lowest implicit fee until that number is reached. These are the marginal channels.

(iv) Finally, calculate the marginal implicit fee by taking the mean of the implicit fees of the marginal channels by summing the implicit fees of the marginal channels and dividing by the number of marginal channels. The result is the marginal implicit fee.

(2) The affiliation fees for channels used in determining the marginal implicit fee are the contractual license fee or retransmission consent fee representing the compensation per subscriber per month paid to the programmer for the right to carry the programming. It excludes fees for services other than the provision of channel capacity, such as marketing, and excludes revenues. The affiliation fees for channels used in determining the marginal implicit fee shall reflect the prevailing affiliation fees offered in the marketplace to third parties. If a prevailing affiliation fee does not exist, the affiliation fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The marginal implicit fee calculation shall be based on affiliation fees in contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(3) Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

(4) Cable operators are permitted to negotiate rates below the maximum permitted rates.

■ 3. Add § 76.972 to read as follows:

§ 76.972 Customer service standards.

(a)(1) A cable system operator shall maintain a contact name, telephone number and e-mail address on its Web site and available by telephone of a designated person to respond to requests for information about leased access channels.

(2) A cable system operator shall maintain a brief explanation of the leased access statute and regulations on its Web site.

(b) Cable system operators shall provide prospective leased access programmers with the following information within three business days of the date on which a request for leased access information is made:

(1) The cable system operator's process for requesting leased access channels;

(2) The geographic and subscriber levels of service that are technically possible;

(3) The number and location and time periods available for each leased access channel;

(4) Whether the leased access channel is currently being occupied;

(5) A complete schedule of the operator's statutory maximum full-time and part-time leased access rates;

(6) A comprehensive schedule showing how those rates were calculated;

(7) Rates associated with technical and studio costs;

(8) Whether inclusion in an electronic programming guide is available;

(9) The available methods of programming delivery and the instructions, technical requirements and costs for each method;

(10) A comprehensive sample leased access contract that includes uniform terms and conditions such as tier and channel placement, contract terms and conditions, insurance requirements, length of contract, termination provisions and electronic guide availability; and

(11) Information regarding prospective launch dates for the leased access programmer.

(c) A bona fide proposal, as used in this section, is defined as a proposal from a potential leased access programmer that includes the following information:

(1) The desired length of a contract term;

(2) The tier, channel and time slot desired;

(3) The anticipated commencement date for carriage;

(4) The nature of the programming;

(5) The geographic and subscriber level of service requested; and

(6) Proposed changes to the sample contract.

(d) All requests for leased access must be made in writing and must specify the date on which the request was sent to the operator.

(e) A cable system operator must respond to a bona fide proposal within 10 days after receipt.

(f) A cable system operator will be subject to a forfeiture for each day it fails to comply with §§ 76.972(a) or 76.972(e).

(g)(1) Operators of systems subject to small system relief shall provide the information required in paragraph (b) of this section within 30 calendar days of a bona fide request from a prospective leased access programmer. For these purposes, systems subject to small system relief are systems that either:

(i) Qualify as small systems under § 76.901(c) and are owned by a small cable company as defined under § 76.901(e); or

(ii) Have been granted special relief.

(2) Bona fide requests, as used in this section, are defined as requests from potential leased access programmers that have provided the following information:

(i) The desired length of a contract term;

(ii) The time slot desired;

(iii) The anticipated commencement date for carriage; and

(iv) The nature of the programming.

■ 4. Section 76.975 is amended to revise paragraphs (b) through (g) and redesignate paragraph (h) as paragraph (i) and to add new paragraph (h) to read as follows:

§ 76.975 Commercial leased access dispute resolution.

* * * * *

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act, or our implementing regulations, §§ 76.970, 76.971, and 76.972 may file a petition for relief with the Commission.

(c) A petition must contain a concise statement of the facts constituting a violation of the statute or the Commission's rules, the specific statute(s) or rule(s) violated, and certify that the petition was served on the cable operator.

(d) The petition must be filed within 60 days of the alleged violation. The time limit on filing complaints will be suspended if the complainant files a notice with the Commission prior to the expiration of the filing period, stating that it seeks an extension of the filing deadline in order to pursue active negotiations with the cable operator, and the cable operator agrees to the extension.

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

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

(g) The cable operator or other respondent will have 30 days from the filing of the petition to file a response. To the extent that a cable operator expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the response. If a leased access rate is disputed, the response must show that the rate charged is not higher than the maximum permitted rate for such leased access, and must be supported by the affidavit of a responsible company official. If, after a response is submitted, the staff finds a prima facie violation of our rules, the staff may require a respondent to produce additional information, or specify other procedures necessary for resolution of the proceeding.

(h)(1) The Media Bureau will resolve a leased access complaint within 90 days of the close of the pleading cycle.

(2) The Media Bureau, after consideration of the pleadings, may grant the relief requested, in whole or in part, including, but not limited to ordering refunds, injunctive measures, or forfeitures pursuant 47 U.S.C. 503, denying the petition, or issuing a ruling on the petition or dispute.

(3) To be afforded relief, the petitioner must show by clear and convincing evidence that the cable operator has violated the Commission's leased access provisions in 47 U.S.C. 532 or §§ 76.970, 76.971, or 76.972, or otherwise acted unreasonably or in bad faith in failing or refusing to make capacity available or to charge lawful rates for such capacity to an unaffiliated leased access programmer.

(4) As part of the remedy phase of the leased access complaint process, the Media Bureau will have discretion to request that the parties file their best and final offer for the prices, terms, or conditions in dispute. The Commission will have the discretion to adopt one of the proposals or choose to fashion its own remedy.

* * * * *

■ 5. Section 76.978 is added to read as follows:

§ 76.978 Leased access annual reporting requirement.

(a) Each cable system shall submit a Leased Access Annual Report with the Commission on a calendar year basis, no later than April 30th following the close of each calendar year, which provides the following information for the calendar year:

(1) The number of commercial leased access channels provided by the cable system.

(2) The channel number and tier applicable to each commercial leased access channel.

(3) The rates the cable system charges for full-time and part-time leased access on each leased access channel.

(4) The cable system's calculated maximum commercial leased access rate and actual rates.

(5) The programmers using each commercial leased access channel and whether each programmer is using the channel on a full-time or part-time basis.

(6) The number of requests received for information pertaining to

commercial leased access and the number of bona fide proposals received for commercial leased access.

(7) Whether the cable system has denied any requests for commercial leased access and, if so, with an explanation of the basis for the denial.

(8) Whether a complaint has been filed against the cable system with the Commission or a Federal district court regarding a commercial leased access dispute.

(9) Whether any entity has sought arbitration with the cable system regarding a commercial leased access dispute.

(10) The extent to which and for what purposes the cable system uses commercial leased access channels for its own purposes.

(11) The extent to which the cable system impose different rates, terms, or conditions on commercial leased access programmers (such as with respect to security deposits, insurance, or termination provisions) with an explanation of any differences.

(12) A list and description of any instances of the cable system requiring an existing programmer to move to another channel or tier.

(b) Leased access programmers and other interested parties may file comments with the Commission in response to the Leased Access Annual Reports by May 15th.

The attached Appendices A and B *will not be included* in the Code of Federal Regulations (CFR).

Appendix A—Standard Protective Order and Declaration for Use in Section 612 Commercial Leased Access Proceedings

Before the Federal Communications Commission, Washington, DC 20554

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

PROTECTIVE ORDER

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

2. Definitions.

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

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

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

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

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

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

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

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

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

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

7. *Disclosure.* Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 8 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

8. Authorized Representatives shall be limited to:

a. Subject to Paragraph 8.d, counsel for the Reviewing Parties to this proceeding, including in-house counsel, actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Subject to Paragraph 8.d, specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; and

c. Subject to Paragraph 8.d., any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper; except that,

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

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

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

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

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

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

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

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

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

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notations required by this Paragraph 13 are not removed.

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

15. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of the Submitting Party, destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 10 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

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

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

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

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

Attachment A to Section 612 Protective Order

DECLARATION

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

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

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

Appendix B—Example Calculation of the Leased Access Rate

I. Example of the Marginal Implicit Fee Calculation

The following table illustrates the channel line-up of a tier with greater than 50% subscriber penetration. The tier consists of 26 channels. We will assume that 100 subscribers purchase this tier and that they all pay the retail price of $18.95.

Programming	Affiliation fee paid by cable operator to the programmer (monthly amount per subscriber)	Implicit fee (net revenue)
Broadcast Station 1	$0.00	$0.000
Broadcast Station 2	0.05	0.082
Broadcast Station 3	0.00	0.000
PEG 1	0.00	0.000
Leased Access 1	0.00	0.000
Cable Network 1	0.12	0.196
Cable Network 2	0.34	0.556
Cable Network 3	0.05	0.082
Cable Network 4	0.07	0.114
Cable Network 5	0.01	0.016
Cable Network 6	0.04	0.065
Cable Network 7	0.05	0.082
Cable Network 8	0.27	0.442
Cable Network 9	0.00	0.000
Cable Network 10	0.10	0.164
Cable Network 11	0.48	0.785
Cable Network 12	2.19	3.582
Cable Network 13	1.10	1.799
Cable Network 14	0.57	0.932
Cable Network 15	0.15	0.245
Cable Network 16	0.41	0.671
Cable Network 17	0.19	0.311
Cable Network 18	0.06	0.098
Cable Network 19	0.21	0.343
Cable Network 20	0.11	0.180
Cable Network 21	0.62	1.014

Step 1: Determine Monthly Per-Subscriber Affiliation Fees for Each Channel on the Tier

The preceding table presents the monthly per-subscriber affiliation fee paid by the cable operator to the programmer. These values are those contractually agreed to and paid by the cable operator. As illustrated, this hypothetical cable operator carries three broadcast stations. Two of the broadcast stations do not receive a monthly per-subscriber payment from the cable operator, while ''Broadcast Station 2'' receives $0.05 per month per subscriber from the cable operator. In addition, ''Cable Network 8'' and ''Cable Network 9'' are sold by the programmer on a bundled basis in a contract which does not specify individual affiliation fees for each network, but instead specifies a rate of $0.27 for carriage of both networks. ''Cable Network 8'' is the higher rated of the two networks and therefore the affiliation fee is allocated to it and the affiliate fee for ''Cable Network 9'' is set equal to zero.

Step 2: Determine the Mark-Up of the Tier

The mark-up is equal to the total subscriber revenue for the programming tier (100 × $18.95 = $1,895), divided by the total of the affiliation fees the cable operator pays to the programmers for the channels on the tier (100 × $7.19 = $719). In the example the mark-up is equal to 2.636.

Step 3: Determine the Implicit Fee of Each Channel on the Tier

The implicit fee, or net revenue, is equal to the gross revenue from the channel less the affiliation fee of the channel. The gross revenue is obtained by multiplying the affiliation fee by the mark-up of the tier.

Step 4: Determine the Number of Marginal Channels on the Tier

The number of marginal channels is equal to 15% of the non-mandated channels on the tier. In this case, the tier contains 5 mandated channels: ''Broadcast Station 1,'' ''Broadcast Station 2,'' ''Broadcast Station 3,'' ''PEG 1,'' and ''Leased Access 1.'' Therefore there are 21 non-mandated channels on the tier. The number of marginal channels is 0.15 × 21 = 3.15. The result should be rounded to the nearest positive integer. This tier has three marginal channels.

Step 5: Determine the Marginal Channels

The marginal channels are the three non-mandated channels with the lowest implicit fee. In this example, those channels are: ''Cable Network 5,'' ''Cable Network 6,'' and ''Cable Network 9.''

Step 6: Calculate the Marginal Implicit Fee

The marginal implicit fee is the mean of the implicit fees of the three marginal channels. The marginal implicit fee is (0.000 + 0.016 + 0.065)/3 = 0.027. The monthly rate for a leased access programmer on this tier is $0.027 per subscriber.

II. Alternative Methods for Calculating the Maximum Allowable Leased Access Rate

20. We use several methods to examine aggregate information on the cable industry and develop a maximum allowable leased access rate. All of our methods begin with the construction of hypothetical analog and digital tiers based upon the 194 most widely distributed networks. We obtain the number of subscribers to the most widely distributed programming networks from SNL Kagan, Economics of Basic Cable Networks, 13th Ed. (at 36–40) and SNL Kagan, Media Trends, 2007 Edition (at 58). Affiliation fees for these networks are from SNL Kagan, Economics of Basic Cable Networks, 13th Edition (at 60–62); SNL Kagan, Media Trends, 2007 Edition (at 59); and SNL Kagan, Cable Program Investor, October 18, 2007 (at 2–3). We base the sizes of the hypothetical analog and digital tiers on data collected via the FCC's Cable Price Survey. The survey indicates that the average analog tier contains 54.9 non-mandated channels and the most highly subscribed digital tier contains 33.7 additional channels. *Report on Cable Industry Prices*, Table 4, 21 FCC Rcd 15087 (released December 27, 2006). The most widely distributed networks were ranked

according to their subscribers. They are then weighted according to the number of subscribers that they reach relative to the most widely distributed network, The Discovery Channel, which received a weight of 1. Lesser distributed networks receive weights that are equivalent to the fraction of subscribers they have relative to the most widely distributed network.

21. The hypothetical analog tier consists of the channels with the highest subscribers, whose weights sum to 54.9. This hypothetical analog tier consists of 67 program networks. These 67 networks reach the same number of subscribers as that which would be reached if 55 networks each reached 100% of cable subscribers. Construction of the hypothetical digital tier is complicated by the fact that 12 of the 194 most widely distributed networks do not currently receive any license fees. We therefore proceed on two fronts. We construct a digital tier which includes these ''no-fee'' networks which we refer to as the ''inclusive digital tier'' as well as an ''exclusive digital tier'' which excludes networks with no license fees from the hypothetical digital tier. An additional complication is that our information on affiliation fees and distribution of cable networks is not sufficiently broad to get a sufficient number of networks whose weights sum to 33.7, the number of channels on the average digital tier. Therefore both the inclusive and exclusive digital tiers will contain all of the networks not included in our hypothetical analog tier. The inclusive digital tier consists of 127 networks with a total weight of 17. The exclusive digital tier contains 115 networks with a weight of 15.1.

22. We examine two approaches to calculating the marginal implicit fees of the hypothetical analog and digital tiers. The first approach, which we refer to as the net revenue approach, follows the method used to calculate the operator-specific rates. The average mark-up of cable operators is determined. This value is used to determine net revenue of each network on the tier by multiplying it against the affiliation fee to obtain gross revenue and subtracting off the programming cost to obtain net revenue. The marginal implicit fee is calculated as the mean or median net revenue of the least profitable 15% of channels on the tier. The other approach, which we call the per-subscriber fee approach, calculates the marginal implicit fee as the mean or median affiliation fee of the least costly 15% of channels on the hypothetical tier. Because the mark-up of each channel on a tier is the same, ranking networks by net revenue or per-subscriber fees leads to the same ordering of the networks. Therefore, the identities of the channels used to calculate the marginal implicit fee under either approach are the same for a given hypothetical tier.

A. The Marginal Implicit Fee Under the Net Revenue Approach

23. As discussed, the net revenue approach mirrors the system-specific method adopted in this order. The mark-up of programming costs by cable operators is determined by dividing video revenues by programming costs. We base this calculation on the average of the programming cost as a percentage of revenue for three large cable operators in 2005. The inverse of this number is equal to the mark-up. SNL Kagan, Cable TV Investor: Deals and Finance, January 31, 2007 at 6. The mark-up in the cable industry is 2.76. This mark-up is then applied to the per-subscriber affiliation fees of the networks in the hypothetical tiers in order to determine the gross revenue per subscriber that each of those networks generates for the cable industry. Subtracting the per subscriber affiliation fee from the gross revenue per subscriber yields the net revenue per subscriber. The next step in the calculation is to determine the marginal channels, which is based upon the number of channels that the average cable operator must set aside for leased access. The marginal networks for the maximum allowable rate on an analog tier will be the 15% of 54.9 or 8.2 networks. The marginal channels are those channels, with the lowest net revenues amongst the 67, whose weights sum to 8.2 (the number of marginal channels on our hypothetical analog tier). The weighted mean of the net revenue of those 13 networks is equal to $0.091 per subscriber per month and the weighted median is equal to $0.094 per subscriber per month.

24. Calculation of the maximum rate for the hypothetical digital tiers is similar. The tier consists of those networks that were not included in the hypothetical analog tier with the greatest numbers of subscribers, whose weights sum to 33.7. Our information on per subscriber affiliation fees and distribution of cable networks is not sufficiently broad to get a sufficient number of networks whose weights sum to 33.7. This occurs because there is a substantial population of networks with very limited distribution. However, in our existing data, we noted that there are a number of networks with license fees that are effectively zero. It is likely that the lesser networks that we have been unable to include have a similar paucity of license revenues. Failure to include these additional networks makes the marginal implicit fee for digital tiers slightly higher than it otherwise would be. The marginal channels are those channels, with the lowest net revenues whose weights sum to 5.1 (15% of the number of channels on our hypothetical digital tier). The weighted mean net revenue of those networks is $0.056 per subscriber per month and the weighted median is $0.070 per subscriber per month for the exclusive digital tier. The weighted mean net revenue for the inclusive digital tier is $0.026 per subscriber per month and the weighted median is $0.035 per subscriber per month.

B. The Marginal Implicit Fee Under the Per-Subscriber Fee Approach

25. The per-subscriber fee method is based upon the costs incurred by a cable system when it must vacate a channel in order to provide capacity to a commercial leased access programmer. If a cable system that receives a request for LA carriage has no vacant channels available, then the system will need to incur certain costs in order to make the required capacity available to the LA programmer. Specifically, it is unlikely that the commercial contracts that the cable operator has with program channels permit unilateral costless cancellation by the cable operator. Even without detailed information on these contracts, it is reasonable to assume that the cable operator would need to provide some compensation to the ''bumped'' channel in order to induce it to vacate the system. One reasonable candidate for this is the fee that the cable operator was collecting from each consumer and paying to the bumped channel (the ''per-subscriber fee''). If we assume that the marginal channel is earning negligible advertising revenues, then that channel would be made whole if it continued to receive the per-subscriber fee that the cable operator had been paying. We use this as an alternative method of examining the costs that leased access programming may impose on cable operators.

To calculate the marginal implicit fee under the per-subscriber fee approach, rather than calculating the weighted means and medians of the net revenue of the bottom 15% of networks in a tier, the weighted means and medians of the affiliation fees are calculated. As discussed, because a constant mark-up is applied to affiliation fees when calculating net revenue, networks with the lowest net revenue are also the networks with the lowest affiliation fees. Therefore the marginal implicit cost using the per-subscriber fee method is based on exactly the same networks as used to calculate the marginal implicit fee with the net revenue method. The weighted mean of the per-subscriber fee of the marginal networks on the hypothetical analog tier is equal to $0.051 per subscriber per month and the weighted median is equal to $0.053 per subscriber per month. The weighted mean of the per-subscriber fee of the marginal networks on the hypothetical inclusive digital tier is equal to $0.015 per subscriber per month and the weighted median is equal to $0.020 per subscriber per month. The weighted mean of the programming cost of the marginal networks on the hypothetical exclusive digital tier is equal to $0.032 per subscribe.

[FR Doc. 08–872 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 73, No. 40
Thursday, February 28, 2008

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 708a and 708b

Mergers, Conversion From Credit Union Charter, and Account Insurance Termination; Extension of Comment Period

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advanced notice of proposed rulemaking and request for comment (ANPR); notice of extension of comment period.

SUMMARY: The NCUA Board recently issued an ANPR regarding mergers, conversions from credit union charter, and account insurance termination that provided a 60-day comment period, 73 FR 5461 (Jan. 30, 2008). NCUA received several oral requests to extend the comment period and has decided to extend the comment period for an additional 30 days.

DATES: Comments must be received by April 30, 2008.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on FCU Bylaws'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: At its January 2008 meeting, the NCUA Board issued an ANPR addressing several issues related to credit union mergers, conversion from a credit union charter, and account insurance termination, 73 FR 5461 (Jan. 30, 2008). The ANPR requested comment on whether NCUA should issue regulations to govern merger of a federally insured credit union (FICU) into, or a FICU's conversion to, a financial institution other than a mutual savings bank, and whether NCUA should amend its regulations on mergers, charter conversions, and changes in account insurance. These transactions present issues affecting member rights and ownership interests, and the ANPR specifically requested comment on how NCUA regulations should address four categories of these issues: Management's Duties, Member Right to Equity, Communications to Members, and Member Voting. NCUA received several oral requests to extend the comment period by 30 days. The Board believes a 30-day extension will facilitate submission of comments without causing undue delay to the rulemaking process. Accordingly, the comment period for the ANPR is extended until April 30, 2008.

By the National Credit Union Administration Board on February 20, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–3831 Filed 2–27–08; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127 and 134

RIN 3245–AF40

Women-Owned Small Business Federal Contract Assistance Procedures

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule, notice of reopening of comment period and correction.

SUMMARY: SBA is reopening the comment period for an additional 30 days and making two technical corrections.

DATES: Comments on the proposed rule on Women-Owned Small Business Federal Contract Assistance Procedures (72 FR 73285), must be received on or before March 31, 2008.

ADDRESSES: You may submit comments, identified by 3245–AF40, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail, Hand Delivery/Courier: Robert C. Taylor, Office of Contract Assistance, Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

All comments will be posted on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the comments to Robert C. Taylor and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Robert C. Taylor, Office of Contract Assistance, Office of Government Contracting, (202) 205–7319, *WOSBProposedRegulation@sba.gov.*

SUPPLEMENTARY INFORMATION: On December 27, 2007, SBA published in the **Federal Register** a proposed rule on Women-Owned Small Business Federal Contract Assistance Procedures (72 FR 73285). This proposed rule would add a new part to SBA's regulations that

would implement procedures to increase procurement opportunities for Women-Owned Small Business Concerns, as authorized under the Small Business Act. It would also make the relevant conforming amendments to SBA's current procurement regulations. The original comment period was from December 27, 2007, through February 25, 2008. SBA is reopening the comment period for a limited time until March 31, 2008 for the following reasons. First, this will accommodate the great level of interest that the proposed rule has generated and the requests to extend the comment period. Furthermore, SBA is making two necessary technical corrections to the proposed rule. The first correction is in the **ADDRESSES** section of the proposed rule and amends the Federal eRulemaking Portal Web address and all references to that Web address to read *http://www.regulations.gov.* Finally, SBA is amending the words of issuance to further emphasize that this is a proposed rule.

In SBA's docket Id fr27de07–17 appearing on page 73286 in the **Federal Register** on December 27, 2007, the **ADDRESSES** section is corrected to read as follows:

ADDRESSES: You may submit comments, identified by 3245–AF40, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail, Hand Delivery/Courier: Robert C. Taylor, Office of Contract Assistance, Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

All comments will be posted on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the comments to Robert C. Taylor and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

Furthermore on page 73295 in the **Federal Register** (72 FR 73285), the words of issuance are corrected to read as follows: Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 121, 125, 127 and 134 as follows:

(Authority: 15 U.S.C. 634)

Dated: February 25, 2008.

Fay E. Ott,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. E8–3889 Filed 2–27–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

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

DATES: We must receive comments on this supplemental NPRM by March 19, 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: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to 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–2007–28389; Directorate Identifier 2006–NM–171–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of 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

We issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to

include an airworthiness directive (AD) that would apply to certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. That original NPRM was published in the **Federal Register** on July 3, 2007 (72 FR 36373). That original NPRM proposed to require revising the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness by incorporating new limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That original NPRM also proposed to require the initial performance of certain repetitive inspections specified in the AWLs to phase in those inspections, and repair if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, Boeing has issued Revision October 2007 of section 9 of the 777 Maintenance Planning Data (MPD) Document, D622W001–9 (hereafter referred to as ''Revision October 2007 of the MPD''). The original NPRM referred to Revision March 2006 of the MPD as the appropriate source of service information for accomplishing the proposed actions. Among other actions, Revision October 2007 of the MPD revises the task description for AWL No. 28–AWL–01 and increases the repetitive interval for AWL No. 28–AWL–18. (AWL No. 28–AWL–18 was introduced in Revision September 2007 of the MPD). We have revised paragraphs (f), (g), and (h) of this supplemental NPRM to refer to Revision October 2007 of the MPD.

We have also determined that more airplanes would be affected by this supplemental NPRM. All Model 777 airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued before December 5, 2007, are affected by this supplemental NPRM. Accordingly, we have revised paragraph (c) of this supplemental NPRM. We have also updated the ''Costs of Compliance'' section of this supplemental NPRM to account for the additional airplanes.

In paragraphs (h)(1)(i) and (h)(2)(i) of the original NPRM, we inadvertently specified the compliance time as ''* * * before the accumulation of 36,000 total flight cycles or within 120 months. * * *'' The correct compliance time is 16,000 total flight cycles or within 3,000 days, as specified in Revision October 2007 of the MPD. We have revised this supplemental NPRM accordingly.

Changes Made to This Supplemental NPRM

For standardization purposes, we have revised this supplemental NPRM in the following ways:

- We have added a new paragraph (i) to this supplemental NPRM to specify that no alternative inspections, inspection intervals, or CDCCLs may be used unless they are part of a later approved revision of Revision October 2007 of the MPD, or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.
- We have revised Note 2 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot accomplish the proposed inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the proposed inspections.

Comments

We gave the public the opportunity to participate in developing the original NPRM. We addressed certain comments received in this supplemental NPRM. The remaining comments are being evaluated and will be addressed in the final rule.

Request To Allow Inspections Done According to a Maintenance Program

Japan Airlines (JAL) requests that we revise paragraph (h) of the original NPRM to allow an operator to update its FAA-approved maintenance program to include the initial inspections and repair for certain AWLs. JAL states that the original NPRM would require accomplishing the initial inspection and repair of certain AWLs, which would require JAL to establish a special inspection and special recordkeeping for the proposed requirement.

We agree and have revised paragraphs (h)(1) and (h)(2) of this supplemental NPRM to specify that accomplishing the applicable AWL as part of an FAA-approved maintenance program before the applicable compliance time constitutes compliance with the applicable requirements of those paragraphs.

Request To Harmonize Task Descriptions

JAL states that, in Revision March 2006 of the MPD, the task descriptions defining the applicable area are different for AWLs Nos. 28–AWL–01 and 28–AWL–02. (AWL No. 28–AWL–01 is a repetitive inspection of the external wires over the center fuel tank, and AWL No. 28–AWL–02 is a CDCCL to maintain the original design features for the external wires over the center fuel tank). JAL believes that the task descriptions for these AWLs should match. JAL presumes that, if one purpose for the inspection is to prevent a spark in the fuel vapor over the center fuel tank, then the applicable area should have a certain tolerance instead of defining the area by exact station number. JAL also requests that ''Sta. 1045'' be revised to ''Sta. 1245'' for AWL No. 28–AWL–01.

We agree that the task descriptions for AWL Nos. 28–AWL–01 and 28–AWL–02 should be harmonized, and that there is an error in the station number in the task description for AWL No. 28–AWL–01. Revision October 2007 of the MPD includes a revised task description of AWL No. 28–AWL–01, which addresses JAL's comments. As stated previously, we have revised this supplemental NPRM to refer to Revision October 2007 of the MPD.

Request To Add Additional References to Appendix 1

Boeing requests that we revise Appendix 1 of the original NPRM to reflect the correct airplane maintenance manual (AMM) task titles and numbers for AWLs No. 28–AWL–02, No. 28–AWL–05, No. 28–AWL–06, No. 28–AWL–08, No. 28–AWL–10, No. 28–AWL–12, No. 28–AWL–15, No. 28–AWL–16, No. 28–AWL–17, and No. 28–AWL–19.

JAL requests that we update Appendix 1 of the original NPRM to include all AWLs specified in the MPD, and that we indicate how to maintain the latest version of Appendix 1. JAL also requests that we correct the following errors in Appendix 1 of the original NPRM: (1) For AWL No. 28–AWL–04, change ''SWPM 20–10–15'' to ''SWPM 20–10–13,'' and (2) for AWL No. 28-AWL–15, change ''28–41–05–404–801'' to ''28–41–05–400–801.''

We disagree with revising the AMM references, since we have deleted Appendix 1 from this supplemental NPRM. The purpose of Appendix 1 was to assist operators in identifying the AMM tasks that could affect compliance with a CDCCL. However, we have also received several similar comments regarding the appendixes in other NPRMs that address the same unsafe condition on other Boeing airplanes. Those comments indicate that including non-required information in those NPRMs has caused confusion. Further, Revision October 2007 of the MPD contains most of the updated

information that is listed in Appendix 1 of the original NPRM. Therefore, we have removed Appendix 1 from this supplemental NPRM.

Request To Revise Note 2

Boeing requests that we revise Note 2 of the original NPRM to clarify the need for an AMOC. Boeing states that the current wording is difficult to follow, and that the note is meant to inform operators that an AMOC to the required MPD AWLs may be required if an operator has previously modified, altered, or repaired in the areas addressed by limitations. Boeing requests that we revise Note 2 as follows:

- Add the words ''according to paragraph (g)'' at the end of the first sentence.
- Replace the words ''revision to'' with ''deviation from'' in the last sentence.
- Delete the words ''(g) or'' and ''as applicable'' from the last sentence.

As stated previously, we have simplified the language in Note 2 of this supplemental NPRM for standardization with other similar ADs. The language the commenter requests that we change does not appear in the revised note. Therefore, no additional change to this supplemental NPRM is necessary in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Costs of Compliance

We estimate that this supplemental NPRM would affect 127 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision	8	None	$640	127	$81,280
Inspection	8	None	640	127	81,280

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

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

Comments Due Date

(a) We must receive comments by March 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes; certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before December 5, 2007.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after December 5, 2007, must be already in compliance with the airworthiness limitations (AWLs) specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

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

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Service Information

(f) The term ''Revision October 2007 of the MPD,'' as used in this AD, means Section 9 of the Boeing 777 Maintenance Planning Document (MPD) Document, D622W001–9, Revision October 2007.

Revision of Airworthiness Limitations (AWLs) Section

(g) Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness by incorporating the information in the sections specified in paragraphs (g)(1) and (g)(2) of this AD into the MPD; except that the initial inspections specified in paragraph (h) of this AD must be done at the compliance times specified in paragraph (h) of this AD.

(1) Subsection D, ''AIRWORTHINESS LIMITATIONS—SYSTEMS, FUEL SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision October 2007 of the MPD.

(2) Subsection E, ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision October 2007 of the MPD.

Initial Inspections and Repair

(h) Do the inspections required by paragraphs (h)(1) and (h)(2) of this AD at the compliance times specified in paragraphs (h)(1) and (h)(2), in accordance with the applicable AWLs described in Subsection E, ''PAGE FORMAT: SYSTEMS AIRWORTHINESS LIMITATIONS,'' of Revision October 2007 of the MPD. If any discrepancy is found during these inspections, repair the discrepancy before further flight in accordance with Revision October 2007 of the MPD.

(1) At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, do a detailed inspection of external wires over the center fuel tank for damaged clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank, and repair any discrepancy, in accordance with AWL No. 28–AWL–01. Accomplishing AWL No. 28–AWL–01 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD constitutes compliance with the requirements of this paragraph.

(i) Before the accumulation of 16,000 total flight cycles, or within 3,000 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

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

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

(2) At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD, do a special detailed inspection (resistance test) of the lightning shield-to-ground termination of the out tank wiring of the fuel quantity indicating system (FQIS) and, as applicable, repair (restore) the bond to ensure the shield-to-ground termination meets specified resistance values, in accordance with AWL No. 28–AWL–03. Accomplishing AWL No. 28–AWL–03 as part of an FAA-approved maintenance program before the applicable compliance time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD constitutes compliance with the requirements of this paragraph.

(i) Before the accumulation of 16,000 total flight cycles, or within 3,000 days since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

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

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

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitation (CDCCLs)

(i) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Revision October 2007 of the MPD that is approved by the Manager, Seattle Aircraft Certification Office (ACO); or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, FAA, ATTN: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on February 20, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3765 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 47

[Docket No. FAA–2008–0188; Notice No. 08–02]

RIN 2120–AI89

Re-Registration and Renewal of Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend requirements concerning the registration of aircraft. This proposal is based on the need to increase and maintain the accuracy of aircraft registration information in the Civil Aviation Registry. The proposed procedures would ensure aircraft owners periodically provide information regarding changes in registration. These amendments would respond to the concerns of law enforcement and other government agencies and would provide more accurate, up-to-date aircraft registration information to all users of the Civil Aviation Registry database.

DATES: Send your comments on or before *May 28, 2008*. Send your comments on the proposed information collection requirements on or before *May 28, 2008*.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0188 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail*: Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier*: Bring comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Bent, Civil Aviation Registry, AFS–701, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; Telephone (405) 954–4331; e-mail *john.g.bent@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A., Subpart III, Chapter 441, Section 44111. Under that section, the FAA is charged with prescribing regulations considered necessary to carry out this part. In that section, Congress mandated the Administrator make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of buyers and sellers of aircraft; officials responsible for enforcing laws related to the regulation of controlled substances and other users of the system. Other users of the system include persons charged with maintaining safety in air transportation and law enforcement agencies charged with maintaining national security. The modifications described in this NPRM include measures to ensure positive, verifiable, and timely identification of the true owners of aircraft operated in the national airspace system. For these reasons, these proposed changes are within the scope of our statutory authority and are a necessary and reasonable exercise of that authority.

I. Background

The Civil Aviation Registry (Registry) is responsible for developing, maintaining, and operating the national program for the registration of United States civil aircraft. In that capacity, the Registry's Aircraft Registration Branch maintains records on approximately 340,000 aircraft.

During the 1980s, the use of aircraft in drug smuggling became an issue of increasing concern for the U.S. Customs Service, the Drug Enforcement Administration, and law enforcement agencies at all levels of government. These agencies, seeking quick and accurate identification of owners of civil aircraft, advocated an annual registration requirement. In 1988, Congress passed the FAA Drug Enforcement Assistance Act of 1988 (FAA DEA Act) (partially codified at 49 U.S.C. 44111), expanding FAA's mission to include providing assistance to law enforcement agencies involved in the enforcement of laws that regulate controlled substances. In the FAA DEA Act, Congress identified specific shortcomings in the system of records, mandated specific modifications, and authorized and directed rulemaking to make the aircraft registration system more effectively serve the needs of buyers and sellers of aircraft, law enforcement officials, and other users of the system.

In response to this mandate, the FAA has made a number of administrative modifications to its registration process including requiring physical addresses or locations of owners; requiring legible printed or typed names on an application for aircraft registration; and various technical upgrades to the system of records.

The FAA also implemented a focused enforcement program under which nearly 1,000 Certificates of Aircraft Registration (Certificates) have been revoked. This program concentrates on aircraft where a change in ownership has occurred, but the last registered owner has failed to complete and return the Certificate as required by 14 CFR 47.41(b).

Notwithstanding administrative modifications to the registration system, legal enforcement efforts, the requirement for return of a Certificate after any of the events listed in 14 CFR 47.41 and 47.43, and the requirement for completion of the Triennial Aircraft Registration Report (14 CFR 47.51), the number of aircraft on the Registry whose owner can not be positively and verifiably identified in a timely manner is increasing.

In addition to law enforcement need for aircraft registration information, user needs for accurate and current aircraft registration information have increased, and the many incremental improvements attained through automation and administrative changes are not sufficient to respond to those needs. While aircraft registration information is still used to support the delivery of airworthiness directives and other traditional safety-related uses, the information is increasingly relied upon for newer programs, such as flight plan verification.

While various levels of law enforcement have used and continue to use registration data for drug and other law enforcement purposes, their efforts now have expanded to include matters of homeland security. To achieve a level of registration data reliability to meet current and evolving needs of users, modifications to the aircraft registration system must be made to ensure that only eligible aircraft remain on the Registry and that aircraft registration changes are reported within established intervals.

Over the past several decades, the FAA has used several methods in an effort to maintain the accuracy of information on aircraft registration. From March 1970 through January 1978, Certificate holders were required to file an annual report to keep the aircraft Registry updated and limited to only those aircraft eligible for registration. The requirement for the annual report was withdrawn in 1978, when the Registry was reasonably current and was expected to remain current through

contact with aircraft owners over the ordinary course of business. The amendment withdrawing this requirement noted that a reporting requirement might need to be instituted for aircraft registrants from whom no information was received within a reasonable period of time. (43 FR 3900, Jan. 30, 1978)

This anticipation was fulfilled two years later on April 30, 1980, when Amendment 47–21 added 14 CFR 47.51 establishing the Triennial Aircraft Registration Report (Triennial). This regulation requires the holder of a Certificate to send, in response to a request from the FAA Aircraft Registry, a report on an aircraft when three years have passed without certain aircraft registration activities having taken place. Paragraph (d) of this section provides for the suspension or revocation of a Certificate when there is a refusal or failure to send the report. Unfortunately, the Triennial has not proven effective in maintaining the accuracy and currency of the aircraft registration database. For example, while the Registry can determine from mail returned as undeliverable that certain aircraft registration addresses are out of date, we are unable to make a determination regarding how many Triennials are delivered to a registered owner's (former) address of record and are simply discarded by the current occupant. Efforts to improve the effectiveness of the Triennial through enforcement have proven to be expensive, time-consuming, and ineffective.

Modern technology has allowed registration data to be used in increasingly sophisticated ways. An example of a technologically enabled proactive program needing accurate data is an initiative developed by FAA Strategic Operations Security with the Transportation Security Administration. *See* 70 FR 73323, December 9, 2005. This program uses aircraft registration status, along with other information, as a basis for granting or denying aircraft access to the national airspace system. An aircraft seeking to operate in U.S. airspace will have its identification checked. If the information found is sufficiently inconsistent with the profile of a properly registered aircraft, a pilot deviation will be filed on the operator, and the operator may be denied access to the national airspace. This program and others like it operate in real time and draw their information directly from Registry databases. The events of September 11, 2001, and our continuing war on terrorism have created additional motivation to develop every resource that can be used by government agencies seeking to ensure the day-to-day safety of our nation.

To minimize the chance of disruptions for aircraft operators and effectively meet the needs of all users of the aircraft registration system and its data, the FAA has determined that the Aircraft Registry needs to confirm the status of questionable aircraft registrations and ensure the registry data is maintained at the highest reasonable level of accuracy.

How accurate are the records today? Since the annual registration eligibility requirement ended in 1978, many aircraft have left service, been sold, or had owners who moved without reporting their change of status or address. Of the more than 343,000 aircraft registered, an estimated 104,000, or about one-third, are possibly no longer eligible for registration. Over the last several years:

- 17,000 aircraft have been reported as sold by their former owners without the purchasers making application for registration (with about 15,900 being in the ''sale-reported'' category for more than 6 months);
- 4,700 have started registration without completing the requirements (with about 2,100 being in the ''registration-pending'' category for more than 12 months);
- About 30,100 aircraft are known to have bad addresses well beyond the 30 days allowed for reporting changes;
- Almost 14,700 aircraft have had their Certificates revoked due to bad addresses, but remain in the system to prevent reassignment of their U.S. registration number (N-Number) until the FAA is positive the aircraft is no longer operating with that N-Number; and
- Up to 41,000 additional unidentified aircraft are estimated to be inactive or possibly no longer eligible for registration.

In addition to increased accuracy, removing ineligible aircraft from the Registry would eliminate a large pool of questionable N-Numbers. As mentioned above, the FAA, in concert with TSA, is evaluating flight plan filings to determine if an aircraft has the proper profile for operation in the national air space. It is advantageous to a drug trafficker or a terrorist to use an airplane with a registered N-number as these airplanes would be subject to less scrutiny. Revoking these registrations using 14 CFR part 13 enforcement procedures is slow, expensive, adversarial, and does not cancel the assignment of the N-number.

With almost one-third of the aircraft on the register having a questionable registration status, it is clear that the needed accuracy and currency of aircraft registration data cannot be met with the present system of indefinite-duration Certificates that relies primarily on aircraft owners to report address changes, aircraft sales, aircraft destruction, or loss of registration eligibility. The FAA believes that limiting the duration of a Certificate would be the most effective method of increasing the accuracy of its records. Thus, the FAA, seeking to meet current and future needs, proposes in this NPRM:

- The expiration of all Certificates for currently registered aircraft with re-registration requirements for those aircraft that remain eligible for registration;
- The periodic expiration of all Certificates issued after the effective date of the proposed rule with a registration renewal process;
- Elimination of the present Triennial Aircraft Registration Report program in its entirety;
- Limits on the time an aircraft may remain in the sale reported category (without an application being made for registration) before its N-Number assignment is canceled;
- Limits on the time an applicant or successive applicants for registration have to complete the registration process and provisions for reserving the aircraft's N-Number if the aircraft is not registered at the end of this time; and,
- Cancellation of the N-number of an aircraft registered under a Dealer's Aircraft Registration Certificate (Dealer's Certificate), if the Dealer's Certificate has expired and application for registration has not been made under § 47.31.

Under this proposal, aircraft owners desiring to maintain registration would have to re-register their aircraft within a specified time period. Re-registered aircraft would receive a Certificate with an expiration date, as would all new Certificates issued after the date of the rule. Thereafter, the Certificate would expire three years from the date of issuance, but would be renewable for successive three-year terms upon completion and submission of a brief renewal request form and payment of the applicable fee. A registered aircraft owner would have to promptly file re-registration and renewal actions. Since temporary operating authority (''pink copy'') under 14 CFR 47.31(b) would not be available for renewal purposes, no transfer of ownership would have taken place. Upon completion of processing by FAA, the renewed Certificate with a new expiration date would be mailed to the registered owner

at the address indicated on the renewal form.

Under 14 CFR 47.17, we currently charge $5.00 for obtaining a certificate of aircraft registration and would charge the same amount for a renewal registration under this proposal. However, the FAA is pursuing fairer, more cost-based funding for the future. One of the FAA's goals for its pending reauthorization is to match FAA funding more closely with the costs of providing services. Current FAA funding does not align with FAA's costs to provide services, and the current aircraft registration fee, which has been $5.00 since the mid-1960's, is an example of this disconnect. To move the FAA to a more cost-based organization, the Administration's proposal for FAA reauthorization, sent to Congress in February 2007, includes language that addresses registration and certification fees across the board. The House of Representatives adopted much of the Administration's proposal for these fees in H.R. 2881, which passed the House in September 2007. Once the outcome of the reauthorization legislation is known, the FAA will decide whether additional action is necessary through either further legislation or rulemaking.

This notice also includes several non-substantive, technical amendments to establish consistency and conform the regulations to statute or current Registry practices.

General Discussion of the Proposals

Aircraft Re-Registration and Periodic Renewal of Registration

The term ''re-registration'' as used in this document refers to the process for obtaining new Certificates for aircraft that were registered before the effective date of the rule and, therefore have a Certificate without an expiration date. The term ''renewal,'' when referring to aircraft registration, refers to periodic registration required for any aircraft that has a Certificate with an expiration date (i.e., a Certificate issued after the effective date of the rule).

Currently, a Certificate does not expire. However, a Certificate may have been invalid from inception (see § 47.43) or become ineffective upon the occurrence of any of the events specified in § 47.41(a). The Certificate, with the reverse side completed, must be returned to the FAA Aircraft Registry after the sale of the aircraft or the occurrence of any other event specified in § 47.41. If the holder complies and returns the Certificate, the aircraft records can then be updated. However, the Registry is frequently not notified of a change affecting registration and consequently, the aircraft registration records may not reflect accurate registration information. If, for some reason, the Certificate were not available for return, proposed § 47.41(b) would require the last registered owner to send a statement to the Registry explaining why the Certificate is not available.

Timely and adequate notice of ownership changes is the responsibility of the parties involved. The seller is responsible for returning the Certificate to the FAA with the reverse side completed. The new owner is responsible for filing an Aircraft Registration Application (Application) and evidence of ownership in compliance with part 47, if the owner intends to operate the aircraft.

Inaccurate records have many negative consequences. For example, FAA uses aircraft records to identify owners of specific aircraft, so that safety related information such as airworthiness directives, can be delivered to those owners. Because of inaccurate information, many safety related mailings are returned without delivery. Aircraft manufacturers also use aircraft records for similar reasons. Law enforcement and security agencies rely upon FAA's aircraft records to identify owners of aircraft, but in many cases they are unable to do so within a reasonable timeframe and with an acceptable level of confidence. Out-of-date registration information may possibly result in loss of property, and if safety related information is not received, could result in personal injury. The FAA has concluded, as noted earlier, that the level of accuracy in the system of records must be significantly improved to better serve the needs of the users of the system.

The FAA is proposing a 3-year renewal interval. The 3-year interval is based in part on its experience with the Triennial program (this program will be discussed in more detail later). With a 3-year renewal, the owner would bear the responsibility of meeting the renewal requirements as well as the consequences for failing to meet those requirements. This stands in contrast to the current situation in which a registered owner's failure to comply with regulatory requirements generally has no immediate consequences for that owner.

Presently about 35% of registered aircraft are operating on potentially ineffective registrations, because the Registry has not been notified of registration changes. With the implementation of the proposed 3-year renewal, according to the analysis provided in the preliminary Regulatory Evaluation (a copy of which has been placed in the docket for this rulemaking), we estimate that the inaccuracy rate would drop to about 5.6% of the 240,000 aircraft expected to remain on the register. By comparison, a 5-year renewal interval would likely result in an error rate of about 12.5%, and a 7-year renewal interval would result in an error rate of about 21.8%. Even under the 3-year renewal interval, avoiding data degradation due to registration information changes would depend upon aircraft owners reporting all changes in a timely manner.

Under proposed § 47.40(a), any aircraft registered before the effective date of the rule would have to be re-registered over a 3-year period. Re-registration would provide updated aircraft registration information and result in the issuance of a Certificate of Aircraft Registration with an expiration date three years after the last day of the month in which the certificate is issued. An example of a schedule for re-registration with sample dates is provided in proposed section § 47.40, to illustrate that aircraft registered in a given month would be required to re-register in a specific 3-month period. Because the aircraft could not be legally operated beyond the end of the 3-month period, the application and registration fee should be filed for re-registration in a timely manner within the specific time period identified. The pink slip may not be used as temporary authority to operate an aircraft that is being re-registered. The FAA recommends application be made at least 45 days before the end of the 3-month period. This scheduling, as shown by these sample dates, is necessary to manage the Registry's workload during the re-registration period. The actual dates for re-registration would be established upon publication of the final rule, and the schedule shown in proposed section § 47.40 would be changed accordingly.

As mentioned in the previous paragraph, if re-registration were not accomplished, the Certificate would expire. Thereafter, the N-number assigned to the aircraft would be administratively cancelled no earlier than 30 days following the end of the specific period of time given for re-registration. Proposed § 47.15(i), described below, would provide for the cancellation of the N-number assignment for aircraft that do not accomplish re-registration within the specific timeframes.

Re-registration would have the most dramatic effect on the Aircraft Registry, eliminating as many as 104,000 aircraft that are likely no longer eligible for registration. This would be an enormous improvement in the accuracy of the

aircraft registration database. However, to maintain the necessary level of accuracy, re-registration needs to be followed by periodic renewal. The FAA believes that a 3-year renewal interval would be the best choice.

Proposed § 47.40(b) would establish a 3-year expiration for initial Aircraft Registration Certificates issued after the effective date of the rule. The expiration date would be three years from the last day of the month in which they are issued.

Approximately 120 days before the expiration date on a Certificate, the Registry would notify the aircraft owner at the address on the registration of the impending expiration and provide the Aircraft Registration Renewal form. The registrant would either mail in the Aircraft Registration Renewal form and a renewal fee, or if there were no change in registration information, file the completed form and pay the fee electronically through the Registry's Web site.

Under proposed § 47.40(c), an applicant for renewal should apply 90 days in advance of the expiration date on the Certificate of Aircraft Registration to allow for receipt of the new certificate before expiration of the old one. A renewal certificate will expire three years after the expiration date of the previous certificate.

A first Certificate of Aircraft Registration issued on or after (effective date of final rule) expires three years from the last day of the month in which the certificate is issued. Subsequent Certificates of Aircraft Registration, issued upon compliance with the renewal requirement, will expire three years after the expiration date of the previous certificate. For example, an aircraft first registered on June 15, 2010, would receive a certificate with an expiration date of June 30, 2013. When first renewed, the renewal certificate would have an expiration date of June 30, 2016. Future renewal registration certificates would have expiration dates of June 30, 2019, then 2022, and so on, even if the Aircraft Registration Renewal is filed, processed, and the certificate is issued well before the current expiration date.

If the aircraft was not re-registered within the timeframes identified in the schedule or the expiration date on the Certificate has passed, the Certificate would expire. Although the Registry would issue a reminder notice, even in the absence of such notice, the applicant would be responsible for taking action in a timely manner to obtain a new Certificate before the expiration date. An expired Certificate could not be used for operation after the expiration date on the certificate. Since retention of an N-number is contingent upon maintenance of an unexpired registration certificate, the registration number assigned to the aircraft would be administratively cancelled no earlier than 30 days following the expiration of the certificate.

Proposed § 47.41(a) clarifies that a Certificate is no longer valid once it has expired, and proposed § 47.15(i), described below, would provide for cancellation of the N-number assignment should the renewal of aircraft registration not be accomplished. Information regarding re-registration and renewal of aircraft registration would be posted on the Registry's Web site and also provided for media publication.

Benefits of re-registration and renewal of aircraft registration would reach every user of the Aircraft Registry database. The FAA would realize cost savings when mailing airworthiness directives, conducting surveys of aircraft owners, and accomplishing other necessary contacts with aircraft owners. Aircraft manufacturers would realize similar cost savings when mailing safety notices. The above mailings would potentially reach more aircraft owners, and mailing cost would be reduced by not sending mailings to owners and operators of inactive aircraft that would no longer be carried on the Registry. With more owners receiving this information, fewer would be at risk to experience safety issues. Vendors who send out useful information regarding aircraft products would benefit from more accurate aircraft registration information, as would the owners who would receive that information.

Triennial Aircraft Registration Report

In an effort to maintain accurate information, existing § 47.51 requires an owner of a registered aircraft with no registration activity for the past 36 months to complete and send to the Registry a Triennial Aircraft Registration Report, AC Form 8050–73 (Triennial). If there has been a change in registered owner information, such as a change in current name, address, aircraft identification, or citizenship status, the returned form must reflect that change. The form is also used to report the sale, destruction, or other disposition of aircraft. We have gained experience and insight from the problems associated with the Triennial program. From the large number of Triennials that are returned as undeliverable, we have a count of known aircraft registrations with bad addresses. This count is not indicative of all such records, since some owners neglect to report an address change or leave a forwarding address. A new occupant who resides at the owner's former address may dispose of the mailing, viewing it as junk mail. As there are no current enforcement or follow-up actions, there is nothing to compel the owner to complete and return the Triennial.

The 70,000 Triennial report notices sent annually to Certificate holders typically prompt 9,000 address changes and identify 5,000 aircraft with undeliverable addresses. There are also an undetermined number of notices that reach registered owners who choose not to report their aircraft's sale or destruction. Apart from the approximately 104,000 aircraft FAA projects as not eligible for registration, at any point in time at least 11.5% of the estimated 240,000 active aircraft on the register reflect inaccurate registration information. Because bad address returns and non-responses would result in the cancellation of an aircraft's registration under this proposal, this number should drop to the approximately 5.6% error rate cited earlier.

The FAA proposes to remove § 47.51 and eliminate the requirement for aircraft owners to complete and return a Triennial Aircraft Registration Report, AC Form 8050–73. The proposed re-registration and renewal requirements would supersede and eliminate the need for the information obtained via the Triennial. The removal of the paperwork burden associated with the Triennial would help to offset that associated with the 3-year renewal requirement. A description of the paperwork burden associated with this NPRM appears later in this document.

Sale Reported and Registration Pending

There are currently about 17,000 aircraft (out of over 340,000) whose status is ''sale reported.'' Of these, about 15,900 have been in the ''sale reported'' category for more than 6 months, according to the preliminary Regulatory Evaluation. In these cases, FAA has received notice of a sale from the last registered owner, but no Application has been filed, and the aircraft has not been registered to the new owner. Historically, there have been approximately 17,000 ''sale reported'' aircraft at any given time. Many of the aircraft that were originally placed in this short-term category have remained there for more than two decades. This is due, in part, to Registry requirements that information effecting changes in aircraft registration come from authoritative sources who may not be available or willing to provide the

information necessary to clarify the record. Almost 4,700 additional aircraft are in ''registration pending,'' which means the FAA has received evidence of ownership change and an Application, but due to various reasons is not able to complete the registration of the aircraft. Of these, about 2,100 have been in the ''registration pending'' category for more than 12 months. Under these circumstances, neither security and law enforcement agencies, nor the FAA, may be able to locate the owner.

Currently § 47.41(b) requires the last registered owner to endorse the reverse of the Certificate and send it to the Registry after the sale of an aircraft or other event specified in § 47.41. Not only is the return of a Certificate important for maintaining current records, it is in the owner's best interest to declare his relinquishment of responsibility for the aircraft's operation after a sale or other event resulting in termination of registration. If the Certificate is not available, proposed § 47.41(b) would require the last registered owner to send a statement to the Registry as to why the Certificate is not available.

Based on our aircraft registration experience, the FAA considers six months in ''sale reported'' and 12 months in ''registration pending'' as the maximum reasonable time an aircraft should remain in these transitional categories. Proposed § 47.15(i) provides that when these time limits are exceeded, the FAA may cancel assignment of N-numbers. Although these two categories are distinct, an aircraft may be ''sale reported'' for some period and change to ''registration pending'' upon the submission of an Application. Thus, under the FAA proposal, there is the possibility of an aircraft remaining in these short-term transitional categories for up to 18 months.

Under this proposed rule, the FAA estimates that the numbers of aircraft in the ''sale reported'' and ''registration pending'' categories would decrease from their current levels of approximately 17,000 and 4,700, respectively. The FAA anticipates that after the effective date of this final rule, the number of aircraft in both categories would not go to zero, as new aircraft would be coming into the inventory on a daily basis. Thus, as this rulemaking would eliminate aircraft in the ''sale reported'' category with records greater than 6 months old and in the ''registration pending'' category with records greater than 12 months, the FAA expects the numbers of aircraft in these categories to decrease to about 1,300 and 2,500, respectively.

Temporary Authority To Operate an Aircraft

Title 49 U.S.C. 44101(b)(3) provides that an aircraft may be operated without registration for a reasonable period of time after a transfer of ownership. Existing § 47.31(b) does not limit the time a duplicate (pink) copy of the Application together with an approved extension may be used to operate an aircraft. The FAA has determined that 12 months is a reasonable period of time to accomplish registration following a transfer of ownership. Proposed § 47.31(b)(2) would establish 12 months as the maximum time that the pink copy of the Application, including any subsequently issued extensions, may be used as temporary authority to operate the aircraft after ownership has transferred, and registration requirements have not been met. If the owner has not registered the aircraft within the 12-month timeframe, the aircraft would not be eligible for operation. Proposed § 47.31(b)(3) would clarify that temporary authority may not be used to operate the aircraft if there is no N-number assigned to the aircraft at the time application for registration is made. It is the responsibility of a prudent aircraft purchaser to establish whether the temporary authority to operate an aircraft is available prior to operation. It should be noted that expiration of a Certificate does not involve a transfer of ownership; therefore, pink copy operating authority would not be available.

Aircraft Registration

Proposed § 47.41(a) would be revised to specify that a Certificate is effective until a specified event has occurred, such as registration being revoked, cancelled, expired, or the ownership of the aircraft is transferred. Registration has always ended upon revocation, cancellation, or change of ownership. The term ''expired'' would be added to include those registrations that have not been re-registered under proposed § 47.40(a), following the date established in proposed § 47.40(a)(2), and those registrations issued after the date of the final rule that have passed their expiration dates and have not renewed in accordance with proposed § 47.40(c). At the point registration is no longer valid, the assignment of registration number would be cancelled in accordance with proposed § 47.15(i). Since it has not been the practice to suspend an aircraft registration, the term ''suspended'' would be removed from existing § 47.41(a). Existing § 47.41(a)(4) would be removed since reference to change of ownership would be incorporated into the introductory text.

Proposed § 47.39 would clarify that an aircraft is registered on the date that the Registry determines that the requirements of part 47 have been met. The effective date of registration is shown by a date stamp on the Application and as the date of issuance on the Certificate. This would clarify that registration is not effective as of the date the Application and supporting documentation are received at the Registry.

Dealer's Aircraft Registration

Existing § 47.61(b) states that a Dealer's Aircraft Registration Certificate (Dealer's Certificate) is an alternative for the Certificate and may be used for any aircraft properly registered under that Dealer's Certificate. If an aircraft owned by a dealer is registered under the Dealer's Certificate, and that Dealer's Certificate expires, the registration of the aircraft is no longer valid. Proposed § 47.61(c) would add a requirement for those aircraft registered under a Dealer's Certificate that has expired. If an application for registration were not made under existing § 47.31, the assignment of an N-number to any aircraft registered under that expired Dealer's Certificate would be cancelled. This is reflected in proposed §§ 47.41(a) and 47.15(i). Before canceling the N-number, the Registry would provide written notice to the holder of the Dealer's Certificate to advise of the pending cancellation.

Existing § 47.67 states that if a dealer is not a manufacturer, the holder of the Certificate must send evidence that he is the owner to the Registry before an aircraft can be operated under a Dealer's Certificate. Proposed § 47.67 would clarify that the dealer must provide evidence of ownership sufficient under existing § 47.11.

Assignment of Aircraft Registration Numbers (N-Numbers)

Under the Convention on International Civil Aviation (Chicago Convention), 61 Stat. 1180, ''Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks.'' The United States complies with this requirement by issuing N-numbers to all registered aircraft, whether the aircraft are used for international or domestic flights. N-numbers must be placed on aircraft in compliance with 14 CFR part 45. The procedures for requesting and obtaining numbers are covered in 14 CFR part 47.

Existing § 47.15 requires an applicant for registration to place a ''U.S.

identification number (registration mark)'' on the application and on all supporting documents. All newly manufactured aircraft are assigned N-numbers; all aircraft previously registered in a foreign country that are being registered in the U.S. are assigned N-numbers. If a U.S.-registered aircraft is sold within the United States, the aircraft retains its N-number unless the new owner requests a new number.

Existing § 47.15(a) requires for an aircraft last previously registered in the United States, that the applicant place the N-number that is already assigned to the aircraft on the Application and supporting evidence, provided the aircraft was registered at the time ownership was transferred. If an aircraft was last previously registered in the United States, but registration was terminated or ended (e.g., at the request of the owner, destroyed/scrapped, exported, etc.), there is no assigned N-number. Proposed § 47.15(a) would describe the procedure to acquire an N-number assignment.

Under existing §§ 47.15(f) and 47.17, the Registry assigns a special registration number upon request and payment of a $10.00 fee. A special registration number may be reserved for use at a later time. A number may also be reserved indefinitely by paying $10.00 annually.

Existing § 47.15(f) would be revised to specify the time within which a Certificate holder must place a special registration number on the aircraft after the Registry has authorized the number change. If not used, the authorization for a number change would expire one year from the date of issuance. Currently, the owner must notify the Registry within five days after placing the special registration number on the aircraft. The temporary authority to operate the aircraft with the special registration number would be valid only until receipt of a revised Certificate showing the new number, but not for more than 120 days from the date the number is placed on the aircraft. Frequently, the owner does not send the completed Assignment of Special Registration Numbers to the Registry in a timely fashion as required. The proposed change would place the responsibility on the registered owner to ensure that the completed Assignment of Special Registration Numbers is filed in a timely manner to ensure a revised Certificate can be received within 120 days.

Proposed § 47.15(i) would clarify that an N-number is valid for operation only as long as the registration of the aircraft has not ended. The N-number would no longer be authorized for use when an aircraft is sold and not registered within stated time limits; a Certificate expires; a Certificate holder has not re-registered the aircraft under the re-registration requirements; or an aircraft is registered under a Dealer's Certificate that has expired, and application for registration has not been made under existing § 47.31. This proposal would limit the time an aircraft's registration status may remain in the transitional period following transfer of ownership. The Registry would cancel the assignment of an N-number if the Registry receives notice of sale, and no Application is received within six months (sale reported). The N-number would be cancelled if more than 12 months have passed since a new owner has provided evidence of ownership from the last registered owner and an Application, but the requirements of this part have not been met (registration pending). The N-number would be administratively cancelled at the expiration of an appropriate interval following termination of registration. At the time an aircraft meets the criteria to end registration, the last owner of record would be provided reasonable, advance notice that the N-number would be cancelled and given the opportunity to reserve the number prior to its being placed in an unavailable status.

Proposed § 47.15(j) would be added to clarify that if the last owner of record desires to reserve the N-number, the request for reservation and fee must be filed before cancellation. At the time of cancellation, the Registry database also allows for the process of reserving the N-number. If a request to reserve the N-number and fee were not received before cancellation, the number would be unavailable for use for a period of five years. After the 5-year period, that number would be available. The anticipated cancellation of the estimated 104,000 N-numbers assigned to inactive aircraft would eventually free those numbers for reservation or assignment.

Technical Amendments

In addition to the changes we are adopting to implement the rulemaking, discussed above, we are also adopting a number of non-substantive changes to 14 CFR part 47. These technical amendments are primarily editorial in nature and are intended for clarification.

Proposed § 47.2 would add the new definition of ''Registry'' to identify the FAA, Civil Aviation Registry, Aircraft Registration Branch. The definitions of U.S. citizen ''partnership'' and ''corporation'' would be revised to be identical with those found in 49 U.S.C. 40102(a)(15). Proposed § 47.7(d) would also be revised to clarify that a partnership may apply for registration only if each partner is an individual citizen of the United States.

To ensure that signers' names can be clearly determined from the application record, proposed § 47.13(a) now would specify that the name of each signer on an Application be typed or legibly printed in the signature block. Notice of this administrative change was published March 23, 2004, in the **Federal Register** (69 FR 13614). Proposed § 47.13(a) also would clarify that a signature on an Application or a document filed as supporting evidence under this part must be in ink. The requirement for a request for cancellation of a Certificate to be signed in ink would be removed since the Registry does accept such requests by facsimile.

The requirements for instruments made by representatives and signature requirements are identical not only for an Application and a request for cancellation of a Certificate, but also for any document filed as supporting evidence. Proposed § 47.13, paragraphs (b), (c), (d), (e), and (f), would include any document filed as supporting evidence under this part.

A continuing concern for law enforcement is the use by a person registering an aircraft of a post office box or ''mail drop'' as a return address for the purpose of evading identification of the registered owner's address. Proposed § 47.45 would require that an applicant applying for a revised Certificate due to a change of address, provide a physical address or location when a post office box or ''mail drop'' is used for mailing purposes. This conforms to longstanding practice. Notice of this procedure was published October 20, 1994, in the **Federal Register** (19 FR 53013).

Proposed § 47.45 would require that an applicant applying for a revised Certificate due to a change of address comply with the same requirement.

Proposed § 47.49 would clarify that if a Certificate is lost, stolen, or mutilated, a written request is required stating the reason a replacement certificate is needed. It would also inform that the Registry issues a temporary Certificate by fax.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Aircraft Registration Renewal.

Summary: The FAA proposes to amend 14 CFR part 47, requiring aircraft registration be renewed 36 months after the issuance of the Certificate and each three years, thereafter, as long as ownership is not transferred. Information from the Aircraft Registration Renewal form would be used to update registration information in the Registry's database.

Use: This information collection supports the Department of Transportation's strategic goals on safety and security. The information collected will be necessary to obtain a renewal of aircraft registration.

Title 49, U.S.C. Section 44101(a) provides that a person may operate an aircraft only when it is registered under section 44013.

Currently aircraft registration does not expire. Under this proposal, each Certificate issued after adoption of the final rule would have a 3-year expiration date. If registration is to continue, each aircraft owner must apply for renewal by completing and filing an Aircraft Registration Renewal form at least 90 days before the expiration date on the Certificate. The aircraft owner would verify the existing registration information and report any changes. The Registry will use the information to update aircraft ownership information and place the form in the aircraft record. This proposal would support the informational needs of the Registry's database and all users of the database, including law enforcement and security agencies.

Respondents: The likely respondents to this proposed information requirement are all aircraft owners who want to continue registration past the expiration date on their Certificate. The FAA estimates the number of registration renewals would be 64,489 annually; however, the number of aircraft owners and the signature requirements for each aircraft vary depending upon the registration type (e.g., individual, partnership, government, or co-ownership).

Frequency: The FAA estimates that there would be 64,489 registration forms completed annually over the 20-year period examined by this proposed rule. This is based on the current estimate of 239,049 active registered aircraft and an annual average increase of 3,347 aircraft (to account for projected growth), as well as subsequent registration actions over this time period. The former number of aircraft would have to re-register, while the latter aircraft would have to register for the first time. After these initial registrations and re-registrations, aircraft would have to renew these registrations every three years. In addition, each year, a percentage of aircraft would renew earlier than their required 3-year schedule due to the normal course of business actions, such as an aircraft being sold and a new certificate being issued to the new owner/applicant. Over 20 years, the FAA estimates 1,289,786 forms would need to be completed, which averages 64,489 per year. The time to complete the single page Aircraft Registration Renewal form is estimated at 30 minutes. Therefore, 32,244.5 hours would be spent annually completing the required form. As described in the preliminary Regulatory Evaluation, the FAA estimates the hourly rate of an aircraft owner's time at $37.20 in 2005 dollars, so half an hour would equate to $18.60 per owner per form. Thus, the average cost per year equals $599,747.70 (32,244.5 hours times $18.60 per hour).

The proposed re-registration requirement would also increase the paperwork burden associated with the existing Aircraft Registration Application collection (OMB No. 2120–0042).

Annual Burden Estimate: Over 20 years, the FAA estimates 1,289,786 forms would need to be processed. Of these forms, 188,379 would be for re-registration and 1,101,407 would be for renewal. As described in the preliminary Regulatory Evaluation, the FAA estimates processing costs of $12.32 and $9.26, respectively, per form. Over 20 years, these costs sum to $12,519,856.52 (calculation: 188,379 times $12.32 plus 1,101,407 times $9.26), for an annual cost of $625,992.83 (calculation: $12,519,856.52 divided by 20). The FAA estimates that it will take 0.391 hours to process each re-registration form and 0.320 hours to process each renewal form. This difference comes from FAA's assumption that the time needed for certain tasks in the renewal process would be less than in the re-registration process, as these tasks would be done on-line, eliminating the need for paper to be processed. Over 20 years, the time to process all the re-registration and the renewals forms equals 73,656.19 hours and 352,450.19 hours, respectively, for a total burden of 426,106.37 hours, and an average annual burden of 21,305.32 hours.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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.

Individuals and organizations may send comments on the information collection requirement by May 28, 2008, and should direct them to the address listed in the **ADDRESSES** section at the end of this preamble. Comments also should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

II. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create

unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the preliminary Regulatory Evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Costs and Benefits of This Rulemaking

This proposed rule would mandate that all aircraft owners re-register their aircraft over a 3 year period, and then renew these registrations on a 3 year basis. Total estimated costs, over 20 years, range from $30.53 million ($16.50 million, discounted) to $33.03 million ($17.38 million, discounted). These costs include both the costs to aircraft owners as well as processing costs for the Civil Aircraft Registry and include costs savings from the proposed elimination of the Triennial Program.

The primary benefit of this rulemaking would be the increased accuracy of the records within the Aircraft Registry. Currently, over one third of registered aircraft information is incorrect. The FAA has concluded that the level of accuracy in the system of records must be significantly improved in order to better serve the needs of the users of the system as well as support its own operations. Benefits would accrue from improving the database as well as improving the data collection process.

Who Is Potentially Affected by This Rulemaking

Private Sector

There are currently about 343,000 registered aircraft, of which about 239,000 are active aircraft. The FAA expects about 239,000 aircraft to re-register and then, every 3 years, renew their certificate. The FAA also expects between an additional 1,400 to 3,450 new aircraft to register each year.

Government

This proposal would increase the workload on the Civil Aviation Registry, which would have to process an additional 1.22 million to 1.29 million renewal and registration certificates over a 20-year period. However, this additional work would be partially offset by the proposed elimination of the Triennial Aircraft Registration Program.

Our Cost Assumptions and Sources of Information

- Discount rate—7%;
- Period of analysis—2007 through 2026;
- All monetary values are expressed in 2005 dollars;
- The FAA based projections on two different annual growth rates for aircraft—1.4% and 0.6%.
- The FAA uses the following unit costs:

(a) $5—cost per aircraft for both re-registration and renewal

(b) $37.20—hourly rate of an aircraft owner's time

(c) $12.32—FAA processing costs for re-registration per applicant

(d) $9.26—FAA processing costs for renewal per applicant

(e) $2.06—FAA processing costs for the Triennial Program for each notice sent

(f) $16.80—FAA processing costs for the Triennial Program per reply

(g) The FAA based projections on two different annual growth rates for aircraft—1.4% and 0.6%.

A provision in the FAA Financing Reform Proposal would, if enacted, increase the re-registration and renewal fee to $45, based on direct and allocable indirect unit costs of the FAA Registry's Aircraft Registration Branch and an allowance for FAA Headquarters' overhead. This fee differs from the costs used in this analysis for the re-registration and renewal fee ($5), FAA processing costs for re-registration per applicant ($12.32), and FAA processing costs for renewal per applicant ($9.26). An explanation reconciling these cost differences can be found in the Addendum to the Initial Regulatory Analysis, which can be found in the docket for this rulemaking.

Benefits of This Rulemaking

The primary benefit of this rulemaking would be the increased accuracy of the records within the Aircraft Registry. Currently, over one third of registered aircraft information is incorrect. Inaccurate records have many negative consequences. For example, FAA uses aircraft records to identify owners of specific aircraft so that safety related information, such as airworthiness directives (ADs), can be delivered to those owners, but because of inaccuracies, many safety-related mailings are returned without delivery. Aircraft manufacturers also use aircraft records for the same reasons, to send out safety-related information. Law enforcement and security agencies rely upon FAA's aircraft records to identify and locate owners of aircraft.

The FAA has concluded that the level of accuracy in the system of records must be significantly improved in order to better serve the needs of the users of the system as well as support its own operations. Specifically, benefits would accrue from improving the database as well as improving the data collection process. The benefits from improving the Registry database include cost savings, better service for aircraft owners, and help with law enforcement. The benefits to be realized by improving the data collection process also include cost savings as well as a more accurate response rate.

Costs of This Rulemaking

This rulemaking proposes that all aircraft owners would have to re-register their aircraft during a 3-year period under guidelines to be published, that all aircraft registrations would need to be renewed every 3 years, and that the present Triennial Program would be eliminated in its entirety.

The FAA estimates that approximately 239,000 aircraft would each go through the proposed re-registration process, and so would be issued a new registration certificate, each with an expiration date, over the first three years of this rulemaking; it is this expiration date, with the subsequent renewals, that is at the heart of this rulemaking and would help to improve the Registry's records. An aircraft could also receive a new certificate through the normal course of business (NCB) renewal process. For instance, if an aircraft was re-registered

according to the schedule and was then sold at a later date, the certificate issued after the sale would be an NCB transaction and not a transaction from the re-registration schedule. In such a case, its 3-year clock would start anew. Over this 3-year period, approximately 188,400 of these 239,000 aircraft would be re-registered due to the re-registration requirement and 50,700 would receive their re-registration certificate during NCB. However, there would be additional registration activity during this time period, as the FAA assumes a range for the annual growth in the number of aircraft needing to register of about 1,400 to about 3,350. As a result, the FAA projects that 243,400 to 249,100 aircraft would either be re-registered or initially registered over the first 3 years of this proposal. As a result of re-registration, 79%, or about 188,400, of the 239,000 aircraft would be re-registered due to the re-registration requirement, and 21%, or 50,700, would receive their re-registration certificates during NCB.

Following aircraft certificate re-registration would be their renewal every 3 years. In calculating the costs of renewal, the FAA counts the number of aircraft transactions that result in a new certificate due both to an NCB action as well as the number of aircraft certificates issued due to the rulemaking-mandated renewal program. In addition, as in the first three years, the FAA assumes an increase in the number of aircraft needing to register, reflecting the annual growth in the number of aircraft.

The FAA estimates that the Registry would process from 1.22 million to 1.29 million certificate actions over 20 years. However, the Registry would achieve cost savings with the elimination of the Triennial Program. Over 20 years, the proposal to replace the current system with a 3-year re-registration program, followed by a 3-year renewal cycle would cost from $30.53 million ($16.50 million, discounted) to $33.03 million ($17.38 million, discounted).

The FAA examined two other scenarios including 5 and 7 year renewal cycles with the Triennial Program eliminated. While these scenarios had lower costs, their much higher expected error rates would more than offset any advantage that these lower costs would bring, leading to doubts as to the accuracy and usefulness of the Registry's database.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would affect all aircraft owners, through part 47, as all aircraft owners would be required to re-register and then periodically renew their aircraft. The total cost per certificate per aircraft owner is about $26. An aircraft owner would renew his or her certificate, on average, about 6 more times over a 20-year period for a total of 7 certificate actions; assuming 7 certificate actions would result in costs of about $181 over 20 years, or an average cost of $9 per year. For a small business that owned several aircraft, the cost of this proposed rule to them would be negligible and, therefore, not significant.

Since annualized costs would be less than 1% of annual median revenue, the FAA believes that this proposed action would not have a significant economic impact on a substantial number of small entities. The FAA calls for comments on these assumptions; the FAA requests that all comments be accompanied by full documentation.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this NPRM and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not

likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

(1) Searching the Federal eRulemaking Portal at (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

III. The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 47—AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 4 U.S.C. 1830; Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(g), 40113–40114, 44101–44108, 44110–44113, 44703–44704, 44713, 45302, 46104, 46301.

PART 47—[AMENDED]

2. Amend 14 CFR part 47 by removing the words ''FAA Aircraft Registry'' and ''FAA Registry'' wherever they appear and adding, in their place, the word ''Registry''.

§§ 47.5, 47.7, 47.9, 47.11, 47.35, and 47.37 [Amended]

3. Amend 14 CFR part 47 by removing the words ''Application for Aircraft Registration'' and ''application'' and adding, in their place, the words ''Aircraft Registration Application, AC Form 8050–1'' in the following places:

a. Section 47.5(a)
b. Section 47.7(a)
c. Section 47.9(a)
d. Section 47.11 (introductory text)
e. Section 47.35(a)
f. Section 47.37(a)(2)

§§ 47.5, 47.7, and 47.11 [Amended]

4. Amend 14 CFR part 47 by removing the words ''Application for Aircraft Registration'' and ''application'' and adding, in their place, the words ''Aircraft Registration Application'' in the following places:

a. Section 47.5(c)
b. Section 47.7(c)(2)
c. Section 47.11(h)

§§ 47.5, 47.7, 47.8, 47.11, 47.31, and 47.43 [Amended]

5. Amend 14 CFR part 47 by removing the words ''Certificate of Aircraft Registration'' and ''registration certificate'' and adding in their place, the words ''Certificate of Aircraft Registration, AC Form 8050–3'' in the following places:

a. Section 47.5(c)
b. Section 47.7(d)
c. Section 47.8(c)
d. Section 47.11(e)
e. Section 47.31(a)
f. Section 47.43 (b)

§§ 47.9, 47.33, and 47.35 [Amended]

6. Amend 14 CFR part 47 by removing the word ''Administrator'' and adding, in its place, the word ''FAA'' in the following places:

a. Section 47.9(e)
b. Sections 47.33(b) and 47.33(d)
c. Section 47.35(b)

7. Revise § 47.1 to read as follows:

§ 47.1 Applicability.

This part prescribes the requirement for registering aircraft under 49 U.S.C. 44101–44104. Subpart B applies to each applicant for, and holder of, a Certificate of Aircraft Registration, AC Form 8050–3. Subpart C applies to each applicant for, and holder of, a Dealer's Aircraft Registration Certificate, AC Form 8050–6.

8. Amend § 47.2 by adding the definition of ''Registry'' in alphabetical order and by revising paragraphs (2) and (3) of the definition of ''U.S. citizen'' to read as follows:

§ 47.2 Definitions.

* * * * *

Registry means the FAA, Civil Aviation Registry, Aircraft Registration Branch.

* * * * *

U.S. citizen * * *

(2) A partnership each of whose partners is an individual who is a citizen of the United States.

(3) A corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of

the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

9. Amend § 47.3 by revising paragraph (a) to read as follows:

§ 47.3 Registration required.

(a) An aircraft may be registered under 49 U.S.C. 44103 only when the aircraft is not registered under the laws of a foreign country and is—

(1) Owned by a citizen of the United States;

(2) Owned by an individual citizen of a foreign country lawfully admitted for permanent residence in the United States;

(3) Owned by a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State within the United States, and the aircraft is based and primarily used in the United States; or

(4) An aircraft of—

(i) The United States Government; or

(ii) A State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

* * * * *

10. Revise the first sentence of § 47.7(d) introductory text to read as follows:

§ 47.7 United States citizens and resident aliens.

* * * * *

(d) *Partnerships.* A partnership may apply for a Certificate of Aircraft Registration, AC Form 8050–3, under 49 U.S.C. 44102 only if each partner, whether a general or limited partner, is an individual who is a citizen of the United States. * * *

* * * * *

§ 47.8 [Amended]

11. Amend § 47.8(c) by removing the reference to ''§ 47.41(a)(5)'' and adding, in its place, ''§ 47.41(a)(3)''.

§ 47.11 [Amended]

12. Amend § 47.11(b)(1) by removing the words ''certificate of repossession on FAA Form 8050–4'' and adding, in its place, the words ''Certificate of Repossession of Encumbered Aircraft, FAA Form 8050–4''.

13. Amend § 47.13 by revising paragraphs (a) through (f) to read as follows:

§ 47.13 Signatures and instruments made by representatives.

(a) Each person signing an Aircraft Registration Application, AC Form 8050–1, or a document submitted as supporting evidence under this part, must sign in ink. The Aircraft Registration Application must also have the typed or legibly printed name of each signer in the signature block.

(b) When one or more persons doing business under a trade name submits an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, AC Form 8050–3, the application, document, or request must be signed by, or on behalf of, each person who shares title to the aircraft.

(c) When an agent submits an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, on behalf of the owner, he must—

(1) State the name of the owner on the application, document, or request;

(2) Sign as agent or attorney-in-fact on the application, document, or request; and

(3) Submit a signed power of attorney, or a true copy thereof certified under § 49.21 of this chapter, with the application, document, or request.

(d) When a corporation submits an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, it must—

(1) Have an authorized person sign the application, document, or request;

(2) Show the title of the signer's office on the application, document, or request; and

(3) Submit a copy of the authorization from the board of directors to sign for the corporation, certified as true under § 49.21 of this chapter by a corporate officer or other person in a managerial position therein, with the application, document, or request, unless—

(i) The signer of the application, document, or request is a corporate officer or other person in a managerial position in the corporation and the title of his office is stated in connection with his signature; or

(ii) A valid authorization to sign is on file at the Registry.

(4) The provisions of paragraph (d)(3) of this section do not apply to an irrevocable deregistration and export request authorization when an irrevocable deregistration and export request authorization under the Cape Town Treaty is signed by a corporate officer and is filed with the Registry.

(e) When a partnership submits an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, it must—

(1) State the full name of the partnership on the application, document, or request;

(2) State the name of each general partner on the application, document, or request; and

(3) Have a general partner sign the application, document, or request.

(f) When co-owners, who are not engaged in business as partners, submit an Aircraft Registration Application, a document submitted as supporting evidence under this part, or a request for cancellation of a Certificate of Aircraft Registration, each person who shares title to the aircraft under the arrangement must sign the application, document or request.

* * * * *

14. Amend § 47.15 by:

a. Removing the word ''identification'' wherever it appears, and adding, in its place the word ''registration'';

b. Revising paragraphs (a) introductory text, (a)(2), (c), the first sentence of paragraph (d), and (f);

c. Redesignating the undesignated paragraph following paragraph (a)(3) as (a)(4) and revising it; and

d. Adding paragraphs (i) and (j) to read as set forth below.

§ 47.15 Registration number.

(a) *Number required.* An applicant for aircraft registration must place a U.S. registration number (registration mark) on his Aircraft Registration Application, AC Form 8050–1, and on any evidence submitted with the application. There is no charge for the assignment of numbers provided in this paragraph. This paragraph does not apply to an aircraft manufacturer who applies for a group of U.S. registration numbers under paragraph (c) of this section; a person who applies for a special registration number under paragraphs (d) through (f) of this section; or a holder of a Dealer's Aircraft Registration Certificate, AC Form 8050–6, who applies for a temporary registration number under *§ 47.16.*

* * * * *

(2) *Aircraft last previously registered in the United States.* Unless the applicant applies for a different number under paragraphs (d) through (f) of this section, the applicant must place the U.S. registration number that is already assigned to the aircraft on his Aircraft Registration Application, and the supporting evidence. If there is no

number assigned, the applicant must obtain a U.S. registration number from the Registry by request in writing describing the aircraft by make, model, and serial number.

* * * * *

(4) *Duration of a U.S. registration number assignment.* Authority to use the registration number obtained under paragraph (a)(1), (2), or (3) of this section expires 90 days after the date it is issued unless the applicant submits an Aircraft Registration Application and complies with § 47.33 or § 47.37, as applicable, within that period of time. However, the applicant may obtain an extension of this 90-day period from the Registry if the applicant shows that the delay in complying with that section is due to circumstances beyond the applicant's control.

* * * * *

(c) An aircraft manufacturer may apply to the Registry for enough U.S. registration numbers to supply estimated production for the next 18 months. There is no charge for this allocation of numbers.

(d) Any available, unassigned U.S. registration number may be assigned as a special registration number. * * *

* * * * *

(f) The Registry authorizes a special registration number change on the Assignment of Special Registration Numbers, AC Form 8050–64. The authorization expires one year from the date the Registry issues an Assignment of Special Registration Numbers unless the special registration number is permanently placed on the aircraft. Within five days after the special registration number is placed on the aircraft, the owner must complete and sign the Assignment of Special Registration Numbers, state the date the number was placed on the aircraft, and return the original form to the Registry. The duplicate of the Assignment of Special Registration Numbers and the present Certificate of Aircraft Registration, AC Form 8050–3, must be carried in the aircraft as temporary authority to operate it. This temporary authority is valid until the date the owner receives the revised Certificate of Aircraft Registration showing the new registration number, but in no case is it valid for more than 120 days from the date the number is placed on the aircraft.

* * * * *

(i) When aircraft registration has ended, as described in § 47.41(a), the assignment of a registration number to an aircraft is no longer authorized for use except as provided in § 47.31(b) and will be cancelled:

(1) Following the date established in § 47.40(a)(2) for any aircraft that has not been re-registered under § 47.40(a);

(2) Following the expiration date shown on the Certificate of Aircraft Registration for any aircraft whose registration has not been renewed under § 47.40(c);

(3) Following the expiration date shown on the Dealer's Aircraft Registration Certificate, AC Form 8050–6, for any aircraft registered under subpart C of this part, when the certificate has not been renewed, and the owner has not applied for registration in accordance with § 47.31; or

(4) When ownership has transferred—

(i) Six months after first receipt of notice of aircraft sale or evidence of ownership from the last registered owner or successive owners, and an Aircraft Registration Application has not been submitted.

(ii) Six months after evidence of ownership authorized under § 47.67 has been submitted, and the applicant has not met the requirements of this part.

(iii) Twelve months after a new owner has submitted evidence of ownership and an Aircraft Registration Application under § 47.31, and the applicant has not met the requirements of this part.

(j) At the time an assignment of registration number is cancelled, the number may be reserved for one year in the name of the last owner of record if a request has been submitted with the fee required by § 47.17. If the request for reservation and fee are not submitted prior to cancellation, the registration number is unavailable for assignment for a period of five years.

§ 47.16 [Amended]

15. Amend § 47.16(a) by removing the words ''Dealer's Aircraft Registration Certificates'' and adding, in their place, the words ''Dealer's Aircraft Registration Certificates, AC Form 8050–6,''.

16. Amend § 47.17 by revising paragraphs (a)(1), (4), (5), and (6) to read as follows:

§ 47.17 Fees.

(a) * * *

(1) Certificate of Aircraft Registration (each aircraft) or renewal thereof	$5.00
* * * * *	
(4) Special registration number (each number)	10.00
(5) Changed, reassigned, or reserved registration number	10.00
(6) Replacement Certificate of Aircraft Registration	2.00

* * * * *

17. Amend § 47.31 as follows:

a. Remove the words ''Aircraft Bill of Sale, ACC Form 8050–2'' where they appear in paragraph (a)(2), and add, in their place, the words ''Aircraft Bill of Sale, AC Form 8050–2'';

b. Revise paragraph (b) to read as set forth below; and

c. Remove paragraph (c).

The revisions read as follows:

§ 47.31 Application.

* * * * *

(b) After compliance with paragraph (a) of this section, the applicant of an aircraft last previously registered in the United States must carry the second duplicate copy (pink) of the Aircraft Registration Application in the aircraft as temporary authority to operate without registration.

(1) This temporary authority is valid for operation within the United States until the date the applicant receives the Certificate of Aircraft Registration or until the date the FAA denies the application, but in no case for more than 90 days after the date the applicant signs the application. If by 90 days after the date the applicant signs the Aircraft Registration Application, the FAA has neither issued the Certificate of Aircraft Registration nor denied the application, the Registry will issue a letter of extension that serves as authority to continue to operate the aircraft without registration while it is carried in the aircraft.

(2) This temporary authority is not available in connection with any Aircraft Registration Application received when 12 months have passed since the receipt of the first application following transfer of ownership by the last registered owner.

(3) If there is no registration number assigned at the time application for registration is made, the second duplicate copy (pink) of the Aircraft Registration Application may not be used as temporary authority to operate the aircraft.

18. Amend § 47.33 by removing the word ''identification'' where it appears in paragraph (c), and adding, in its place, the word ''registration''; and revising paragraph (a)(2) to read as follows:

§ 47.33 Aircraft not previously registered anywhere.

(a) * * *

(2) Submits with his Aircraft Registration Application, AC Form 8050–1, an Aircraft Bill of Sale, AC Form 8050–2, signed by the seller, an equivalent bill of sale, or other evidence of ownership authorized by § 47.11.

* * * * *

19. Revise § 47.39 to read as follows:

§ 47.39 Effective date of registration.

An aircraft is registered on the date the Registry determines that the submissions meet the requirements of this part. The effective date of registration is shown by a date stamp on the Aircraft Registration Application, AC Form 8050–1, and as the date of issuance on the Certificate of Aircraft Registration, AC Form 8050–3.

20. Add § 47.40 to read as follows:

§ 47.40 Registration Expiration and Renewal.

(a) *Re-registration*. Each aircraft registered under this part before [effective date of final rule] must be re-registered in accordance with this paragraph.

(1) Each applicant for re-registration must comply with § 47.31, regardless of the year in which the aircraft was registered. Each holder of a Certificate of Aircraft Registration, AC Form 8050–3, must apply between October 1, 2008, and September 30, 2011, according to the following schedule:

If the certificate was issued in	Then, you must re-register between
January	10/1/08 and 12/31/08.
February	1/1/09 and 3/31/09.
March	4/1/09 and 6/30/09.
April	7/1/09 and 9/30/09.
May	10/1/09 and 12/31/09.
June	1/1/10 and 3/31/10.
July	4/1/10 and 6/30/10.
August	7/1/10 and 9/30/10.
September	10/1/10 and 12/31/10.
October	1/1/11 and 3/31/11.
November	4/1/11 and 6/30/11.
December	7/1/11 and 9/30/11.

(2) A Certificate of Aircraft Registration issued before [effective date of final rule] expires at the end of the 3-month period identified in the table that corresponds with the month the certificate was issued.

(3) The second duplicate copy (pink) of the Aircraft Registration Application, AC Form 8050–1, may not be used as temporary authority to operate an aircraft that is being re-registered. The Registry may postpone the expiration date established in paragraph (a)(2) above, if application for re-registration has been made at least 45 days before that expiration date, and registration cannot be accomplished by the final date. Postponement will not be granted to an aircraft re-registered outside of the schedule in paragraph (1) of this section.

(4) A Certificate of Aircraft Registration issued under this paragraph (a) expires three years after the last day of the month in which it is issued.

(b) *Initial Registration*. A Certificate of Aircraft Registration issued in accordance with § 47.31 expires three years after the last day of the month in which it is issued.

(c) *Renewal*. Each holder of a Certificate of Aircraft Registration containing an expiration date may apply for renewal by submitting a completed Aircraft Registration Renewal, AC Form 8050–XXX, and the fee required by § 47.17. The Aircraft Registration Renewal and fee should be submitted at least 90 days before the certificate's expiration date to facilitate timely issuance and delivery of the new certificate before expiration. A certificate issued under this paragraph expires three years from the expiration date of the previous certificate.

21. Amend § 47.41 by—

a. Removing paragraphs (a)(2) and (a)(4);

b. Redesignating paragraph (a)(3) as (a)(2) and paragraphs (a)(5) through (a)(9) as paragraphs (a)(3) through (a)(7);

c. Removing the semi-colon at the end of paragraphs (a)(1) through (a)(4) and adding in their place a period, and removing the phrase ''; or'' at the end of paragraph (a)(5) and adding, in its place, a period; and

d. Revising the introductory text of paragraph (a) and adding paragraph (b)(4) to read as follows:

§ 47.41 Duration and return of Certificate.

(a) Each Certificate of Aircraft Registration, AC Form 8050–3, issued by the FAA under this subpart is effective, unless registration has ended by reason of having been revoked, canceled, expired, or the ownership is transferred, until the date upon which one of the following events occurs:

* * * * *

(b) * * *

(4) If the certificate is not available, a statement describing the aircraft, stating the reason the certificate is not available, must be submitted to the Registry within the time required by this section.

22. Revise § 47.43(b) to read as follows:

§ 47.43 Invalid registration.

* * * * *

(b) If the registration of an aircraft is invalid under paragraph (a) of this section, the holder of the invalid Certificate of Aircraft Registration, AC Form 8050–3, must return it as soon as possible to the Registry.

23. Revise § 47.45 to read as follows:

§ 47.45 Change of address.

Within 30 days after any change in the mailing address or permanent residence of a registrant, the registrant must notify the Registry in writing of the change of address. If a post office box or mailing drop is used for mailing purposes, the registrant's physical address or location must also be shown. Upon acceptance, the Registry will issue, without charge, a revised Certificate of Aircraft Registration, AC Form 8050–3, reflecting the new mailing address.

24. Amend § 47.47 by revising the introductory text of paragraph (a) and paragraph (a)(1) as follows:

§ 47.47 Cancellation of Certificate for export purpose.

(a) The holder of a Certificate of Aircraft Registration, AC Form 8050–3, or the holder of an irrevocable deregistration and export request authorization recognized under the Cape Town Treaty and filed with FAA who wishes to cancel the Certificate of Aircraft Registration for the purpose of export must submit to the Registry—

(1) A written request for cancellation of the Certificate of Aircraft Registration describing the aircraft by make, model, and serial number, stating the U.S. registration number and the country to which the aircraft will be exported;

* * * * *

25. Revise § 47.49 to read as follows:

§ 47.49 Replacement of Certificate.

(a) If the original Certificate of Aircraft Registration, AC Form 8050–3, is lost, stolen, or mutilated, the registered owner may submit to the Registry a written request that states the reason a replacement certificate is needed, and the fee required by § 47.17. The Registry will send a replacement certificate to the registered owner's mailing address or to another mailing address if requested in writing by the registered owner.

(b) The registered owner may request a temporary Certificate of Aircraft Registration pending receipt of a replacement certificate. The Registry issues a temporary Certificate of Aircraft Registration in the form of a fax that must be carried in the aircraft until receipt of the replacement certificate.

§ 47.51 [Removed and Reserved]

26. Remove and reserve § 47.51.

27. Amend § 47.61 by—

a. Revising the section heading:

b. Removing the word ''Dealers''' from paragraph (b), and adding, in its place, the word ''Dealer's''; and

c. Revising the introductory text of paragraph (a) and paragraph (a)(2) and adding paragraph (c) to read as follows:

§ 47.61 Dealer's Aircraft Registration Certificates.

(a) The FAA issues a Dealer's Aircraft Registration Certificate, AC Form 8050–6, to U.S. manufacturers and dealers to—

* * * * *

(2) Facilitate operating, demonstrating, and merchandising aircraft by the manufacturer or dealer without the burden of obtaining a Certificate of Aircraft Registration, AC Form 8050–3, for each aircraft with each transfer of ownership, under Subpart B of this part.

* * * * *

(c) If the Dealer's Aircraft Registration Certificate expires under § 47.71, and an aircraft is registered under this Subpart, application for registration must be made under § 47.31, or the assignment of registration number may be cancelled in accordance with § 47.15(i)(3).

§ 47.63 [Amended]

28. Amend § 47.63(a) by removing the words ''An Application for Dealers''' Aircraft Registration Certificates'' and adding, in their place, the words ''A Dealer's Aircraft Registration Certificate Application''.

29. Revise § 47.65 to read as follows:

§ 47.65 Eligibility.

To be eligible for a Dealer's Aircraft Registration Certificate, AC Form 8050–6, the applicant must have an established place of business in the United States, must be substantially engaged in manufacturing or selling aircraft, and must be a citizen of the United States, as defined by 49 U.S.C. 40102 (a)(15).

30. Revise § 47.67 to read as follows:

§ 47.67 Evidence of ownership.

Before using a Dealer's Aircraft Registration Certificate, AC Form 8050–6, for operating the aircraft, the holder of the certificate (other than a manufacturer) must send to the Registry evidence of ownership under § 47.11. An Aircraft Bill of Sale, AC Form 8050–2, or its equivalent, may be used as evidence of ownership. There is no recording fee.

§ 47.69 [Amended]

31. Amend § 47.69 by removing the words ''Dealer's Aircraft Registration Certificate'' in the introductory text, and adding, in their place, the words ''Dealer's Aircraft Registration Certificate, AC Form 8050–6''.

32. Amend § 47.71 by—

a. Removing the words ''Dealer's Aircraft Registration Certificate'' in paragraph (a), and adding, in their place, the words ''Dealer's Aircraft Registration Certificate, AC Form 8050–6,''; and

b. Revising paragraph (b) to read as follows:

§ 47.71 Duration of Certificate; change of status.

* * * * *

(b) The holder of a Dealer's Aircraft Registration Certificate must immediately notify the Registry of any of the following—

(1) A change of name;

(2) A change of address;

(3) A change that affects status as a citizen of the United States; or

(4) The discontinuance of business.

Issued in Washington, DC, on February 21, 2008.

James J. Ballough

Director, Flight Standards Service.

[FR Doc. E8–3822 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA 2007–0053]

RIN 0960–AG54

Compassionate Allowances for Cancers; Office of the Commissioner, Hearing

AGENCY: Social Security Administration (SSA).

ACTION: Advance Notice of Proposed Rulemaking; Announcement of Public Hearing and Limited Reopening of Comment Period.

SUMMARY: We are considering ways to quickly identify diseases and other serious medical conditions that obviously meet the definition of disability under the Social Security Act (the Act) and can be identified with minimal objective medical information. We are calling this method ''Compassionate Allowances.'' We held one public hearing already and plan to hold additional public hearings this year. This is the second hearing in the series. The purpose of this hearing is to obtain your views about the advisability and possible methods of identifying and implementing compassionate allowances for children and adults with cancers. Our first hearing, on December 4–5, 2007, dealt with rare diseases. We will address other kinds of medical conditions in later hearings.

DATES: This hearing will be held April 7, 2008, between 8:45 a.m. and 5:30 p.m. Eastern Standard Time (EST), in Boston, MA. The hearing will be held at 7 Cambridge Center, Cambridge, MA, 02142, at the Broad Institute Auditorium of the Massachusetts Institute of Technology. While the public is welcome to attend the hearing, only invited witnesses will present testimony. You may also watch the proceedings live via webcast beginning at 9 a.m. Eastern Standard Time (EST). You may access the webcast link for the hearing on the Social Security Administration Web page at *http://www.socialsecurity.gov/compassionateallowances/hearings0407.htm.*

ADDRESSES: You may submit written comments about the compassionate allowances initiative with respect to children and adults with cancers, as well as topics covered at the hearing by: (1) Internet through the Federal eRulemaking Portal at *http://www.regulations.gov;* (2) e-mail addressed to *Compassionate.Allowances@ssa.gov;* or (3) mail to Diane Braunstein, Director, Office of Compassionate Allowances and Listings Improvements, ODP, ODISP, Social Security Administration, 4468 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401. We must receive written comments by May 9, 2008.

FOR FURTHER INFORMATION CONTACT: *Compassionate.Allowances@ssa.gov.* You may also mail inquiries about this meeting to Diane Braunstein, Director, Office of Compassionate Allowances and Listings Improvements, ODP, ODISP, Social Security Administration, 4468 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under titles II and XVI of the Act, we pay benefits to individuals who meet our rules for entitlement and have medically determinable physical or mental impairments that are severe enough to meet the definition of disability in the Act. The rules for determining disability can be very complicated, but some individuals have such serious medical conditions that their conditions obviously meet our disability standards. To better address the needs of these individuals, we are looking into ways to allow benefits as quickly as possible.

On July 31, 2007, we published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** to

solicit the public's views on what standards we should use for making compassionate allowances, methods we might use to identify compassionate allowances and suggestions for how to implement those standards and methods. (See 72 FR 41649.) You may read the ANPRM at *http://www.gpoaccess.gov/fr/index.html* or at *http://www.regulations.gov,* where you may also read the public comments we received. The 60-day comment period on the overall compassionate allowance initiative ended on October 1, 2007. We reopened the comment period in connection with our first public hearing in order to receive comments with respect to children and adults with rare diseases. This notice constitutes a limited reopening of the comment period with respect to children and adults with cancers, as well as topics covered at the hearing on April 7, 2008.

Will We Respond to Your Comments?

We will carefully consider your comments, although we will not respond directly to comments sent in response to this notice or the hearing. Thereafter, we will decide whether to implement the compassionate allowance initiative and, if so, how the initiative will be implemented. If we decide to issue regulations addressing compassionate allowances, we will publish a notice of proposed rulemaking (NPRM) in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose in the NPRM, and we will summarize and respond to the significant comments in the preamble to any final rules.

Additional Hearings

We held a hearing on rare diseases on December 4 and 5, 2007. You may access a transcript of the hearing at *www.regulations.gov*, when it becomes available. We plan to hold additional hearings on chronic conditions and traumatic injuries, and will announce those hearings later with notices in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.006, Supplemental Security Income. (72 FR 62608)

Dated: February 6, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–3720 Filed 2–27–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124590–07]

RIN 1545–BG11

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to foreign base company sales income, as defined in section 954(d), in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. These regulations, in general, will affect CFCs and their United States shareholders. Certain portions of these proposed regulations restate changes to § 1.954–3(a)(4) that were contained in former proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 28, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–124590–07), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044 or send electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–121509–00).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ethan Atticks, (202) 622–3840; concerning submissions of comments, Kelly Banks, (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. Foreign Base Company Sales Income

Under section 951(a)(1)(A)(i), a United States shareholder of a CFC includes in gross income its pro rata share of the CFC's subpart F income for the CFC's taxable year which ends with or within the taxable year of the shareholder. Section 952(a)(2) defines the term ''subpart F income'' to mean, in part, ''foreign base company income.'' Section 954(a)(2) defines ''foreign base company income'' to include foreign base company sales income (FBCSI) for the taxable year. Section 954(d)(1) defines FBCSI to mean income derived by a CFC in connection with (1) the purchase of personal property from a related person and its sale to any person, (2) the sale of personal property to any person on behalf of a related person, (3) the purchase of personal property from any person and its sale to a related person, or (4) the purchase of personal property from any person on behalf of a related person, provided (in all of these cases) that the property both is manufactured, produced, grown or extracted outside of the CFC's country of organization and is sold for use, consumption or disposition outside of such country.

The Treasury regulations further define FBCSI and the applicable exceptions from FBCSI. These exceptions from FBCSI are contained in § 1.954–3(a)(2), which addresses personal property manufactured, produced, constructed, grown, or extracted within the CFC's country of organization (the same country manufacture exception), § 1.954–3(a)(3), which addresses personal property sold for use, consumption or disposition within the CFC's country of organization, and § 1.954–3(a)(4) which addresses personal property manufactured, produced or constructed by the CFC (the manufacturing exception).

Section 1.954–3(a)(4)(i) provides that FBCSI does not include income of a CFC derived in connection with the sale of personal property manufactured, produced, or constructed by such corporation in whole or in part from personal property which it has purchased. It then states generally that a foreign corporation is considered to have manufactured, produced, or constructed personal property which it sells if the property sold is in effect not the property which it purchased. Specifically, § 1.954–3(a)(4)(i) states that personal property sold will be considered as not being the property purchased if the provisions of § 1.954–3(a)(4)(ii) or (iii) are satisfied.

Section 1.954–3(a)(4)(ii) and (iii) set forth two separate tests to determine whether a CFC is considered to manufacture, produce, or construct personal property that it sells. First, § 1.954–3(a)(4)(ii) sets forth a ''substantial transformation'' test, pursuant to which if personal property is substantially transformed prior to sale, the property sold will be treated as having been manufactured, produced, or constructed by the selling corporation. Examples of substantial transformation provided in the regulations include the conversion of wood pulp to paper, steel rods to screws and bolts, and tuna fish to canned tuna. Second, § 1.954–

3(a)(4)(iii) sets forth a general ''substantive test'' and a safe harbor that apply when purchased property is used by the CFC as a component part of personal property that is sold by the CFC. Under the substantive test, the sale of personal property will be treated as the sale of a product manufactured by the CFC rather than the sale of component parts if the operations conducted by the CFC in connection with the property are substantial in nature and generally considered to constitute the manufacture, production, or construction of the property. The assembly of automobiles from component parts is provided as an example of an activity considered to be substantial in nature and generally considered to constitute the manufacture of a product. Under the safe harbor, without limiting the application of the substantive test, the operations of a selling corporation in connection with the use of purchased property as a component part of the personal property that is sold will be considered to constitute the manufacture of a product if in connection with such property conversion costs (direct labor and factory burden) of such corporation account for 20 percent or more of the total cost of goods sold. Section 1.954–3(a)(4)(iii) makes clear that, in no event, however, will packaging, prepackaging, labeling, or minor assembly operations constitute the manufacture, production, or construction of property for purposes of section 954(d)(1). For purposes of this preamble, satisfaction of the requirements of § 1.954–3(a)(4)(ii) or (iii) will be referred to as satisfaction of the ''physical manufacturing test.''

B. The Branch Rule

In addition to the general FBCSI rules of section 954(d)(1), section 954(d)(2) provides a special rule for purposes of determining FBCSI if a CFC carries on activities through a branch or similar establishment outside its country of organization and the carrying on of such activities has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation (the branch rule). Under the branch rule, to the extent prescribed by regulations, the income attributable to the carrying on of such activities is treated as income derived by a wholly owned subsidiary of the CFC and constitutes FBCSI of the CFC. Section 1.954–3(b)(1)(i) (addressing sales or purchase branches) and (ii) (addressing manufacturing branches) provide rules on the application of the branch rule. The purpose of the branch rule is to prevent a CFC from using a foreign branch to avoid the application of the FBCSI rules. Absent the branch rule, a CFC could engage in purchasing or manufacturing activities with respect to personal property in a high-tax jurisdiction and selling activities with respect to the property in a low-tax jurisdiction without incurring FBCSI. In such a case, the sales income would not be FBCSI to the CFC because the same person would be purchasing or manufacturing the personal property and selling the personal property. The branch rule therefore treats a sales, purchase, or manufacturing branch located outside of the country of organization of the CFC as a separate corporation so as to create a related party transaction between the branch and the remainder of the CFC for purposes of determining FBCSI.

With respect to manufacturing branches, § 1.954–3(b)(1)(ii)(*a*) provides that if a CFC carries on manufacturing, producing, constructing, growing, or extracting activities by or through a branch or similar establishment located outside of its country of organization and the use of that branch or similar establishment for such activities with respect to personal property purchased or sold by or through the remainder of the CFC has substantially the same tax effect as if that branch or similar establishment were a wholly owned subsidiary corporation of such CFC, that branch or similar establishment and the remainder of the CFC will be treated as separate corporations for purposes of determining FBCSI of such CFC. Section 1.954–3(*b*)(1)(ii)(*b*) provides that the use of a manufacturing branch or similar establishment will be considered to have substantially the same tax effect as if it were a wholly owned subsidiary corporation of the CFC if the tax imposed on the income derived by the remainder of the CFC satisfies the test set forth in § 1.954–3(b)(1)(ii)(*b*) (the manufacturing branch tax rate disparity test). There is also a separate tax rate disparity test which applies to sales or purchase branches under § 1.954–3(b)(1)(i)(*b*) (the sales branch tax rate disparity test).

For purposes of the manufacturing branch tax rate disparity test, the income considered to be derived by the remainder of the CFC is determined first by applying the rules of § 1.954–3(b)(2)(i) which treat the CFC and the manufacturing branch as separate corporations, and then by determining the income of the CFC that would be FBCSI under section 954(d)(1) and § 1.954–3(a)(1) if the CFC and the branch were separate corporations (but without applying the exceptions contained in § 1.954–3(a)(2), (3), and (4)).

Specifically, § 1.954–3(b)(2)(i)(*a*) treats the remainder of the CFC and the manufacturing branch as separate corporations. In addition, § 1.954–3(b)(2)(i)(*b*) and (*c*) deem purchases or sales to be made ''on behalf of'' a related person to take into account that the remainder of the CFC and the branch are treated as separate corporations. Section 1.954–3(b)(2)(i)(*b*) addresses sales and purchase branches by treating selling or purchasing activities conducted through a branch or similar establishment with respect to personal property as performed on behalf of the CFC if the CFC manufactures, produces, constructs, grows, extracts, purchases, or sells that same property. Section 1.954–3(b)(2)(i)(*c*) provides a corollary rule addressing manufacturing branches, pursuant to which the purchase or sale of personal property by the remainder of the CFC is treated as performed on behalf of a branch that manufactures, produces, constructs, grows, or extracts that property. The general rule of § 1.954–3(a)(1) is then applied to determine the income that would be FBCSI if the branch and the remainder of the CFC were separate corporations subject to the ''on behalf of'' related party transactions described above.

Section 1.954–3(b)(1)(ii)(*b*) provides that the manufacturing branch tax rate disparity test is satisfied if the income that would be FBCSI after applying these special rules is taxed in the year when earned at an effective rate of tax that is less than 90 percent of, and at least 5 percentage points less than, the hypothetical effective rate of tax. The hypothetical effective rate of tax is the effective rate of tax which would apply to such income under the laws of the country in which the manufacturing branch is located, if, under the laws of such country, the entire income of the CFC were considered derived by such CFC from sources within such country from doing business through a permanent establishment therein, received in such country, and allocable to such permanent establishment, and the CFC were created or organized under the laws of, and managed and controlled in, such country.

If the manufacturing branch tax rate disparity test is satisfied, § 1.954–3(b)(1)(ii)(*a*) then treats the branch and the remainder of the CFC as separate corporations and the special rules of § 1.954–3(b)(2)(ii) are applied for purposes of determining FBCSI. Section 1.954–3(b)(2)(ii)(*a*) through (*c*) provide separate CFC and related party rules that mirror § 1.954–3(b)(2)(i)(*a*) through

(*c*). Section 1.954–3(b)(2)(ii)(*d*) through (*f*) provide special rules to prevent double counting of FBCSI and to align treatment of branches with the treatment of separate CFCs. In particular, § 1.954–3(b)(2)(ii)(*e*) provides that income derived by a branch or similar establishment, or by the remainder of the CFC, will not be FBCSI if the income would not be so considered if it were derived by a separate CFC under like circumstances.

C. Legal Developments

In Rev. Rul. 75–7 (1975–1 CB 244), revoked by Rev. Rul. 97–48 (1997–2 CB 89), the IRS considered a case in which a CFC purchased raw material from related persons outside of its country of organization, contracted with an unrelated manufacturer located outside of its country of organization to process the raw material into a finished product, and then sold the finished product to unrelated persons outside of its country of organization. Under the terms of the arrangement, the contract manufacturer was paid a conversion fee. The raw material, work in process, and finished product remained the property of the CFC at all times. The CFC alone had complete control over the time and quantity of production as well as complete quality control over the conversion process. The IRS ruled, under these facts, that the performance of the operations by the contract manufacturer whereby the raw material was processed into a finished good was considered to be a performance by the CFC, and the CFC would therefore be treated as having substantially transformed personal property. The ruling further concluded that, because the CFC conducted the manufacturing activity outside of its country of organization, it was considered to do so through a branch or similar establishment. Because the manufacturing branch tax rate disparity test was not satisfied, however, the activities of the ''branch'' were not considered the activities of a separate CFC and the CFC was therefore entitled to the manufacturing exception from FBCSI. See § 601.601(d)(2)(ii)(*b*).

In *Ashland Oil, Inc.* v. *Commissioner,* 95 TC 348 (1990), the Tax Court held that an unrelated manufacturing corporation in a contract manufacturing arrangement with a CFC cannot be treated as a branch or similar establishment of the CFC. In *Vetco, Inc.* v. *Commissioner,* 95 TC 579 (1990), the Tax Court held that a wholly owned subsidiary of a CFC in a contract manufacturing arrangement with the CFC also cannot be treated as a branch or similar establishment of the CFC.

In Rev. Rul. 97–48 the IRS revoked Rev. Rul. 75–7. Rev. Rul. 97–48 states that the IRS will follow *Ashland Oil, Inc.* v. *Commissioner* and *Vetco, Inc.* v. *Commissioner,* and therefore confirms that the IRS will not treat a separate contract manufacturer as a branch for purposes of section 954(d)(2). In addition, Rev. Rul. 97–48 rules that the activities of a contract manufacturer cannot be attributed to a CFC for purposes of either section 954(d)(1) or section 954(d)(2) to determine whether the income of a CFC is FBCSI. However, the ruling does not address the circumstances under which the activities of the CFC itself may qualify as manufacturing when a contract manufacturing or similar arrangement is in place. See § 601.601(d)(2)(ii)(*b*).

D. Business Developments

Final regulations addressing FBCSI were first published in 1964 (TD 6734, 29 FR 6392). Since then, global economic expansion and globalization have led to significant changes in manufacturing. Many multinational groups have extensive manufacturing networks that straddle geographic borders. These cross-border manufacturing networks are created primarily to leverage expertise and cost efficiencies. In addition, the use of contract manufacturing arrangements has become a common way of manufacturing products because of the flexibility and efficiencies it affords. Accordingly, updated rules in this area are important to the continued competitiveness of U.S. businesses operating abroad.

Explanation of Provisions

In response to the growing importance of contract manufacturing and other manufacturing arrangements, the Treasury Department and the IRS propose to modernize the FBCSI regulations in light of current business structures and practices that are inadequately addressed by the current regulations. Specifically, the proposed regulations address: (1) The application of the manufacturing exception where the physical manufacturing test is not satisfied by the CFC but where the CFC, and/or a branch of the CFC, is involved in the manufacturing process; (2) the application of the branch rule to business structures involving the use of one or more branches engaged in manufacturing, producing, constructing, growing, or extracting activities; and (3) other miscellaneous branch rule issues. Certain portions of these proposed regulations restate changes that were previously proposed in REG–104537–97 (63 FR 14669) and withdrawn in REG–113909–98 (64 FR 37727).

A. Application of the Manufacturing Exception Where the Physical Manufacturing Test Is Not Satisfied by the CFC but the CFC Is Involved in the Manufacturing Process—Substantial Contribution to Manufacturing

Section 954(d)(1) includes, as FBCSI, income from the purchase of personal property from any person and ''its'' sale to a related person. Some taxpayers argue that use of the word ''its'' implies that the property sold must be the same property that is purchased for the sales income to be FBCSI. Accordingly, these taxpayers assert that where the personal property purchased by the CFC is manufactured such that the property purchased is not the same as the property sold by the CFC, the property sold by the CFC is not the property purchased and therefore the sale of such property does not generate FBCSI, even if the CFC itself performs little or no part of the manufacture of that property. They further argue that the manufacturing exception under § 1.954–3(a)(4)(i) provides a safe harbor but does not define the universe of cases in which personal property sold by a CFC is considered to be different from the property purchased by the CFC for purposes of determining FBCSI. In addition, they argue that § 1.954–3(a)(4)(i) supports their view because it states, in part, that ''[a] foreign corporation will be considered, for purposes of this subparagraph, to have manufactured, produced, or constructed personal property which it sells if the property sold is in effect not the property which it purchased.''

The Treasury Department and the IRS believe that the position taken by these taxpayers is contrary to existing law, and results from an incorrect reading of section 954(d)(1) and § 1.954–3(a)(4)(i). Section 954(d)(1) requires only a purchase of personal property and the sale of that personal property by the CFC with no indication as to form. Moreover, section 954(d)(1)(A) limits FBCSI to income derived in connection with the purchase (or sale) of personal property that is manufactured, produced, grown, or extracted outside of the CFC's country of organization, thereby indicating that section 954(d)(1) is concerned with the segregation of purchase or sales and manufacturing into different jurisdictions, not merely with whether the property was manufactured.

Section 1.954–3(a)(4) provides the only set of rules under which a change in form of personal property is considered relevant for purposes of

determining FBCSI. The first sentence of Treas. Reg. § 1.954–3(a)(4) sets forth the general rule that ''foreign base company sales income does not include income of a CFC derived in connection with the sale of personal property manufactured, produced, or constructed by such corporation in whole or in part from personal property which it has purchased.'' The third sentence of that paragraph explains that ''the property sold will be considered, for purposes of this subparagraph, as not being the property which is purchased if the provisions of subdivision (ii) or (iii) of this subparagraph are satisfied.'' The plain language of the regulation, as well as the examples, clarify that in order to satisfy § 1.954–3(a)(4)(ii) or (iii) the relevant manufacturing activities must be performed by the CFC itself. See, for example, *Electronic Arts, Inc.* v. *Commissioner,* 118 TC 226, 265 (2002) (stating that ''petitioner's focus on certain language in section 1.954–3(a)(4), Income Tax Regs., overlooks the regulation's requirement that various actions have been done 'by' the corporation being evaluated''). See also, *Medchem* v. *Commissioner,* 116 TC 308 (2001).

Further, this regulation was issued shortly after the statute became effective, and is consistent with the legislative history, which contemplates that property sold will be considered different from the property purchased only when the CFC itself manufactures that property. See S. Rep. No. 1881, 87th Cong., 2d Sess. (1962), 1962–3 C.B. 841, 949 (stating that ''[i]n a case in which a controlled foreign corporation purchases parts or materials which it then transforms or incorporates into a final product, income from the sale of the final product would not be foreign base company sales income if the corporation substantially transforms the parts or materials, so that, in effect, the final product is not the property purchased.'')

The proposed regulations clarify that for purposes of determining FBCSI personal property sold by a CFC will be considered to be the property purchased by the CFC regardless of whether it is sold in the same form in which it was purchased, in a different form than the form in which it was purchased, or as a component part of a manufactured product, except as specifically provided by the same country manufacture exception contained in § 1.954–3(a)(2) and the manufacturing exception contained in § 1.954–3(a)(4). Therefore, the only time that the manufacture of a product will affect whether income is FBCSI is when the manufacture of the product is performed by the CFC or performed in the country of organization of the CFC. With respect to the manufacturing exception contained in § 1.954–3(a)(4), the proposed regulations clarify that a CFC qualifies for the manufacturing exception from FBCSI only if the CFC, acting through its employees, manufactured the relevant product within the meaning of § 1.954–3(a)(4)(i). The proposed regulations also further provide rules to determine whether the activities of a branch or similar establishment outside the country in which the CFC is incorporated have substantially the same tax effect as if the branch or similar establishment were a wholly owned subsidiary corporation, and thus whether under section 954(d)(2) the income attributable to the branch or similar establishment constitutes FBCSI of the CFC.

The Treasury Department and the IRS recognize, however, that due to business considerations in the global marketplace, personal property may be manufactured pursuant to a contract manufacturing arrangement under which the CFC engages in activities related to the manufacture of the property (for example, oversight, direction and control over the contract manufacturer) but does not satisfy the physical manufacturing test. In certain of these cases, the Treasury Department and the IRS believe that the CFC should qualify for the manufacturing exception to FBCSI. Accordingly, the proposed regulations modify § 1.954–3(a)(4) to provide that a CFC that provides a ''substantial contribution'' with respect to the manufacture, production, or construction of personal property, but that could not satisfy the physical manufacturing test, may have manufactured such property for purposes of the manufacturing exception. Specifically, proposed § 1.954–3(a)(4)(i) provides that, in addition to proposed § 1.954–3(a)(4)(ii) and (iii), a taxpayer may qualify for the manufacturing exception by satisfying the ''substantial contribution test'' in proposed § 1.954–3(a)(4)(iv). Pursuant to proposed § 1.954–3(a)(4)(iv)(b), a CFC will satisfy the substantial contribution test with respect to personal property only if the facts and circumstances evidence that the controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture of that property.

Factors to be considered in determining whether a CFC makes a substantial contribution to the manufacture of personal property include but are not limited to: (1) Oversight and direction of the activities or process (including management of the risk of loss) pursuant to which the property is manufactured under the principles of § 1.954–3(a)(4)(ii) and (iii); (2) performance of manufacturing activities that are considered in, but insufficient to satisfy the tests provided in § 1.954–3(a)(4)(ii) or (iii); (3) control of the raw materials, work-in-process and finished goods; (4) management of the manufacturing profits; (5) material selection; (6) vendor selection; (7) control of logistics; (8) quality control; and (9) direction of the development, protection, and use of trade secrets, technology, product design and design specifications, and other intellectual property used in manufacturing the product.

In light of the addition of the new test contained in proposed § 1.954–3(a)(4)(iv), the interaction between several existing regulation sections and the new test is clarified. First, the existing manufacturing exceptions under § 1.954–3(a)(4)(ii) and (iii) are modified to clarify that the applicability of the tests under § 1.954–3(a)(4)(ii) and (iii) are restricted to cases in which physical transformation or physical assembly or conversion of component parts is conducted by the selling corporation.

Second, the definition of manufacturing for purposes of the same country manufacture exception contained in § 1.954–3(a)(2) is modified to exclude manufacturing as defined under the substantial contribution test, and to ensure that the modifications to the existing manufacturing exceptions under § 1.954–3(a)(4)(ii) and (iii) do not narrow the same country manufacture exception. The Treasury Department and the IRS did not intend these regulations to change the scope of the same country manufacture exception. Section 1.954–3(a)(2) excludes manufacturing as defined under the substantial contribution test because a rule that expanded the definition of manufacturing to include § 1.954–3(a)(4)(iv) activities for purposes of the same country manufacture exception could prove difficult to administer. Such a rule could require an assessment of activities other than physical manufacturing conducted by an unrelated person. Modifying § 1.954–3(a)(2) ensures that the modifications to the existing manufacturing exceptions under § 1.954–3(a)(4)(ii) and (iii) do not narrow the same country manufacture exception by clarifying that property manufactured in the country of organization of the selling corporation will qualify for the same country manufacture exception regardless of whose employees engage in

manufacturing activities that satisfy the principles of § 1.954–3(a)(4)(ii) or (iii).

Third, the proposed regulations modify § 1.954–3(a)(6), which addresses the application of the manufacturing exception to a CFC's distributive share of partnership income where the partnership manufactures and sells personal property. The reference to ''the separate activities or property of the controlled foreign corporation or any other person,'' in § 1.954–3(a)(6) was intended to clarify that the activities of another person could not be attributed to the partnership for purposes of applying the manufacturing exception. Because these proposed regulations clarify that no attribution is allowed for purposes of applying the manufacturing exception that language is now unnecessary and is therefore removed. Section 1.954–3(a)(6) is also modified consistent with the modifications to § 1.954–3(a)(4) providing that a CFC may only qualify for the manufacturing exception through the activities of its employees.

B. Application of the Branch Rule to Business Structures Involving the Use of More Than One Branch Engaged in Manufacturing

Proposed § 1.954–3(b)(2)(ii)(*c*)(*2*) creates a rebuttable presumption with respect to the application of the substantial contribution test where a CFC claims to satisfy the substantial contribution test with respect to the activities of a branch of that CFC that satisfies § 1.954–3(a)(4)(ii) or (iii). Under this rebuttable presumption, if a branch of a CFC satisfies the physical manufacturing test with respect to personal property sold by the remainder of the CFC, the remainder of the CFC will be presumed not to make a substantial contribution to the manufacture of that personal property unless the CFC can rebut that presumption to the satisfaction of the Commissioner.

The Treasury Department and the IRS believe that these rules are necessary as a backstop to the branch rule. In the absence of the rebuttable presumption, a rule permitting a CFC to qualify for the manufacturing exception based upon its contribution to the manufacturing activities of a branch would prove difficult to administer. Such a rule could encourage a CFC to elect classification of its subsidiaries that engage in manufacturing activities as disregarded entities, obfuscating the division of manufacturing labor and income between the CFC and its branches. Of course, the presumption may be rebutted and any adverse consequences alleviated by incorporating the branch that satisfies the physical manufacturing test.

Although § 1.954–3(b)(1)(i)(*c*) provides a rule addressing the use of multiple sales or purchase branches, § 1.954–3(b)(1)(ii) does not provide a corollary rule for the use of multiple manufacturing branches. The Treasury Department and the IRS believe that the lack of a specific rule addressing the use of more than one manufacturing branch does not currently limit the general manufacturing branch rule of § 1.954–3(b)(1)(ii)(*a*) from applying to each manufacturing branch of a CFC in a case where a CFC performs manufacturing activities through more than one branch or similar establishment. Rather, such an application is consistent with the rules regarding multiple sales or purchase branches. Nonetheless, for clarity, the proposed regulations set forth rules addressing the use of multiple manufacturing branches.

The proposed regulations set forth two rules addressing the application of the manufacturing branch tax rate disparity test to multiple manufacturing branches.

Proposed § 1.954–3(b)(1)(ii)(*c*)(*2*) addresses situations in which multiple branches each perform manufacturing activities with respect to separate items of personal property that are then sold by the CFC. Consistent with the rule for multiple sales branches, the proposed regulations require the separate application of the manufacturing branch tax rate disparity test to each branch that is manufacturing a separate item of personal property.

Proposed § 1.954–3(b)(1)(ii)(*c*)(*3*) addresses situations in which multiple branches, or one or more branches and the remainder of the CFC, perform manufacturing activities with respect to the same item of personal property that is then sold by the CFC. When multiple branches, or one or more branches and the remainder of the CFC, perform manufacturing activities with respect to the same item of personal property, the manufacturing branch tax rate disparity test is applied by giving satisfaction of the physical manufacturing test precedence over other contributions to manufacturing. Therefore, if only one branch, or only the remainder of the CFC, satisfies the physical manufacturing test of § 1.954–3(a)(4)(ii) or (iii), then the location of that branch or the remainder of the CFC will be the location of manufacturing of the personal property for purposes of applying the manufacturing branch tax rate disparity test. If more than one branch, or one or more branches and the remainder of the CFC, each satisfy the physical manufacturing test, then the branch or the remainder of the CFC located or organized in the jurisdiction that would impose the lowest effective rate of tax will be the location of manufacturing of the personal property for purposes of applying the manufacturing branch tax rate disparity test.

If none of the branches nor the remainder of the CFC satisfies the physical manufacturing test, but the CFC as a whole satisfies the substantial contribution test contained in proposed § 1.954–3(a)(4)(iv), then the location of manufacturing of the personal property will be the location of the branch or the remainder of the CFC that provides the predominant amount of the CFC's substantial contribution to manufacturing. Whether any branch or the remainder of the CFC provides a predominant amount of the CFC's contribution to manufacturing is determined by applying the facts and circumstances test provided in § 1.954–3(a)(4)(iv) to weigh the contribution to manufacturing of each branch or the remainder of the CFC. If a predominant amount of the CFC's contribution to manufacturing is not provided by any one location, the location of manufacturing of the personal property for purposes of applying the manufacturing branch tax rate disparity test will be that place (either the remainder of the CFC or one of its branches) where manufacturing activity is performed and which would impose the highest effective rate of tax when applying either § 1.954–3(b)(1)(i)(*b*) or (ii)(*b*).

Because the proposed regulations address cases in which two or more branches, or one or more branches and the remainder of the CFC, perform manufacturing activities related to the manufacture of the same item of property, § 1.954–3(b)(2)(ii)(*a*) is modified to clarify the application of the branch rule where manufacturing activities are performed in more than one location. In such cases, proposed § 1.954–3(b)(2)(ii)(*a*) provides that, for purposes of treating the location of sales or purchase income as a separate corporation for purposes of determining whether FBCSI is incurred, that separate corporation will exclude any branch or the remainder of the CFC that would be treated as a separate corporation, if the hypothetical rate imposed by the jurisdiction of each such branch or the remainder of the CFC were separately tested against the effective rate of tax imposed on the sales or purchase income under the relevant tax rate disparity test.

C. Miscellaneous Branch Rule Issues

The Treasury Department and the IRS also propose to amend certain other aspects of § 1.954–3(b) as follows:

1. Definition of a Manufacturing Branch

While § 1.954–3(b)(1)(ii)(*a*) defines a manufacturing branch as a branch or similar establishment through which a CFC carries on manufacturing activities, it does not explicitly require that § 1.954–3(a)(4)(i) be satisfied by the CFC as a whole in order for the manufacturing branch rule to apply. The Treasury Department and the IRS believe that a manufacturing branch only exists with respect to personal property sold by a CFC if the CFC (including any branch of that CFC) has manufactured that property. Accordingly, proposed § 1.954–3(b)(1)(ii)(*a*) clarifies this point by providing that the manufacturing branch rule applies only where a CFC (including any branch of the CFC) satisfies the manufacturing requirement under proposed § 1.954–3(a)(4).

2. Modification of § 1.954–3(b)(2)(ii)(e)

Section 1.954–3(b)(2)(ii)(*e*) provides that income derived by a branch or similar establishment, or by the remainder of the CFC, will not be FBCSI if the income would not be so considered if it were derived by a separate CFC under like circumstances. For example, if a branch of a CFC purchases personal property from an unrelated person and sells the property to an unrelated person without any involvement by the remainder of the CFC, the branch rule will not apply to create a related party transaction between the branch and the remainder of the CFC. Therefore the purchase and sale of that personal property by the branch will not generate FBCSI.

The proposed regulations provide that the substantial contribution test generally applies to a CFC that sells personal property where another person (for example, a second CFC) satisfies the physical manufacturing test with respect to that property. However, a negative presumption applies where a CFC claims to satisfy the substantial contribution test with respect to income from the sale of personal property where the physical manufacturing test is satisfied by a branch of that CFC. The effect of these rules is that, where a CFC seeks to rely on the substantial contribution test with respect to the income from the sale of personal property manufactured (within the meaning of § 1.954–3(a)(4)(ii) or (iii)) by one or more of its branches, but cannot rebut the negative presumption to the satisfaction of the Commissioner, a branch or the remainder of a CFC may have FBCSI where a separate CFC would not. Therefore, to integrate the rules regarding the substantial contribution test and its application under the branch rule, proposed § 1.954–3(b)(2)(ii)(*e*) excepts from its general rule cases in which a branch satisfies the physical manufacturing test with respect to personal property and the remainder of the controlled foreign corporation fails to rebut the presumption that it does not satisfy the substantial contribution test with respect to the activities of that manufacturing branch.

In addition, consistent with the clarification regarding the scope of the branch rule contained in proposed § 1.954–3(b)(1), § 1.954–3(b)(2)(ii)(*e*) is modified to clarify that it applies only for purposes of paragraph (b) of § 1.954–3 (that is, the branch rule). This clarifies that in no event will the branch rule cause income not to be FBCSI if that income would otherwise be FBCSI under section 954(d)(1). For example, assume a CFC incorporated in Country Y purchases personal property from a related party and has that property manufactured by a contract manufacturer in Country Z. If the CFC does not perform any other activity with respect to the manufacture of the property, and if the CFC sells the manufactured property through a branch located in Country Z for use, consumption, or disposition outside of Country Y, the income from the sale of that property is FBCSI under section 954(d)(1). If the branch located in Country Z were a separate CFC the income would not be FBCSI because it would be selling personal property manufactured in its country of organization, Country Z. However, because the income would be FBCSI to the CFC under section 954(d)(1), proposed § 1.954–3(b)(2)(ii)(*e*) does not apply to create a different result.

3. Modification of § 1.954–3(b)(2)(i)(b), (b)(2)(ii)(b) and (b)(4), Example 3

Commentators have noted that § 1.954–3(b)(2)(i)(*b*) and (ii)(*b*) can be read to cause a branch that purchases from unrelated persons and sells to unrelated persons to have FBCSI even where the remainder of the CFC has no connection with the personal property that is sold. Although § 1.954–3(b)(2)(ii)(*e*) should prevent such a result, commentators note that a contrary reading is possible because the sales branch rules of § 1.954–3(b)(2)(i)(*b*) and (ii)(*b*) apply, in part, with respect to personal property manufactured, produced, constructed, grown, or extracted by, or personal property purchased or sold by the ''controlled foreign corporation'' (as opposed to by the ''remainder'' of the controlled foreign corporation). For example, in a case in which a branch both manufactures and sells personal property, the branch could be considered to sell on behalf of the remainder of the CFC because the branch's manufacturing activities would be considered to be manufacturing activities of the CFC, thereby triggering the application of § 1.954–3(b)(2)(ii)(*b*). Further, commentators note that § 1.954–3(b)(4), *Example 3* appears to support this reading because in that example a branch of a corporation purchases from a related person and sells to an unrelated person, and the branch is treated as selling that property on behalf of the remainder of the CFC, even though the remainder of the corporation does not manufacture, purchase, or sell the personal property.

Section 1.954–3(b)(2)(i)(*b*) and (ii)(*b*) are intended to apply only to purchasing or selling by a branch with respect to personal property manufactured, purchased, or sold by ''the remainder of'' the CFC (including any branch treated as the remainder of the CFC). For example, the branch rule could apply in a case where personal property is manufactured by the CFC in the country of organization of the CFC and then sold by a branch of the CFC located outside of the country of organization of the CFC. However, the branch rule does not apply where, for example, a branch of the CFC purchases personal property from an unrelated party and sells it to an unrelated party without any involvement by the remainder of the CFC. Accordingly, the proposed regulations amend § 1.954–3(b)(2)(i)(*b*) and (ii)(*b*) by adding the words ''remainder of'' before each place where the words ''controlled foreign corporation'' appear in those paragraphs and by adding the words ''(or by any branch treated as the remainder of the CFC)'' after each place where the words ''controlled foreign corporation'' appear in those paragraphs. Consistent with this change, the proposed regulations revise the rationale for the result in § 1.954–3(b)(4), *Example 3* as described below.

In § 1.954–3(b)(4), *Example 3,* a branch of a second-tier CFC purchases finished goods from the first-tier CFC and sells 90 percent of the product for use, consumption, or disposition outside of the country in which the branch is located and the country of organization of the second-tier CFC. The remainder of the second-tier CFC does not engage in any manufacturing or

selling activities. The sales branch tax rate disparity test is met in comparison to the effective tax rate of the second-tier CFC (the first-tier CFC and second-tier CFC are organized in the same country). The example concludes that since the sales branch tax disparity test is met, the branch is treated as a separate CFC and is treated as selling personal property on behalf of the second-tier CFC and therefore the 90 percent of sales made for use, consumption, or disposition outside of the branch's country is FBCSI.

The rationale of the example is incorrect because the branch is not selling on behalf of the second-tier CFC because the remainder of the second-tier CFC (not including the branch) does not manufacture, purchase, or sell the personal property. Therefore, § 1.954–3(b)(2)(i)(*b*) and (ii)(*b*) do not apply. However, the result is correct because the branch, treated as a separate corporation, is purchasing from a related person, the first-tier CFC, organized outside of the branch's country and selling to persons outside the branch's country and the branch is located in a jurisdiction that satisfies the sales branch tax rate disparity test with respect to the income from the sale of the personal property. Accordingly, the proposed regulations revise § 1.954–3(b)(4), *Example 3* to provide the correct rationale for the result. In addition, the result in § 1.954–3(b)(4), *Example 3* is further revised to add two alternative factual scenarios (purchase from an unrelated party, and manufacture within the meaning of proposed § 1.954–3(a)(4)(iv) by the selling branch) to illustrate the point that, in general, a branch will not have FBCSI if a separate CFC would not have FBCSI under like circumstances.

Proposed Effective/Applicability Date

These regulations will apply to taxable years of CFCs beginning on or after the date they are published as final regulations in the **Federal Register**, and for taxable years of United States shareholders in which or with which such taxable years of the CFCs end.

Reliance on Proposed Regulations

Until these regulations are finalized, taxpayers may choose to apply these regulations in their entirety to all open tax years as if they were final regulations.

Request for Comments

The Treasury Department and the IRS request comments on all aspects of these proposed regulations, including comments regarding the substantial contribution test, and the activities listed in § 1.954–3(a)(4)(iv)(*b*). In particular, comments are requested on whether one or more safe harbors should be added to the substantial contribution test. In drafting the proposed regulations, the Treasury Department and the IRS considered a number of approaches to a safe harbor but ultimately chose to request comments in this regard because of difficulties in fashioning a safe harbor that would be flexible enough to apply across various industries and across a range of different types of manufacturing arrangements. Among the safe harbors considered in drafting the proposed regulations were: (1) A list of mandatory activities; (2) a cost based test; (3) a compensation based test; (4) a value based test; (5) a tax rate disparity based test; and (6) a percentage based test comparing the compensation paid to employees of the CFC for performing activities related to the manufacturing process vs. the total cost for all activities related to the manufacturing process (that is, including costs paid to a contract manufacturer but excluding the cost of raw materials and marketing intangibles). In addition, the Treasury Department and the IRS request comments as to whether the requirement, under the manufacturing exception from foreign base company sales income, that the activities of the CFC be performed by its employees, should permit commercial arrangements where individuals performing services for the CFC, while not on its payroll, are nevertheless controlled by employees of the CFC.

Comments are also requested on whether it would be appropriate to add an anti-abuse rule similar to the foreign base company services substantial assistance test announced in Notice 2007–13 to prevent a CFC from qualifying for the manufacturing exception based on the application of the substantial contribution test in cases in which substantially all of the direct or indirect contributions to the manufacture of personal property provided collectively by the CFC and any related United States person is provided by one or more related United States persons. Such a rule might provide, for example, that where (1) the United States parent of a CFC provides 45 percent of the manufacturing contribution, (2) the CFC provides 5 percent of the manufacturing contribution, and (3) an unrelated contract manufacturer provides 50 percent of the manufacturing contribution to the personal property, the CFC does not make a substantial contribution to the manufacture of that property because a related United States person provides 80 percent or more of the contribution to the manufacture of the property (90 percent in this case, 45/50) provided collectively by the CFC and any related United States person. Such a rule was considered but ultimately not included in the proposed regulations and comments are requested on whether or not such a rule should be added to the final regulations. See § 601.601(d)(2)(ii)(*b*).

In addition, comments are requested on the multiple manufacturing branch rules. First, comments are requested on whether the negative presumption rule concerning cases in which the selling branch or the remainder of the CFC performs activities described in proposed § 1.954–3(a)(4)(iv) is more appropriate than an alternative rule that would deny the use of the test contained in proposed § 1.954–3(a)(4)(iv) in cases in which a branch of the CFC manufactures the property within the meaning of proposed § 1.954–3(a)(4)(ii) or (iii). Second, comments are requested on the consequences of and possible alternatives to proposed § 1.954–3(b)(1)(ii)(*c*)(*3*)(*e*), which provides that if a predominant amount of the CFC's substantial contribution is not provided by any one location, the location of manufacturing of the personal property will be considered to be that location (either the remainder of the CFC or one of its branches) which imposes the highest effective rate of tax that would be imposed on the sales income, among those locations where manufacturing activity related to the generation of that income is performed. The Treasury Department and the IRS considered a rule that would allow taxpayers to alternatively use the mean effective rate of tax among the locations where manufacturing activity is performed, so long as that effective rate of tax was within a set number of percentage points of the highest effective tax rate that would be imposed by any jurisdiction in which a manufacturing branch or the remainder of the CFC was located or organized. However, the Treasury Department and the IRS were concerned about the complexity of such a rule. The Treasury Department and the IRS request comments on whether this or other alternatives to the highest rate test would be appropriate. Finally, comments are requested on whether any modifications to § 1.954–3(b)(1)(i)(*b*) and (b)(1)(ii)(*b*) should be adopted to make the rules concerning the comparison of effective rates of tax easier to apply.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the proposed regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Ch. 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

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

Par. 2. Section 1.954–3 is amended by:

1. Adding a new sentence after the first sentence of paragraph (a)(1)(i), and by revising the second sentence of *Example 1* in paragraph (a)(1)(iii), and the first sentence of *Example 2* in paragraph (a)(1)(iii).

2. Revising the third sentence of paragraph (a)(2).

3. Revising paragraph (a)(4)(i), and the first sentences of paragraphs (a)(4)(ii) and (iii), and by adding paragraph (a)(4)(iv).

4. Revising the text of paragraph (a)(6)(i).

5. Adding a new sentence to the end of paragraph (b)(1)(ii)(*a*).

6. Redesignating the text of paragraph (b)(1)(ii)(*c*) as paragraph (b)(1)(ii)(*c*)(*1*), and adding a paragraph heading to newly designated paragraph (b)(1)(ii)(*c*)(*1*).

7. Adding paragraphs (b)(1)(ii)(*c*)(*2*), and (*c*)(*3*).

8. Revising paragraph (b)(2)(i)(*b*).

9. Adding a new sentence to the end of paragraph (b)(2)(ii)(*a*), and revising paragraph (b)(2)(ii)(*b*).

10. Redesignating the text of paragraph (b)(2)(ii)(*c*) as paragraph (b)(2)(ii)(*c*)(*1*), adding a paragraph heading to newly redesignated paragraph (b)(2)(ii)(*c*)(*1*), adding paragraph (b)(2)(ii)(*c*)(*2*), and revising paragraph (b)(2)(ii)(*e*).

11. Revising *Example 3* in paragraph (b)(4).

12. Adding paragraph (d).

The additions and revisions read as follows:

§ 1.954–3 Foreign base company sales income.

(a) * * *

(1) *In general*—(i) *General rules.* * * * For purposes of the preceding sentence, except as provided in paragraphs (a)(2) and (a)(4) of this section, personal property sold by a controlled foreign corporation will be considered to be the same property that was purchased by the controlled foreign corporation regardless of whether the personal property is sold in the same form in which it was purchased, in a different form than the form in which it was purchased, or as a component part of a manufactured product. * * *

* * * * *

Example 1. * * * Corporation A purchases from M Corporation, a related person, articles manufactured in the United States and sells the articles to P, not a related person, for delivery and use in foreign country Y. * * *

Example 2. Corporation A in *Example 1* also purchases from P, not a related person, articles manufactured in country Y and sells the articles to foreign corporation B, a related person, for use in foreign country Z. * * *

* * * * *

(2) * * * The principles set forth in paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section apply under this paragraph (a)(2) in determining what constitutes manufacture, production, or construction of personal property, excluding, in the case of manufacture, production, or construction by a person other than the controlled foreign corporation, the requirement set forth in paragraph (a)(4)(i) of this section that the provisions of paragraphs (a)(4)(ii) and (a)(4)(iii) of this section may only be satisfied through the activities of that person's employees. * * *

* * * * *

(4) *Property manufactured, produced, or constructed by the controlled foreign corporation*—(i)—*In general.* Foreign base company sales income does not include income of a controlled foreign corporation derived in connection with the sale of personal property manufactured, produced, or constructed by such corporation in whole or in part from personal property which it has purchased. A controlled foreign corporation will have manufactured, produced, or constructed personal property which the corporation sells only if such corporation satisfies the provisions of paragraphs (a)(ii), (a)(iii), or (a)(iv) of this section through the activities of its employees with respect to such property. A controlled foreign corporation will not be treated as having manufactured, produced, or constructed personal property which the corporation sells merely because the property is sold in a different form than the form in which it was purchased. For rules of apportionment in determining foreign base company sales income derived from the sale of personal property purchased and used as a component part of property which is not manufactured, produced, or constructed, see paragraph (a)(5) of this section.

(ii) * * * If personal property purchased by a foreign corporation is substantially transformed by such foreign corporation prior to sale, the property sold by the selling corporation is manufactured, produced, or constructed by such selling corporation. * * *

(iii) * * * If purchased property is used as a component part of personal property which is sold, the sale of the property will be treated as the sale of a manufactured product, rather than the sale of component parts, if the assembly or conversion of the component parts into the final product by the selling corporation involves activities that are substantial in nature and generally considered to constitute the

manufacture, production, or construction of property. * * *

(iv) *Substantial contribution to manufacturing of personal property*—(*a*)—*In general.* This paragraph (a)(4)(iv) applies only if a controlled foreign corporation does not satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section, but the personal property purchased by a controlled foreign corporation would be considered to be manufactured, produced, or constructed prior to sale (under the principles of paragraphs (a)(4)(ii) or (iii) of this section) by the controlled foreign corporation if the manufacturing, producing, and constructing activities undertaken with respect to the property prior to sale were undertaken by the controlled foreign corporation through the activities of its employees. If this paragraph (a)(4)(iv) applies, the personal property sold by the controlled foreign corporation is manufactured, produced, or constructed by such controlled foreign corporation only if the facts and circumstances evidence that the controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of the personal property sold. The determination of whether a controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of the personal property sold will involve, but will not necessarily be limited to, consideration of the activities set forth in paragraph (a)(4)(iv)(*b*) of this section. The weight given to any activity (whether or not set forth) will vary with the facts and circumstances of the particular business. The presence or absence of any activity, or of a particular number of activities, is not determinative. Further, the fact that other persons make contributions to the manufacture, production, or construction of personal property prior to sale does not necessarily prevent the controlled foreign corporation from making a substantial contribution to the manufacture, construction, or production of that property through the activities of its employees.

(b) Activities. Activities of a controlled foreign corporation's employees to be considered in determining whether a controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, construction, or production of personal property include but are not limited to—

(*1*) Oversight and direction of the activities or process (including management of the risk of loss) pursuant to which the property is manufactured, produced, or constructed under the principles of paragraphs (a)(4)(ii) or (iii) of this section;

(*2*) Performance of activities that are considered in but that are insufficient to satisfy the tests provided in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section;

(*3*) Control of the raw materials, work-in-process and finished goods;

(*4*) Management of the manufacturing profits;

(*5*) Material selection;

(*6*) Vendor selection;

(*7*) Control of logistics;

(*8*) Quality control; and

(*9*) Direction of the development, protection, and use of trade secrets, technology, product design and design specifications, and other intellectual property used in manufacturing the product.

(c) The rules of this paragraph (a)(iv) are illustrated by the following examples:

Example 1. No substantial contribution to manufacturing. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are then manufactured (under the principles of paragraph (a)(4)(iii)) of this section into Product X by CM, an unrelated corporation that performs the physical conversion outside of FS's country of organization, pursuant to a contract manufacturing arrangement. Product X is then sold by FS for use outside of FS's country of organization. At all times, FS retains control of the raw material, work-in-process, and finished goods, as well as the intangibles used in the conversion process. FS retains the right to oversee and direct the physical conversion of Product X by CM but does not regularly exercise, through its employees, its powers of oversight or direction.

(ii) *Result.* FS does not satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section because FS does not, through the activities of its employees, substantially transform, convert or assemble personal property into Product X. However, Product X was manufactured (by CM), and therefore this paragraph (a)(4)(iv) applies. FS does not satisfy the test under this paragraph (a)(4)(iv) because it does not make a substantial contribution through the activities of its employees to the manufacture of Product X. Mere contractual ownership of materials and intellectual property and contractual rights to exercise powers of direction and control (without the exercise of those powers) are not sufficient to satisfy this paragraph (a)(4)(iv). Therefore, FS is not considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 2. Substantial contribution to manufacturing, unrelated manufacturer. (i) *Facts.* Assume the same facts as in *Example 1*, except for the following. FS, through its employees, is engaged in product design and quality control. Employees of FS regularly exercise the right to oversee and direct the activities of CM in the manufacture of Product X.

(ii) *Result.* FS does not satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X because FS does not, through the activities of its employees, substantially transform, convert or assemble personal property into Product X. However, Product X was manufactured (by CM), and therefore this paragraph (a)(4)(iv) applies. FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore FS is considered to have manufactured Product X. The analysis and conclusion in this *Example 2* would be the same if CM were a corporation that was related to FS.

Example 3. Employees of another person. (i) Facts. FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are then manufactured (under the principles of paragraph (a)(4)(iii) of this section) into Product X by CM, an unrelated contract manufacturer located in Country C. CM uses employees of another corporation to operate its manufacturing plant and convert the raw materials into Product X. Apart from the physical conversion of the raw materials into Product X, employees of FS perform all of the other activities with respect to the manufacture of Product X (for example, oversight and direction of the manufacturing process, control of raw materials, control of logistics, vendor selection, quality control). FS sells Product X for use, consumption or disposition outside Country M.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X between the time the raw materials were purchased and the time Product X was sold were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X. If CM's manufacturing plant were located in Country M, the test in paragraph (a)(2) of this section could be satisfied even if CM did not manufacture Product X through the activities of its employees.

Example 4. Automated manufacturing. (i) Facts. FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are then manufactured (under the principles of paragraph (a)(4)(ii) of this section) into Product X by CM, an unrelated corporation located outside of FS's country of organization, pursuant to a contract manufacturing arrangement. Product X is then sold by FS to related and unrelated persons for use outside of FS's country of organization. Under the contract manufacturing arrangement, CM is responsible for the physical transformation of the raw materials into Product X. At all times, FS retains ownership of the raw material, work-in-process, and finished goods. FS retains the right to oversee and

direct the physical conversion of Product X by CM but does not regularly exercise, through its employees, its powers of oversight or direction. FS is the owner of sophisticated software and network systems that remotely and automatically (without human involvement) take orders, route them to CM, order raw materials, and perform quality control. FS has a small number of computer technicians who monitor the software and network systems to ensure that they are running smoothly and to apply any necessary patches or fixes. The software and network systems were developed by employees of DP, the U.S. corporate parent of FS, pursuant to a cost sharing agreement between DP and FS. DP employees regularly supervise the computer technicians, evaluate the results of the automated manufacturing business, and make ongoing operational decisions, including with regard to acceptable performance of the manufacturing process, stoppages of that process, and product and process redesign and updates to meet the needs of the business and its customers. DP employees develop and provide to FS all of the upgrades to the software and network systems. DP also has employees who control the other aspects of the manufacturing process such as product design, vendor and material selection, management and retention of the manufacturing profits, and the selection of CM.

(ii) *Result.* FS does not satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X because FS does not, through the activities of its employees, substantially transform, convert or assemble personal property into Product X. If the manufacturing activities undertaken with respect to Product X between the time the raw materials were purchased and the time Product X was sold were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. FS does not satisfy the test under this paragraph (a)(4)(iv) because it does not make a substantial contribution through the activities of its employees to the manufacture of Product X. Mere contractual ownership of materials and intellectual property together with contractual rights to exercise powers of direction and control and a small number of technical employees are not sufficient to satisfy this paragraph (a)(4)(iv). FS's primary contribution to the manufacture of Product X is the provision of the software and network systems to CM. Substantial operational responsibilities and decision making are exercised by DP employees who direct the activities of the FS employees. Therefore, FS is not considered to have manufactured Product X.

* * * * *

(6) * * * (i) * * * To determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been foreign base company sales income if received by it directly, under § 1.952–1(g), the property sold will be considered to be manufactured, produced or constructed by the controlled foreign corporation, within the meaning of paragraph (a)(4) of this section, only if the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if the controlled foreign corporation had earned the income directly, determined by taking into account the activities of the employees of, and property owned by, the partnership.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(a) * * * The provisions of this paragraph (b)(1)(ii)(a) will not apply unless the controlled foreign corporation (including any branches or similar establishments of such controlled foreign corporation) manufactures, produces, or constructs such personal property within the meaning of paragraph (a)(4)(i) of this section.

* * * * *

(*c*) *Use of more than one branch*—(1) *Use of one or more sales or purchase branches in addition to a manufacturing branch.* * * *

(*2*) *Use of more than one branch to manufacture, produce, construct, grow, or extract separate items of personal property.* If a controlled foreign corporation carries on manufacturing, producing, constructing, growing, or extracting activities with respect to separate items of personal property by or through more than one branch or similar establishment located outside the country under the laws of which such corporation is created or organized, then paragraphs (b)(2)(ii)(*b*) and (*c*) of this section will be applied separately to each such branch or similar establishment (by treating such branch or similar establishment as if it were the only branch or similar establishment of the controlled foreign corporation and as if any such other branches or similar establishments were separate corporations) in determining whether the use of such branch or similar establishment has substantially the same tax effect as if such branch or similar establishment were a wholly owned subsidiary corporation of the controlled foreign corporation. The application of this paragraph (b)(1)(ii)(c)(2) is illustrated by the following example:

Example. Multiple branches that satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section. (i) *Facts.* FS is a controlled foreign corporation organized in Country M. FS operates two branches, Branch A and Branch B located in Country A and Country B, respectively. Branch A and Branch B each manufacture separate items of personal property (Product X and Y respectively) within the meaning of paragraph (a)(4)(ii) or (iii) of this section. Raw materials used in the manufacture of Product X and Product Y are purchased by FS from an unrelated person. FS engages in activities in Country M to sell Product X and Product Y to a related person for use, disposition or consumption outside of Country M. Employees of FS located in Country M perform only sales functions. The effective rate imposed on the income from the sales of Product X and Product Y is 10%. Country A imposes an effective rate of tax on sales income of 20%. Country B imposes an effective rate of tax on sales income of 12%.

(ii) *Result.* Pursuant to this paragraph (b)(1)(ii)(*c*)(*2*), paragraph (b)(1)(ii)(*b*) of this section is separately applied to Branch A and Branch B with respect to the sales income of FS attributable to Product X (manufactured by Branch A) and Product Y (manufactured by Branch B). Because the effective rate of tax on FS's sales income from the sale of Product X in Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch A is located (20%), the use of Branch A has substantially the same tax effect as if Branch A were a wholly owned subsidiary corporation of FS. Because the effective rate of tax on FS's sales income from the sale of Product Y in Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch B is located (12%), the use of Branch B does not have substantially the same tax effect as if Branch B were a wholly owned subsidiary corporation of FS. Consequently, only Branch A is treated as a separate corporation apart from the remainder of FS for purposes of determining foreign base company sales income.

(3) *Use of more than one manufacturing branch, or one or more manufacturing branches and the remainder of the controlled foreign corporation, to manufacture, produce, construct, grow, or extract the same property*—(*a*)—*In general.* This paragraph (b)(1)(ii)(*c*)(*3*) applies to determine the location of manufacturing, producing, constructing, growing or extracting of personal property for purposes of applying paragraphs (b)(1)(i)(*b*) or (ii)(*b*) of this section where more than one branch of a controlled foreign corporation, or one or more branches of a controlled foreign corporation and the remainder of the controlled foreign corporation, each engage in manufacturing, producing, constructing, growing or extracting activities with respect to the same item of personal property which is then sold by the controlled foreign corporation.

(b) *Physical manufacture, production, or construction in one or more*

locations. If only one branch or only the remainder of a controlled foreign corporation satisfies either paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to an item of personal property, then that branch or the remainder of the controlled foreign corporation will be the location of manufacturing, producing, or constructing of that property for purposes of applying paragraph (b)(1)(i)(*b*) or (ii)(*b*) of this section to the income from the sale of that property. See § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 1*. If more than one branch, or one or more branches and the remainder of the controlled foreign corporation, each independently satisfy either paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to an item of property, then the location of manufacturing, producing, or constructing of that property for purposes of applying paragraph (b)(1)(i)(*b*) or (ii)(*b*) of this section will be that branch or the remainder of the controlled foreign corporation that satisfies paragraph (a)(4)(ii) or (a)(4)(iii) of this section and that is located or organized in the jurisdiction that would, after applying paragraph (b)(1)(ii)(*b*) of this section to such branch or paragraph (b)(1)(i)(*b*) of this section to the remainder of the controlled foreign corporation, impose the lowest effective rate of tax on the income allocated to such branch or the remainder of the controlled foreign corporation under such paragraph (that is, either paragraph (b)(1)(ii)(*b*) or (b)(1)(i)(*b*) of this section), if, under the laws of such country, the entire income of the controlled foreign corporation were considered derived by such corporation from sources within such country from doing business through a permanent establishment therein, received in such country, and allocable to such permanent establishment, and the corporation were created or organized under the laws of, and managed and controlled in, such country. See § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 2*.

(c) *Predominant contribution*. If none of the branches nor the remainder of a controlled foreign corporation satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to an item of personal property, but the controlled foreign corporation as a whole makes a substantial contribution to the manufacture, production, or construction of that property within the meaning of paragraph (a)(4)(iv) of this section, then for purposes of applying paragraph (b)(1)(i)(*b*) or (ii)(*b*) or this section, the branch or the remainder of the controlled foreign corporation that makes the predominant amount of the controlled foreign corporation's substantial contribution with respect to the manufacture, production, or construction of that property will be the location of manufacturing, producing, or constructing with respect to that property. See § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 3*. Whether any branch or the remainder of the controlled foreign corporation provides a predominant amount of the controlled foreign corporation's substantial contribution is determined by weighing each branch's or the remainder of the controlled foreign corporation's relative contribution to the manufacture of the item of property as determined by applying the facts and circumstances test provided in paragraph (a)(4)(iv) of this section. If multiple branches are located in a single jurisdiction, then the activities of those branches will be aggregated for purposes of determining the branch or the remainder of the controlled foreign corporation that makes the predominant amount of the controlled foreign corporation's substantial contribution with respect to the manufacture, production, or construction of an item of property. For purposes of this paragraph (b)(1)(ii)(*c*)(*3*)(*c*), a branch or the remainder of the controlled foreign corporation makes a predominant amount of the controlled foreign corporation's substantial contribution with respect to the manufacture, production, or construction of an item of personal property only if it makes a significantly greater contribution to the manufacture, production, or construction of that property than any other branch or the remainder of the controlled foreign corporation. The location of any particular activity (that is, for purposes of deciding whether that activity is conducted in a particular branch or in the remainder of the controlled foreign corporation) will be determined by applying the principles of paragraph (b)(1)(ii)(*c*)(*3*)(*d*) of this section.

(d) *Location of activity*. The location of any activity with respect to the manufacture, production, or construction of an item of personal property is where the controlled foreign corporation makes a contribution through its employees to such activity. For example, the location of any activities concerning intangible property is not determined based on the formal assignment of intangible property, but on where employees of the controlled foreign corporation develop, protect, and direct the use of the intangible.

(e) *Where no branch or the remainder of the controlled foreign corporation provides a predominant contribution*. If neither a branch nor the remainder of a controlled foreign corporation independently satisfies paragraph (a)(4)(ii) or (iii) of this section and neither a branch nor the remainder of the controlled foreign corporation provides a predominant amount of the controlled foreign corporation's contribution to the manufacture of an item of personal property, but the controlled foreign corporation as a whole makes a substantial contribution to the manufacture of that property within the meaning of paragraph (a)(4)(iv) of this section, then for purposes of applying paragraph (b)(1)(i)(*b*) or (ii)(*b*) of this section, the location of manufacturing of that property will be that branch or remainder of the controlled foreign corporation that provides a contribution to the manufacture of the property and that is located or organized in the jurisdiction that would, after applying paragraph (b)(1)(ii)(*b*) of this section to such branch or (b)(1)(i)(*b*) of this section to such remainder of the controlled foreign corporation, impose the highest effective rate of tax on the income allocated to such branch or such remainder of the controlled foreign corporation under that paragraph, if, under the laws of such country, the entire income of the controlled foreign corporation were considered derived by such corporation from sources within such country from doing business through a permanent establishment therein, received in such country, and allocable to such permanent establishment, and the corporation were created or organized under the laws of, and managed and controlled in, such country. See § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 4*.

(f) *Examples*. The following examples illustrate the application of this paragraph (b)(1)(ii)(*c*)(*3*):

Example 1. Multiple branches that contribute to the manufacture of a single product, only one branch that satisfies paragraph (a)(4)(ii) or (a)(4)(iii) of this section. (i) *Facts*. FS is a controlled foreign corporation organized in Country M. FS operates three branches, Branch A, Branch B, and Branch C, located respectively in Country A, Country B, and Country C. Branch A, Branch B, and Branch C each performs different manufacturing activities with respect to the manufacture of Product X. Branch A, through the activities of its employees, designs Product X. Branch B, through the activities of its employees, provides quality control and oversight. Branch C, through the activities of its employees, manufactures Product X (within the meaning of paragraph (a)(4)(iii) of this section) using the designs of Branch A and under the oversight of the quality control personnel of Branch B. The activities of

Branch A and B do not satisfy either paragraph (a)(4)(ii) or (a)(4)(iii) of this section. Employees of FS located in Country M purchase the raw materials used in the manufacture of Product X from a related person and control the work-in-process and finished goods throughout the manufacturing process. Employees of FS located in Country M also manage the risk of loss from the manufacture of Product X and the manufacturing profits from the sales of Product X. Further, employees of FS located in Country M control logistics, select vendors and raw materials, and oversee the coordination between the branches. Employees of FS located in Country M sell Product X to unrelated persons for use, consumption or disposition outside of Country M. The sales income from the sale of Product X is taxed in Country M at an effective rate of tax of 10%. Country C imposes an effective rate of tax of 20% on sales income.

(ii) *Result.* Because only the activities of Branch C satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section, paragraph (b)(1)(ii)(*b*) of this section is applied by considering only the effective rate of tax that would apply in Country C. The effective rates of tax in Country A and Country B are not considered, because Branch A and Branch B do not satisfy either paragraph (a)(4)(ii) or (a)(4)(iii) of this section. Because the effective rate of tax on the sales income (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch C is located (20%), the use of Branch C has substantially the same tax effect as if Branch C were a wholly owned subsidiary corporation of FS. Therefore sales of Product X by the remainder of FS are treated as sales on behalf of Branch C. Pursuant to paragraph (b)(2)(ii)(*c*)(*2*) of this section, FS will only qualify for the manufacturing exception under paragraph (a)(4)(iv) of this section if FS successfully rebuts, to the satisfaction of the Commissioner, the presumption that FS does not provide a substantial contribution to the manufacture of Product X. For this purpose, the activities of FS include the activities of Branch A or Branch B if either of those branches would not be treated as a separate corporation under paragraph (b)(1)(ii)(*b*) of this section, if that paragraph were applied to each of Branch A and Branch B.

Example 2. Multiple branches satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to the same product sold by the controlled foreign corporation. (i) *Facts.* Assume the same facts as in *Example 1*, except for the following. In addition to the design of Product X, Branch A also manufactures (within the meaning of paragraph (a)(4)(ii) of this section) a part of Product X. Branch C then combines that part with other parts to complete Product X. The activities of Branch C are sufficient to qualify as manufacturing under paragraph (a)(4)(iii) of this section with respect to Product X. Country A imposes an effective rate of tax of 12% on sales income.

(ii) *Result.* Because the activities of Branch A and Branch C satisfy the requirements of paragraph (a)(4)(ii) and (iii) of this section respectively, paragraph (b)(1)(ii)(b) of this section is applied by comparing the effective rate of tax imposed on the income from the sales of Product X against the lowest effective rate of tax that would apply to the sales income in either Country A or Country C if paragraph (b)(1)(ii)(b) of this section were applied separately to Branch A and Branch C. The effective rate of tax in Country B is not considered because Branch B does not satisfy either paragraph (a)(4)(ii) or (a)(4)(iii) of this section. Because the effective rate of tax on the sales income of FS from the sale of Product X (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch A is located (12%), neither Branch A nor Branch C is treated as a separate corporation and sales of Product X by the remainder of the controlled foreign corporation are not treated as made on behalf of any branch.

Example 3. Predominant contribution by employees located in the country of organization of the controlled foreign corporation, traveling employees, paragraph (a)(4)(iii) of this section satisfied by an unrelated contract manufacturer. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are then manufactured (under the principles of paragraph (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation located in Country C that performs the physical conversion pursuant to a contract manufacturing arrangement. Employees of FS located in Country M sell Product X to unrelated persons for use, consumption or disposition outside of Country M. Employees of FS located in Country M engage in design, testing, quality control and oversight with respect to the manufacture of Product X. Employees of FS located in Country M also direct the use of intellectual property used in the manufacture of Product X from Country M. At all times, employees of FS located in Country M control the raw material, work-in-process and finished goods. Employees of FS located in Country M also control logistics, select vendors, and manage the risk of loss from the manufacture of Product X and the manufacturing profits from Product X. Quality control and oversight of the manufacturing process is conducted by employees of FS who are employed in country M but who regularly travel to Country C. Branch A, located in Country A, is the only branch of FS. Design work with respect to Product X conducted by Branch A is supplemental to the bulk of the design work, which is done by employees of FS located in Country M. FS as a whole (including Branch A) provides a substantial contribution to the manufacture of Product X within the meaning of paragraph (a)(4)(iv) of this section.

(ii) *Result.* FS qualifies for the exception to foreign base company sales income contained in paragraph (a)(4) of this section with respect to income from the sale of Product X because FS satisfies the test contained in paragraph (a)(4)(iv) of this section by providing a substantial contribution through the activities of its employees to the manufacture of Product X. The fact that employees of FS travel to the location of CM to perform some of the activities considered in determining whether a controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacturing of an item of personal property does not prevent activities of such employees while located in Country M from being considered in determining the applicability of paragraph (a)(4)(iv) of this section to FS. In addition, paragraph (b) of this section does not apply to treat a branch of FS as having substantially the same tax effect as if the branch were a wholly owned subsidiary corporation, because FS, as opposed to Branch A, provides the predominant contribution with respect to Product X.

Example 4. Multiple branches perform manufacturing activities, no branch makes a predominant contribution, paragraph (a)(4)(iii) of this section is satisfied by an unrelated contract manufacturer. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are then manufactured (under the principles of paragraph (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation located in Country C that performs the physical conversion pursuant to a contract manufacturing arrangement. Employees of FS located in Country M sell Product X to unrelated persons for use, consumption or disposition outside of Country M. FS has two branches, Branch A and Branch B, located in Country A and Country B respectively. FS (including Branch A and Branch B) makes a substantial contribution within the meaning of paragraph (a)(4)(iv) of this section with respect to the manufacture of Product X. Branch A, through the activities of its employees, designs Product X. Branch B, through the activities of its employees, provides quality control and oversight of the manufacturing process. At all times, FS controls the raw materials, work-in-process and the finished Product X through employees located in Country M. FS also manages the risk of loss related to the manufacture of Product X and the manufacturing profits from the sales of Product X through employees located in Country M. Further, employees of FS located in Country M control logistics, select vendors, and oversee the coordination between the branches. Country M imposes an effective rate of tax on sales income of 10%. Country A imposes an effective rate of tax on sales income of 20% and Country B imposes an effective rate of tax on sales income of 24%.

(ii) *Result.* Based on the facts, neither the remainder of FS (through activities of its employees in Country M), nor Branch A, nor Branch B, provide a predominant amount of the controlled foreign corporation's substantial contribution to the manufacture of Product X. FS, Branch A, and Branch B each provide a contribution through the activities of their employees to the manufacture of Product X. Accordingly, paragraph (b)(1)(ii)(*b*) of this section is applied by comparing the effective rate of tax

imposed on the income from the sales of Product X against the effective rate of tax that would apply to the sales income in Branch B, which is located in the jurisdiction that would impose the highest effective rate of tax on the sales income (24%). Because the effective rate of tax imposed on the sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%) the remainder of FS is treated as selling on behalf of Branch B. Further, for purposes of determining whether the remainder of FS qualifies for any exception from foreign base company sales income, applying paragraph (b)(2)(ii)(*a*) of this section, the remainder of FS includes any branch of FS that would not, after the application of paragraph (b)(1)(ii)(*b*) of this section to such branch, be treated as a separate corporation. In this case, the effective rate of tax imposed on the sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (20%). Therefore, for purposes of determining foreign base company sales income, the remainder of FS does not include the activities of Branch A. The remainder of FS does not qualify for the manufacturing exception from foreign base company sales income contained in paragraph (a)(4)(iv) of this section. Because Product X is sold for use, consumption, or disposition outside of Country M, the income from the sale of Product X is foreign base company sales income.

Example 5. Multiple branches contribute to the manufacture of a single product, one branch sells the product, the remainder of the controlled foreign corporation does not participate. (i) *Facts.* FS is a controlled foreign corporation organized in Country M, a country that imposes a 0% effective rate of tax on sales income. FS operates two branches, Branch A and Branch B, located respectively in Country A, a country that imposes a 30% effective rate of tax on income, and Country B, a country that imposes a 0% effective rate of tax on income. Branch A and Branch B each perform different activities with respect to the manufacture of Product X. Branch A, through the activities of a large number of its employees working at a state of the art facility, expends significant time and resources to design a sophisticated product, Product X. Branch B, through the activities of its employees, purchases raw materials from a related person and contracts with CM, an unrelated corporation located in Country C, to manufacture Product X. The raw materials are then manufactured (under the principles of paragraph (a)(4)(iii) of this section) into Product X by CM. Branch A, through the activities of its employees, directs the use of intellectual property it developed, including product designs, to provide quality control and oversight to CM with respect to the manufacture of Product X. Branch B controls the raw materials, work in process, and the finished Product X. Branch B manages the risk of loss with respect to Product X throughout the manufacturing process. Branch B also controls logistics and selects vendors in connection with Product X. Branch B then sells Product X to unrelated persons for use, consumption or disposition outside of Country M. FS (including Branch A and Branch B) provides a substantial contribution within the meaning of paragraph (a)(4)(iv) of this section with respect to the manufacture of Product X. FS does not provide a contribution to the manufacture of Product X through employees located in Country M.

(ii) *Result.* Based on the facts, neither Branch A nor Branch B provides the predominant amount of FS's contribution to the manufacture of Product X. Further, Branch A and Branch B each provide a contribution through the activities of its employees to the manufacture of Product X. Accordingly, paragraph (b)(1)(ii)(*b*) of this section is applied by comparing the effective rate of tax imposed on the income from the sales of Product X against the effective rate of tax that would apply to the sales income in Branch A, which is located in the jurisdiction that would impose the highest effective rate of tax on the sales income (30%). Because the effective rate of tax in Country B with respect to the sales income (0%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (30%), the seller, Branch B, is treated as selling on behalf of Branch A, which is treated as the remainder of FS pursuant to paragraph (b)(1)(ii)(*c*) of this section. Further, for purposes of determining whether the remainder of FS qualifies for any exception from foreign base company sales income, Branch B, treated as the remainder of FS, includes any branch or remainder of FS that would not, after the application of paragraph (b)(1)(ii)(*b*) of this section to such branch or (b)(1)(i)(*b*) of this section to such remainder of FS, be treated as a separate corporation. In this case, the effective rate of tax (0%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (30%), but not country M (0%). Therefore, for purposes of determining foreign base company sales income, Branch B, treated as the remainder of FS, does not include the activities of Branch A, but does include the activities of the remainder of FS located in Country M. However, since the remainder of FS in Country M does not perform any activities related to the manufacture of Product X, the inclusion of the remainder of FS does not qualify Branch B for any exception from foreign base company sales income. Since the location of manufacturing of Product X is considered to be the location of Branch A rather than Branch B, Branch B, treated as the remainder of FS, does not qualify for the manufacturing exception from foreign base company sales income contained in paragraph (a)(4) of this section. Since the sale of Product X is for use, consumption, or disposition outside of Country B, the income from the sale of Product X is foreign base company sales income.

Example 6. Multiple branches contribute to the manufacture of a single product, the selling branch is located in the higher tax jurisdiction, the remainder of the controlled foreign corporation does not participate. (i) *Facts.* Assume the same facts as in *Example 5* except that Branch B rather than Branch A is located in the jurisdiction that would impose the higher effective rate of tax on income from the sales of Product X.

(ii) *Result.* Based on the facts, neither Branch A nor Branch B provides the predominant amount of FS's contribution to the manufacture of Product X. Since Branch B is located in the jurisdiction that would impose the higher effective rate of tax on income from the sale of Product X, Branch B is considered to be the location of manufacturing of Product X for purposes of applying paragraph (b) of this section. Because all of the income from the sale of Product X is already taxed in Country B, the use of Branch B is not treated as having substantially the same tax effect as if Branch B were a wholly owned subsidiary corporation of FS, and therefore Branch B and the remainder of FS are not treated as separate corporations under paragraph (b)(1)(ii)(*a*) of this section for purposes of determining foreign base company sales income.

(2) * * *

(i) * * *

(*b*) *Activities treated as performed on behalf of the remainder of corporation.* With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will—

(*1*) With respect to personal property manufactured, produced, constructed, grown, or extracted by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation); or

(*2*) With respect to personal property (other than property described in paragraph (b)(2)(i)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.

(ii) * * *

(a) *Treatment as separate corporations.* * * * For purposes of applying the rules of this paragraph (b)(2)(ii), a branch or similar establishment of a controlled foreign corporation treated as a separate corporation purchasing or selling on behalf of the remainder of the controlled foreign corporation under paragraph (b)(2)(ii)(*b*) of this section, or the remainder of the controlled foreign corporation treated as a separate corporation purchasing or selling on behalf of a branch or similar establishment of the controlled foreign corporation under paragraph (b)(2)(ii)(*c*) of this section, will exclude any other branch or similar establishment or

remainder of the controlled foreign corporation that would be treated as a separate corporation (apart from the branch or similar establishment of a controlled foreign corporation that is treated as a separate purchasing or selling corporation under paragraph (b)(2)(ii)(*b*) of this section or the remainder of the controlled foreign corporation that is treated as a separate purchasing or selling corporation under paragraph (b)(2)(ii)(*c*) of this section) if the effective rate of tax imposed on the income of the purchasing or selling branch or similar establishment, or purchasing or selling remainder of the controlled foreign corporation, were tested against the effective rate of tax that would apply to such income if it were earned in the jurisdiction of such other branch or similar establishment or the remainder of the controlled foreign corporation under § 1.954–3(b)(1)(i)(*b*) or (ii)(*b*) of this section.

(*b*) *Activities treated as performed on behalf of the remainder of corporation.*

With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will—

(*1*) With respect to personal property manufactured, produced, constructed, grown, or extracted by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation); or

(*2*) With respect to personal property (other than property described in paragraph (b)(2)(ii)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.

(*c*) *Treatment of the use of a manufacturing branch by a controlled foreign corporation*—(*1*) *Activities treated as performed on behalf of branch.* * * *

(*2*) *Presumption where a controlled foreign corporation claims to satisfy the substantial contribution test and its own branch satisfies the physical manufacturing test.* If a branch or similar establishment is considered to manufacture, produce, or construct an item of personal property under paragraph (a)(4)(ii) or (a)(4)(iii) of this section, the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation) will be presumed not to manufacture, produce, or construct that same item of personal property under paragraph (a)(4)(iv) of this section (even if it would have otherwise satisfied paragraph (a)(4)(iv) of this section with respect to such property). However, if a controlled foreign corporation demonstrates, to the satisfaction of the Commissioner, that the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation) makes a substantial contribution to the manufacture of that item of personal property within the meaning of paragraph (a)(4)(iv) of this section, then the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), if treated as a separate corporation apart from its manufacturing branch under paragraph (b)(2)(ii)(*a*) of this section, will be considered to manufacture, produce, or construct that item of personal property under paragraph (a)(4)(iv) of this section. The application of this paragraph (b)(2)(ii)(*c*)(*2*) may be illustrated by the following examples:

Example 1. Manufacturing branch, paragraph (b)(1)(ii)(b) satisfied. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, a country that imposes a 0% effective rate of tax on sales income, purchases raw materials from a related person. FS has one branch, Branch A, organized in Country A, a country that imposes a 30% effective rate of tax on sales income. The raw materials are manufactured (within the meaning of paragraph (a)(4)(iii) of this section) into Product X by Branch A. FS sells Product X for use, consumption, or disposition outside of Country M. Absent the application of paragraph (b)(2)(ii)(c)(2) of this section, the remainder of FS would also be considered a manufacturer of Product X under paragraph (a)(4)(iv) of this section. FS proves to the satisfaction of the Commissioner that the remainder of FS makes a substantial contribution to the manufacture of Product X.

(ii) *Result.* Since the effective rate of tax (0%) imposed on the sales income is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the jurisdiction of Branch A (30%), the seller, the remainder of FS is treated as a separate corporation selling on behalf of Branch A. The remainder of FS (not including Branch A) does not satisfy paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. If the manufacturing activities undertaken with respect to Product X between the time the raw materials were purchased and the time Product X was sold were undertaken by the remainder of FS (not including Branch A) through the activities of its employees, the remainder of FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(iii) of this section with respect to Product X. Therefore, paragraph (a)(4)(iv) of this section applies. Because FS has successfully rebutted the presumption of paragraph (b)(2)(ii)(*c*)(*2*) of this section by proving to the satisfaction of the Commissioner that the remainder of FS makes a substantial contribution to the manufacture (within the meaning of paragraph (a)(4)(iv) of this section) of Product X, it qualifies for the exception in paragraph (a)(4)(iv) of this section with respect to Product X. Therefore income from the sale of Product X, when treated as sold by the remainder of FS on behalf of Branch A, is not determined to be foreign base company sales income.

Example 2. Manufacturing branch, paragraph (b)(1)(ii)(b) is not satisfied. (i) *Facts.* Assume the same facts as in *Example 1,* except that Branch A is located in Country B, a country that imposes a 3% rate of tax on sales income.

(ii) *Result.* Paragraph (b)(1)(ii)(*b*) of this section is not satisfied, because the effective rate of tax imposed on the sales income in Country M (0%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the jurisdiction of Branch A (3%). Therefore, Branch A is not treated as a separate corporation for purposes of determining foreign base company sales income. FS qualifies for the manufacturing exception in paragraph (a)(4) of this section because FS (including Branch A) satisfies paragraph (a)(4)(iii) of this section with respect to income from the sales of Product X.

* * * * *

(*e*) *Comparison with ordinary treatment.* With the exception of cases in which a controlled foreign corporation seeks to rely on paragraph (a)(4)(iv) of this section and is unsuccessful in rebutting the presumption created by paragraph (b)(2)(ii)(*c*)(*2*) of this section, income derived by a branch or similar establishment, or by the remainder of the controlled foreign corporation, will not be determined to be foreign base company sales income under paragraph (b) of this section if the income would not be so considered if it were derived by a separate controlled foreign corporation under like circumstances.

* * * * *

(4) * * *

Example 3. (i) *Facts.* Corporation E, a controlled foreign corporation incorporated under the laws of foreign Country X, is a wholly owned subsidiary of Corporation D, also a controlled foreign corporation incorporated under the laws of Country X. Corporation E maintains Branch B in foreign Country Y. Both corporations use the calendar year as the taxable year. In 1964, Corporation E's sole activity, carried on through Branch B, consists of the purchase of articles manufactured in Country X by Corporation D, a related person, and the sale of the articles through Branch B to unrelated persons. 100 percent of the articles sold through Branch B are sold for use outside Country X and 90 percent are also sold for use outside of Country Y. The income of Corporation E derived by Branch B from such transactions is taxed to Corporation E by Country X only at the time Corporation E

distributes such income to Corporation D and is then taxed on the basis of what the tax (a 40 percent effective rate) would have been if the income had been derived in 1964 by Corporation E from sources within Country X from doing business through a permanent establishment therein. Country Y levies an income tax at an effective rate of 50 percent on income derived from sources within such Country, but the income of Branch B for 1964 is effectively taxed by Country Y at a 5 percent rate since under the laws of such country, only 10 percent of Branch B's income is derived from sources within such country. Corporation E makes no distributions to Corporation D in 1964.

(ii) *Result.* In determining foreign base company sales income of Corporation E for 1964, Branch B is treated as a separate wholly owned subsidiary corporation of Corporation E, the 5 percent rate of tax being less than 90 percent of, and at least 5 percentage points less than the 40 percent rate. Income derived by Branch B, treated as a separate corporation, from the purchase from a related person (Corporation D), of personal property manufactured outside of Country Y and sold for use, disposition, or consumption outside of Country Y constitutes foreign base company sales income. If, instead, Corporation D were unrelated to Corporation E, none of the income would be foreign base company sales income because Corporation E would be purchasing from and selling to unrelated persons and if Branch B were treated as a separate corporation it would likewise be purchasing from and selling to unrelated persons. Alternatively, if Corporation D were related to Corporation E, but Branch B manufactured the articles prior to sale under the principles of paragraph (a)(4)(iv) of this section in conjunction with the manufacture of the articles (within the meaning of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) by an unrelated contract manufacturer, then the income would not be foreign base company sales income because Branch B, treated as a separate corporation, would qualify for the manufacturing exception under paragraph (a)(4)(i) of this section.

* * * * *

(d) *Effective/applicability date.* The second sentence of paragraph (a)(1)(i), the second sentence of paragraph (a)(1)(iii) *Example 1,* the first sentence of paragraph (a)(1)(iii) *Example 2,* the third sentence of paragraph (a)(2), paragraph (a)(4)(i), the first sentence of paragraph (a)(4)(ii), the first sentence of paragraph (a)(4)(iii), paragraph (a)(4)(iv), the last sentence of paragraph (a)(6), the last sentence of paragraph (b)(1)(ii)(*a*), paragraph (b)(1)(ii)(*c*)(*2*), paragraph (b)(1)(ii)(*c*)(*3*), paragraph (b)(2)(i)(*b*), the last sentence of paragraph (b)(2)(ii)(*a*), paragraph (b)(2)(ii)(*b*), paragraph (b)(2)(ii)(*c*)(*2*), paragraph (b)(2)(ii)(*e*), and paragraph (b)(4) *Example 3* shall apply to taxable years of controlled foreign corporations beginning on or after the date these rules are published as final regulations in the **Federal Register**, and for taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–3557 Filed 2–27–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management for Cape Hatteras National Seashore

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice of third, fourth, and fifth meetings.

SUMMARY: Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the third, fourth, and fifth meetings of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore. (See **DATES** section.)

DATES: The Committee will hold its third meeting on March 18–19, 2008, from 8 a.m. to 5:30 p.m. on March 18, and from 8 a.m. to 4 p.m. on March 19. The meetings on both days will be held at the Avon Fire Hall, 40159 Harbor Drive, Avon, North Carolina 27915. The Committee will hold its fourth meeting on May 8–9, 2008, from 8 a.m. to 5:30 p.m. on May 8, and from 8 a.m. to 4 p.m. on May 9. The meetings on both days will be held at the Comfort Inn Oceanfront South, 8031 Old Oregon Inlet Road, Nags Head, NC 27959. The Committee will hold its fifth meeting on June 17–18, 2008, from 8 a.m. to 5:30 p.m. on June 17, and from 8 a.m. to 4 p.m. on June 18. The meetings on both days will be held at the Comfort Inn Oceanfront South, 8031 Old Oregon Inlet Road, Nags Head, NC 27959.

These, and any subsequent meetings, will be held for the following reason: To work with the National Park Service to assist in potentially developing special regulations for ORV management at Cape Hatteras National Seashore.

The proposed agenda for the third, fourth, and fifth meetings of the Committee may contain the following items: Approval of Meeting Summary from Last Meeting, Subcommittee and Members' Updates since Last Meeting, Alternatives Discussions, NEPA Update, and Public Comment. However, the Committee may modify its agenda during the course of its work. The meetings are open to the public. Interested persons may provide brief oral/written comments to the Committee during the public comment period of the meetings each day before the lunch break or file written comments with the Park Superintendent.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954, (252) 473–2111, ext. 148.

SUPPLEMENTARY INFORMATION: The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) at Cape Hatteras National Seashore (Seashore). Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the NPS published a general regulation at 36 CFR 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR § 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the **Federal Register**, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

Dated: February 15, 2008.

Michael B. Murray,

Superintendent, Cape Hatteras National Seashore.

[FR Doc. E8–3819 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–X6–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2007–1157; FRL–8532–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Definition of Volatile Organic Compound (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. The revisions update the SIP's reference to the EPA definition of ''Volatile organic compounds (VOC).'' In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number R03–OAR–2007–1157 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: frankford.harold@epa.gov*

C. *Mail:* EPA–R03–OAR–2007–1157, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–1157. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: February 12, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–3396 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1169; FRL–8532–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of establishing administrative amendments to the Commonwealth regulation governing source-specific nitrogen oxides (NO_X) reasonable available control technology (RACT). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 31, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–1169 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–1169, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–

1169. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Virginia's Amendments to Existing Regulation Provisions Concerning Reasonably Available Control Technology, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 12, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–3389 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–42; FCC 07–208]

Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the application of the Commission's revised leased access rate methodology and maximum allowable leased access rate to programmers that predominantly transmit sales presentations or program length commercials.

DATES: Comments for this proceeding are due on or before March 31, 2008; reply comments are due on or before April 14, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–42, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (*NPRM*), contained in MB Docket No. 07–42, FCC 07–208, adopted on November 27, 2007, and released on February 1, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), Public Law No. 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.), and contains no proposed new or modified information collection requirements. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002 (''SBPRA''), Public Law No. 107–198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

Summary of Notice of Proposed Rulemaking

I. Application of Leased Access Rules to Certain Programmers

1. The commercial leased access requirements are set forth in Section 612 of the Communications Act of 1934, as amended. The statute and corresponding leased access rules require a cable operator to set aside channel capacity for commercial use by unaffiliated video programmers. The purposes of Section 612 are ''to promote competition in the delivery of diverse

sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.'' In Report and Order, FCC 07–208, the Commission modified the leased access rate methodology but did not apply the changes to rates charged to programmers that predominantly transmit sales presentations or program length commercials. These direct sales programmers often ''pay'' for carriage—either directly or through some form of revenue sharing with the cable operator. In this Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on whether the new methodology should be applied to the rates charged to programmers that predominantly transmit sales presentations or program length commercials.

2. In the Report and Order, the Commission modified the method for determining the leased access rate for full-time carriage on a tier and harmonized the rate methodology for carriage on tiers with more than 50% subscriber penetration and carriage on tiers with lower levels of penetration by calculating the leased access rate based upon the characteristics of the tier on which the leased access programming will be placed. Cable operators will calculate a leased access rate for each cable system on a tier-by-tier basis which will adequately compensate the operator for the net revenue that is lost when a leased access programmer displaces an existing program channel on the cable system. The Report and Order adopted a methodology to determine the ''marginal implicit fee'' rather than the ''average implicit fee'' in calculating leased access rates. The ''average implicit fee'' is calculated based on the average value of all of the channels in a tier instead of the value of the channels most likely to be replaced. The revised methodology eliminates this excess recovery. In addition, the Report and Order set a maximum allowable leased access rate of $0.10 per subscriber per month to ensure that leased access remains a viable outlet for programmers.

3. The Commission concluded not to apply the new rate methodology to programmers that predominantly transmit sales presentations or program length commercials. These programmers often ''pay'' for carriage—either directly or through some form of revenue sharing with the cable operator. Previously to the Report and Order, the Commission set the leased access rate for a la carte programmers at the ''highest implicit fee'' partly out of a concern that lower rates would simply lead these programmers to migrate to leased access if it were less expensive than what they are currently ''paying'' for carriage. Such a migration would not add to the diversity of voices and would potentially financially harm the cable system. The a la carte rate remains unchanged. Similarly, the Commission does not wish to set the leased access rates at a point at which programmers that predominantly transmit sales presentations or program length commercials simply migrate to leased access because it is less expensive than their current commercial arrangements. The Commission seeks on whether leased access is affordable at current rates to programmers that predominantly transmit sales presentations or program length commercials and whether reduced rates would simply cause migration of existing services to leased access.

4. The Commission is concerned about setting the leased access rates at a point at which programmers that predominantly transmit sales presentations or program length commercials simply migrate to leased access because it is less expensive than their current commercial arrangements. Accordingly, the Commission seeks comment regarding the use of leased access by programmers that predominantly transmit sales presentations and program length commercials. Specifically, is leased access affordable to these programmers at current rates? Will applying the modified rate formula discussed previously in this Report and Order cause migration of existing services to leased access? What would be the effect of such a migration? Is a separate category for direct sales programmers appropriate?

II. Procedural Matters

A. Ex Parte Rules

5. *Permit-But-Disclose.* The *NPRM* in this proceeding will be treated as ''permit-but-disclose'' subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

B. Filing Requirements

6. *Information.* For additional information on this proceeding, contact Katie Costello, *Katie.Costello@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

7. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of

the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

• *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

8. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bill.cline@fcc.gov*. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com;* or via their Web site at *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

C. Initial Paperwork Reduction Act of 1995 Analysis

9. The FNPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), Public Law No. 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.) and contains no proposed new or modified information collection requirements. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002 (''SBPRA''), Public Law No. 107–198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

III. Initial Regulatory Flexibility Analysis

10. The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities of the proposals addressed in the FNPRM Initial Regulatory Flexibility Analysis.

11. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA'') the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (''FNPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

12. *Overview.* The commercial leased access requirements set forth in Section 612 of the Communications Act of 1934 require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the cable operator. The purposes of Section 612 are ''to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.''

13. In the Report and Order in MB Docket No. 07–42, the Commission modified its formula used to calculate commercial leased access rates, which will result in making leased access channels a more viable outlet for leased access programming. The Order also provides that the maximum leased access rate will not exceed $0.10 per subscriber per month for any cable system. The Order, however, did not apply the modified rate formula or the maximum allowable leased access rate to programmers that predominantly transmit sales presentations or program length commercials. These direct sales programmers often ''pay'' for carriage—either directly or through some form of revenue sharing with the cable operator.

14. In the FNPRM, the Commission notes its concern about setting the leased access rates at a point at which programmers that predominantly transmit sales presentations or program length commercials simply migrate to leased access because it is less expensive than their current commercial arrangements. Accordingly, the FNPRM considers whether leased access at current rates is affordable to programmers that predominantly transmit sales presentations and program length commercials. The FNPRM considers whether applying the modified leased access rate formula to programmers that predominantly transmit sales presentations or program length commercials will cause migration of these services to leased access. If these services do migrate to leased access, the FNPRM considers the effect of such a migration. The FNPRM also considers whether a separate category for direct sales programmers is appropriate.

15. In the FNPRM, the Commission seeks comment on the foregoing issues. In particular, the FNPRM invites comment on issues that may impact small entities, including cable operators and leased access programmers.

B. Legal Basis

16. The authority for the action proposed in the rulemaking is contained in Section 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532.

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

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

18. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' (2007 NAISC code 517110) to include the following three classifications which were listed separately in the 2002 NAICS: Wired Telecommunications Carriers (2002 NAICS code 517110), Cable and Other Program Distribution (2002 NAISC code 517510), and Internet Service Providers (2002 NAISC code 518111). The 2007 NAISC defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all firms having 1,500 employees or less. According to Census Bureau data for 2002, there were a total of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC code 517110) that operated for the entire year; 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC code 517510) that operated for the entire year; and 3,408 firms in the Internet Service Providers category (2002 NAISC code 518111) that operated for the entire year. Of these totals, 25,374 of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC code 517110) had less than 100 employees; 5,496 of 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC code 517510) had less than 100 employees; and 3,303 of the 3,408 firms in the Internet Service Providers category (2002 NAISC code 518111) had less than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

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

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

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

22. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, three operators provide DBS service, which requires a great investment of capital for operation: DIRECTV, EchoStar (marketed as the DISH Network), and Dominion Video Satellite, Inc. (''Dominion'') (marketed

as Sky Angel). All three currently offer subscription services. Two of these three DBS operators, DIRECTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion's Sky Angel service, serves fewer than one million subscribers and provides 20 family and religion-oriented channels. Dominion does not report its annual revenues. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we recognize the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

23. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are approximately 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs may qualify as small entities.

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

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

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

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

28. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to LMDS. The Commission has also defined small LMDS entities in the context of Commission license auctions. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the

previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

29. *Open Video Systems (''OVS'').* The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $ 13.5 million or less in annual receipts. The Commission has approved approximately 120 OVS certifications with some OVS operators now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority. As of June 2005, RCN Corporation is the largest BSP and 14th largest MVPD, serving approximately 371,000 subscribers. RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. 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.

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

31. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 7,772 firms in this category that operated for the entire year. Of this total, 7,685 firms had annual receipts of under $24,999,999 and 45 firms had annual receipts of between $25,000,000 and $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated.

32. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $27 million or less in annual receipts. According to Census Bureau data for 2002, there were 377 firms in this category that operated for the entire year. Of this total, 365 firms had annual receipts of under $24,999,999 and 7 firms had annual receipts of between $25,000,000 and $49,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small. Each of these NAICS categories is very broad and includes firms that may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms exclusively produce and/or distribute programming for cable television or how many are independently owned and operated.

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

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

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

fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

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

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

37. The rules ultimately adopted as a result of this FNPRM may contain new or modified information collections. We anticipate that none of the changes would result in an increase to the reporting and recordkeeping requirements of small entities. We invite small entities to comment in response to the FNPRM.

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

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

39. In response to the FNPRM, the Commission may choose to continue to apply its current leased access rates to programmers that predominantly transmit sales presentations or program length commercials; it may choose to apply the modified rate formula and the maximum allowable leased access rate of $0.10 per subscriber per month to these programmers; or it may adopt an alternative approach. We invite comment on the options the Commission is considering, or alternatives thereto as referenced above, and on any other alternatives commenters may wish to propose for the purpose of minimizing any significant economic impact on smaller entities.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

40. None.

IV. Additional Information

41. For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov;* or Katie Costello, *Katie.Costello@fcc.gov;* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

42. Accordingly, *it is ordered,* pursuant to the authority found in sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 532, this *Notice of Proposed Rulemaking Is Adopted.*

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 08–871 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 40

Thursday, February 28, 2008

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0118]

Imported Fire Ant; Availability of a Final Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a final environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release into areas quarantined for imported fire ant of five additional species of phorid flies for use as biological control agents. The final environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the release of these biological control agents. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Quarantine Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant (*Solenopsis invicta* Buren, *Solenopsis richteri* Forel, and hybrids of these species) is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant, which is not native to the United States, feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10 and referred to below as the regulations) are intended to prevent the imported fire ant from spreading throughout its ecological range within the country. The regulations quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

In addition to the movement restrictions in the regulations, the Animal and Plant Health Inspection Service (APHIS) and its State cooperators release three species of phorid flies (*Pseudacteon* species), a natural enemy of the imported fire ant, into quarantined areas. These flies parasitize the imported fire ant, killing those that are parasitized. Those ants that are not parasitized are affected behaviorally by the presence of the flies because their presence reduces fire ant foraging. A decrease in foraging activity facilitates competition from native fire ants that might otherwise be excluded from food sources in fire ant territory.

On November 13, 2007, we published in the **Federal Register** (72 FR 63874, Docket No. APHIS–2007–0118) a notice [1] in which we announced the availability for review and comment of a draft environmental assessment, entitled ''Field Release of Phorid Flies (*Pseudacteon* species) for the Biological Control of Imported Fire Ants'' (July 2007), that examined the potential environmental impacts associated with releasing five additional species of phorid flies into areas quarantined for imported fire ant within the Commonwealth of Puerto Rico and the following States: Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

We solicited comments on the draft environmental assessment for 30 days ending December 13, 2007. We received one comment by that date, from a private citizen, but the commenter did not address the action examined in the assessment (namely, the release of the additional species of phorid flies).

In this document, we are advising the public of our decision and finding of no significant impact regarding the release of five additional species of phorid flies for the biological control of imported fire ants. Accordingly, we are also advising the public that we have adopted the draft environmental assessment, without change, as a final environmental assessment entitled ''Field Release of Phorid Flies (*Pseudacteon* species) for the Biological Control of Imported Fire Ants'' (January 2008).

The final environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site [2] or in our reading room at USDA, Room 1141, South Building, 14th Street and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays. Persons wishing to view the final environmental assessment and finding of no significant impact are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may request paper copies of the final environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the final environmental assessment when requesting copies.

The final environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 22nd day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–3809 Filed 2–27–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the environmental assessment, the finding of no significant impact, and the comment we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0118.*

[2] See footnote 1.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program Repayment Demand and Program Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice invites the general public and other public agencies to comment on proposed information collections. This Notice of Proposed Information Collection announces the intent of the Food and Nutrition Service (FNS) to request a revision for the information collection requirements associated with initiating collection actions against households who have received an overissuance in the Food Stamp Program. In addition, this Notice announces FNS' intent to request a revision of OMB approval for the information collection requirements associated with intentional Program violation determinations.

DATES: Written comments must be submitted on or before April 28, 2008 to be assured consideration.

ADDRESSES: Send comments to Jane Duffield, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: For initiating collection action, contact Dawn Washington at (703) 305–2450. For Intentional Program Violation (IPV) determination, contact Greg Fortine at (703) 305–2401.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Repayment Demand and Program Disqualification.

OMB Number: 0584–0492.

Form Number: None.

Expiration Date: April 30, 2008.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(b)), and Food Stamp Program (FSP) regulations at 7 CFR 273.18 require State agencies to initiate collection action against households that have been overissued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the household of the claim and demanding repayment. This process is automated in most State agencies. For initiating collection action on an overissuance, we are decreasing the estimated annual reporting and recordkeeping burden for State agencies and households from 166,329 hours to 135,393. The reason for the decrease is to reflect the lower number of claims that were established in fiscal year (FY) 2006.

Note that for recipient claims, this **Federal Register** Notice only covers the reporting and recordkeeping burden for initiating collection action. The burden associated with reporting collections and other claims management information on the FNS–209 report is covered under currently approved OMB number 0584–0069. The burden associated with referring delinquent claims and receiving collections through the Treasury Offset Program is covered under currently approved OMB number 0584–0446.

FSP regulations at 7 CFR 273.16 require State agencies to investigate any case of suspected fraud and, where applicable, make an intentional program violation (IPV) determination either administratively or judicially. Notifications and activity involved in the IPV process include:

- The State agency providing written notification informing an individual suspected of committing an IPV of an impending administrative disqualification hearing or court action.
- An individual opting to accept the disqualification and waiving the right to an administrative disqualification hearing or court action by signing either a waiver to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication.
- Once a determination is made regarding an IPV, the State agency sends notification to the affected individual of the action taken on the administrative disqualification hearing or court decision.

Despite an increase in FSP participation, IPV activity has experienced a decline. Therefore, we are decreasing the State agency and household annual reporting and recordkeeping burden for the activities related to IPV disqualifications from 38,435 hours to 11,045 hours.

One of the factors used by a State agency to determine the appropriate disqualification penalty to assign to an individual is whether or not the individual was found to have committed any prior IPVs. The way that State agencies determine this is by accessing and checking the Electronic Disqualified Recipient Subsystem (eDRS). eDRS is an automated system developed by FNS that contains records of disqualifications in every State. State agencies are responsible for updating the system and checking it to determine the appropriate length of each disqualification. An estimate of the annual burden associated with the eDRS process reflects a decrease from 7,418 to 5,563 hours per year.

Summary of Estimated Burden

The net aggregate change from the existing to the proposed annual burden for this collection is a reduction of 30,936 hours, from the currently approved burden of 166,329 hours. For initiating collection action on an overissuance, we are decreasing the estimated annual burden for State agencies and households from 142,510 hours to 118,786 hours to reflect the lower number of claims established in FY 2006. The IPV-related State agency and household annual burden, has decreased from 16,401 hours to 11,044 hours to reflect the lower number of disqualifications. An estimate of the annual burden associated with the eDRS process reflects a total decrease from 7,418 to 5,563 hours per year. Adjustments have been made to the burden to include requirements not previously identified, burden identified incorrectly, and corrections made in the calculations of the number of responses and hours per response.

Affected Public: State and local government, and food stamp households.

Estimated Number of Respondents: 556,053.

Number of Responses per Respondent: 2.53.

Total Number of Annual Responses: 1,404,718.

Estimated Time per Response: 0.09.

Estimated Total Annual Burden: 135,393.

Dated: February 22, 2008.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E8–3750 Filed 2–27–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; Big Bend Ridge Vegetation Management Project and Timber Sale Supplemental Environmental Impact Statement and Proposed Targhee Forest Plan Amendment

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare a supplemental environmental impact statement that was published on May 30, 2007, on page 29948 of the **Federal Register**.

SUMMARY: After review of the proposal and public comments on the project the Caribou-Targhee National Forest has decided not to prepare a Supplemental Environmental Impact Statement for the Big Bend Ridge Vegetation Management Project and Timber Sale and the associated Targhee Forest Plan amendment at this time. The Forest will propose to amend the Targhee Revised Forest Plan under a separate proposal in the near future.

DATES: Effective cancellation of this project upon the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robbin Redman at the Caribou-Targhee National Forest at 1405 Hollipark Drive, Idaho Falls, ID 83401 or via telephone at (208) 557–5821.

Dated: February 20, 2008.

Larry Timchak,

Forest Supervisor.

[FR Doc. 08–862 Filed 2–27–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra National Forest; California; Kings River Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the Kings River Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a supplement to the 2006 Kings River Project Final Environmental Impact Statement (FEIS). The supplement will be focused on new information and clarification, particularly related to Pacific fisher; a new multi-forest Land Management Plan Amendment regarding management indicator species; applicable suggestions in a new paper titled *An Ecosystem Management Strategy for Southern Sierra Mixed-Conifer Forests* by North, M., P. Stine, K. O'Hara, W. Zielinski and S. Stephens; and collaboration that may result in a change in the timing, description, and location of activities within the project area.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)4(4)). The draft supplement to the FEIS is expected to be issued in April 2008 and the final supplement to the FEIS is expected in July 2008. Comments on the draft supplement to the FEIS must be received by 45 days after publication.

ADDRESSES: Send written comments to Ray Porter, District Ranger, High Sierra Ranger District, PO Box 559, Prather, CA 93651, Attn: Kings River Project Supplement.

FOR FURTHER INFORMATION CONTACT: Ross Peckinpah, Kings River Project Coordinator, at the High Sierra Ranger District. Telephone number is (559) 855–5355 x3350. Information regarding the Kings River Project can be found on the Sierra National Forest Web site located at: *http://www.fs.fed.us/sierra/projects/*.

SUPPLEMENTARY INFORMATION:

Background

The Kings River planning area encompasses approximately 131,500 acres of public lands in two watersheds of the Kings River drainage. The northern edge of the project is located about two miles southeast of Shaver Lake, CA.

One hundred years of fire suppression in the Sierra Nevada has resulted in forests full of dead wood and thickly clustered trees. This situation, plus continued urbanization of lands adjacent to national forest lands, has put the forests and homes at risk of catastrophic fire. A FEIS was released in October of 2006 addressing the situation in the Kings River Project area that applied an uneven aged silvicultural system and prescribed fire upon eight units totaling 13,700 acres. On December 20, 2006 the Record of Decision (ROD) for the Kings River Project was signed. The decision was appealed and upheld by the Regional Forester. In May of 2007 a lawsuit was filed against the Forest Service that alleged the analysis conducted for the Kings River Project FEIS and ROD was inadequate. Since that time additional information has developed to help analyze effects of restoration projects on sensitive wildlife species like Pacific fisher. A new multi-forest Land Management Plan Amendment has also been issued regarding management indicator species. A new paper suggesting *An Ecosystem Management Strategy for Southern Sierra Mixed-Conifer Forests* by North, M., P. Stine, K. O'Hara, W. Zielinski and S. Stephens is about to be peer reviewed and published. Collaborative efforts with those who opposed this project and/or new information could change the timing, description, and location of activities within the project area that would require supplementing the FEIS and publishing a new ROD. As a result of this, the December 20, 2006 ROD was withdrawn.

Purpose and Need for Action

This supplement is focused on new information and clarification, particularly related to Pacific fisher; a new multi-forest Land Management Plan Amendment regarding management indicator species; applicable suggestions in a new paper titled *An Ecosystem Management Strategy for Southern Sierra Mixed-Conifer Forests* by North, M., P. Stine, K. O'Hara, W. Zielinski and S. Stephens; and ongoing collaboration so the purpose and need for action remain the same as was described in the 2007 Kings River Project FEIS. ''The underlying need for the proposed action is to restore historical pre-1850 forest conditions across a large landscape'' (Kings River Project FEIS pg. 1–4).

Proposed Action

The proposed action and all alternatives are expected to remain the same as was described in the 2007 Kings River Project FEIS. Three alternatives were analyzed in the FEIS to address the Purpose and Need: (1) The Proposed Action—including commercial tree harvest & thinning, underburning, reforestation, plantation maintenance, fuels treatments, watershed restoration projects, and herbicide treatments to plantations and noxious weeds, (2) No Action and (3) Reduction in Harvest Tree Size—limiting the vegetation treatments to trees 30″ diameter and

smaller; treatment of understocked areas associated with existing openings by site prep, planting and release. The alternatives and proposed action will be informed by the new information and could result in their modification.

Responsible Official

Ed Cole, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Ave., Clovis, CA 93612.

Commenting and Review

A draft supplement to the Kings River Project Environmental Impact Statement will be prepared for comment. The comment period will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The paragraphs that follow are standards that apply all EIS related actions including a supplement to a FEIS.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this supplement and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 22, 2008.

Edward C. Cole,

Forest Supervisor.

[FR Doc. E8–3772 Filed 2–27–08; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 13, 2008, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Public Session

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Report of 2008 Proposals.
4. Report on proposed changes to the Export Administration Regulations.
5. Other Business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be available to the public and a limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Yvette Springer at *yspringer@bis.doc.gov*.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Springer at *yspringer@bis.doc.gov* no later than March 6, 2008.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 21, 2008, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 25, 2008.

Teresa Telesco,

Acting Committee Liaison Officer.

[FR Doc. E8–3814 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on March 13, 2008 at 9 a.m. in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Opening Remarks and Introductions.
2. Presentation of Papers and Comments by the Public.
3. Review of 2008 Proposals.
4. Report on proposed changes to the Export Administration Regulation.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the

meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to Yvette Springer at *Yspringer@bis.doc.gov*.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than March 6, 2008.

For more information, please contact Ms. Springer at 202–482–2813.

Dated: February 21, 2008.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E8–3826 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Carbon and Certain Alloy Steel Wire Rod From Canada: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: February 28, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2007, the Department published the preliminary results of this administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Canada*, 72 FR 62816 (November 7, 2007) (Preliminary Results). This review covers Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario (a division of Sivaco Wire Group 2004 L.P.) (collectively referred to as ''Ivaco''), for the period October 1, 2005 to September 30, 2006. On November 29, 2007, we sent a supplemental questionnaire to Ivaco pertaining to the level of trade issue. Ivaco submitted its response on December 13, 2007. Petitioners (Mittal Steel USA Inc.—Georgetown, Gerdau USA Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries, Inc., and Rocky Mountain Steel Mills) provided comment on Ivaco's response on December 21, 2007. Ivaco responded to petitioners' comments on December 31, 2007. The Department extended the deadlines for case filing briefs and rebuttal briefs because of its request for new information after issuing its preliminary results. Ivaco and petitioners submitted their case briefs on January 23, 2008. Ivaco and petitioners submitted their rebuttal briefs on January 30, 2008. The final results are currently due not later than March 6, 2008.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results up to 180 days from the date of publication of the preliminary results.

We determine that it is not practicable to complete the final results of this review within current statutory limits. The Department requires additional time to evaluate the information submitted by parties after the preliminary results were published. Therefore, we are extending the deadline for the final results of this review by 60 days, until no later than May 5, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act.

Dated: February 21, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 08–870 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Notice of Postponement of Final Antidumping Duty Determination and Extension of Provisional Measures: Light-Walled Rectangular Pipe and Tube From Mexico

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

EFFECTIVE DATE: February 28, 2008.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, Patrick Edwards (PROLAMSA) or Judy Lao (Maquilacero), 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) 482–3019, (202) 482–8029, or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2007, the Department of Commerce (the Department) published the initiation of the antidumping duty investigations on imports of light-walled rectangular (LWR) pipe and tube from the Republic of Korea, Mexico, Turkey, and the People's Republic of China. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China,* 72 FR 40274 (July 24, 2007) (*Initiation Notice*). On January 30, 2008, the Department published its affirmative preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico,* 73 FR 5515 (January 30, 2008). This notice stated that the Department would issue its final determination no later than 75 days after the date on which the Department issued its preliminary determination.

Postponement of Final Determination

Section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) provide that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant portion of exports of the subject merchandise. Additionally, the Department's regulations, at 19 CFR

351.210(e)(2)(ii), require that a request by a respondent for postponement of a final determination be accompanied by a request for extension of the provisional measures from a four-month period to not more than six months.

On February 7, 2008, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), one of the two mandatory respondents, Maquilacero S.A. de C.V. (Maquilacero), requested that the Department: [1] (1) Postpone the final determination, and (2) extend the provisional measures period from four months to a period not longer than six months. Accordingly, pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant portion of exports of the subject merchandise in this investigation and it requested the extension of the provisional measures; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register** (*i.e.*, until no later than June 13, 2008). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to sections 735(a)(2) and 777(i)(1) of the Act and 19 CFR 351.210(g).

Dated: February 22, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–3786 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] Maquilacero stated in its February 7, 2008, letter that its counsel consulted with counsel for Productos Laminados de Monterrey, S.A. de C.V. (''Prolamsa'') and Prolamsa USA Inc., who consented to Maquilacero's request for postponement of the final determination.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF56

Marine Mammals; File No. 605–1904

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Whale Center of New England (Mason Weinrich, Principal Investigator), P.O. Box 159, Gloucester, MA 01930 has been issued a permit to conduct research on humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), and sei (*Balaenoptera borealis*) whales.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Jaclyn Daly, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 7, 2007, notice was published in the **Federal Register** (72 FR 10170) that a request for a scientific research permit to take humpback, fin, and sei whales had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 605–1904, issued to The Whale Center of New England, allows for the harassment of humpback, fin, and sei whales along the U.S. Atlantic coast to: 1) continue population monitoring; 2) determine whether humpback whale life history parameters change with their population status; 3) determine the importance of Jeffrey's Ledge as an aggregation area; 4) determine how humpback and fin whales relate to their prey and use the environment; 5) develop an aging technique from biopsy samples; and 6) determine the effect that prey resources have on the distribution, behavior and social organization of whales. The permit authorizes the close approach of 400 humpback, 250 fin, and 100 sei whales for vessel surveys, photo-identification, tracking, and incidental harassment annually. The permit also authorizes the biopsy sampling of 115 humpback, 95 fin, and 25 sei whales annually during such approaches. For humpback and fin whales, up to 20 samples for each species may be collected annually from young calves at least 3 months old. During approaches, researchers may suction-cup tag 40 humpback, 20 fin, and 25 sei whales greater than six months of age annually. The permit is issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 21, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–3838 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XF86

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Advisory Committee (OAC) will meet in Seattle, WA.

DATES: The meeting will be held on March 17, 2008, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 1055, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The OAC is meeting to review and provide final recommendations on a regulatory amendment package that will make technical and operational fixes to the North Pacific Groundfish Observer Program.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 25, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–3742 Filed 2–27–08; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Friday, March 7, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Clearing and Intermediary Oversight Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–897 Filed 2–26–08; 1:06 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: EIA is soliciting comments on a proposal to conduct a new survey titled ''Report of Refinery Outages.''

DATES: Comments must be filed by April 28, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Joanne Shore. To ensure receipt of the comments by the due date, submission by e-mail to *Joanne.Shore@eia.doe.gov* is recommended. Ms. Shore may be contacted by telephone at 202–586–4677 or facsimile at 202–586–9739; however, e-mail is the preferred medium for correspondence. The mailing address is: Petroleum Division (Attn: Comments on Report of Refinery Outages), EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Shore using the contact information listed above. An example of the information that may be reported on refinery outages is available on the EIA Web site at *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/eia810-part6-proposed-example.pdf*. The example is also available from Ms. Shore at the addresses listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near- and long-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Any comments received help EIA to prepare surveys that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, after considering any comments received, EIA may seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The purpose of the ''Report of Refinery Outages'' would be to collect data for each affected refinery unit regarding the unit type, the outage type (scheduled or unscheduled), the outage timing (beginning and ending dates), unit capacity, and the estimated effects of outages on output. The information would be collected as a new Part 6 on EIA's ''Monthly Refinery Report'' (Form EIA–810).

EIA would propose to collect both scheduled and unscheduled outage information for the report month, and scheduled outage information for the subsequent 12 months. For example, a company reporting data for February (Form EIA–810 for February is due to EIA by March 20 and statistics based on the reported data are published in April), would include information on both scheduled and unscheduled outages that occurred in February as well as information on outages scheduled for March 2008 through February 2009. Information to be reported would be limited to a minimum outage length, such as any outage lasting 5 days or more. The units for reporting would be: (1) Crude Distillation Unit, (2) Reformer Unit, (3) Fluid Catalytic Cracking Unit, (4) Alkylation Unit, (5) Distillate Hydrocracking Unit, (6) Gas Oil Hydrocracking Unit, (7) Residual Fuel Oil Hydrocracking Unit, (8) Gasoline Hydrotreater Unit, (9) Distillate Fuel Oil Hydrotreater Unit, and (10) Coking Unit.

EIA also proposes to require estimates of the outage impacts on net product output for gasoline, gasoline blending components, jet fuel, kerosene, and other distillates. Product impacts may result from several units being out at the same time. As a result, reporting of impacts might have to be organized by grouping overlapping unit outages into a single Outage Event, with estimated product impacts being recorded for the event in total. Generally, if unit outages did not overlap, each unit outage would be a separate event with its own product impacts. An example of the type of information that might be collected is shown on EIA's Web site at *http://www.eia.doe.gov/pub/oil_gas/petroleum/survey_forms/eia810-part6-proposed-example.pdf*.

Survey respondents would include all current EIA–810 respondents; i.e., the operators of all operating and idle petroleum refineries located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other U.S. possessions. Response to the survey would be mandatory pursuant to the Federal Energy Administration Act of 1974, Public Law 93–275.

The information collected would be processed and then disseminated in EIA's *Petroleum Supply Monthly*. The information would also be used in

reports to the Secretary of the Department of Energy as well as other government officials regarding refinery outages and the possible net effects on the supplies of specified major petroleum products (e.g., finished motor gasoline, motor gasoline blending components, jet fuel, kerosene, and other distillates).

The unit-level information collected from the refineries on outages would be considered as public information and would be releasable to the public in identifiable form. However, information on the projected effects of any outage on the net production of specific petroleum products would be treated as protected from public release given that it would be considered as trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Information on refinery outages and the possible effects on petroleum product supplies is essential to the mission of the DOE in general and EIA in particular. Currently, some private organizations collect and disseminate information on refinery outages.

Consideration of a proposal for EIA to collect refinery outage information was necessitated by requesters citing the important roles that petroleum product supplies and prices have in the U.S. economy and the potential significant effects of refinery outages. Public and private analysts who need information on scheduled outages and potential effects for planning and must rely on commercially available sources of information.

Form EIA–810 survey respondents would be expected to complete a new Part 6, ''Report of Refinery Outages,'' and submit it along with the existing Parts 1 through 5 each monthly. (The current Form EIA–810 and instructions are available at *http://www.eia.doe.gov/oil_gas/petroleum/survey_forms/pet_survey_forms.html*.)

II. Current Actions

EIA is considering collecting information each month on refinery outages for the reporting month (scheduled and unscheduled) and scheduled outages for the upcoming 12-month period. The information would be collected as a new Part 6 on Form EIA–810, ''Monthly Refinery Report.'' The information to be reported would include such items as affected units, type of outage, timing, unit capacities, and projected effects on the specified production of petroleum products. At this time, EIA is soliciting public comments on this proposal. At a later time, EIA may request approval from the Office of Management and Budget (OMB) to modify Form EIA–810 to add Part 6, ''Report of Refinery Outages.''

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

1. General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

C. Would one expect refiners to be able to estimate product impacts in a consistent manner that would provide meaningful, compatible estimates?

D. Given the currently available information from private organizations regarding refinery outages, please provide detailed reasons why any unit-level information collected from the refineries on outages should not be considered as public information and releasable to the public in identifiable form. Also, provide reasons why the information on the projected net effects on petroleum product supplies of any outage should not be treated as protected from public release considering it as trade secrets and commercial or financial information obtained from a person and privileged or confidential.

2. As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. What, if any, issues or potential questions should EIA address in the survey form and instructions for collecting information on the timing and projected effects of refinery outages?

C. Can the information be submitted monthly by the due date? (Form EIA–810 is due by the 20th calendar day of a month.)

D. Public reporting burden for the Form EIA–810 is currently 4 hours and 45 minutes per response. The addition of Part 6, ''Report of Refinery Outages,'' is expected to increase the monthly EIA–810 reporting burden by one hour to 5 hours and 45 minutes per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the survey form. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency or any private organization collect similar information? If so, specify the agency/organization, the data element(s), the methods of collection, and what additional value would be derived from EIA undertaking a collection of that information.

3. As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Will the information be useful at the levels of detail to be reported?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternative sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in any request for OMB approval of the collection of the information on refinery outages as a new part of Form EIA–810. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, February 22, 2008.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E8–3769 Filed 2–27–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–588–000; FERC–588]

Commision Information Collection Activities, Proposed Collection; Comment Request; Extension

February 21, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by April 28, 2008.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–588–000.

Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–588 ''Emergency Natural Gas Transportation, Sale and Exchange Transactions'' (OMB No. 1902–0144) is used by the Commission to implement the statutory provisions of Sections 7(c) of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. Under the NGA, a natural gas company must obtain Commission approval to engage in the transportation, sale or exchange of natural gas in interstate commerce. However, Section 7(c) exempts from certificate requirements ''temporary acts or operations for which the issuance of a certificate will not be required in the public interest.'' The NGPA also provides for non-certificated interstate transactions involving intrastate pipelines and local distribution companies.

A temporary operation, or emergency, is defined as any situation in which an actual or expected shortage of gas supply would require an interstate pipeline company, intrastate pipeline, or local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to the customer. The natural gas companies file the necessary information with the Commission so that it may determine if the transaction/operation qualifies for exemption. A report within forty-eight hours of the commencement of the transportation, sale or exchange, a request to extend the sixty-day term of the emergency transportation, if needed, and a termination report are required. The data required to be filed for the forty-eight hour report is specified by 18 CFR 284.270.

Action: The Commission is requesting a three-year approval of the collection of data. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of respondents annually (1)	Number of responses per resondent (2)	Average burden hours per respose (3)	Total annual burden hours (1)×(2)×(3)
8	1	10	80

The estimated total cost to respondents is $4,123.00 (80 hours divided by 2,080 hours per employee per year times $126,384 per year average salary per employee = $4,861.00 (rounded)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be

collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3724 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13084–000]

BPUS Generation Development LLC; Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

February 21, 2008.

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.:* 13084–000.

c. *Date filed:* December 18, 2007.

d. *Applicant:* BPUS Generation Development LLC.

e. *Name and Location of Project:* The proposed Emsworth Back Channel Dam Hydroelectric Project would be located on the Ohio River in Allegheny County, Pennsylvania. It would use the U.S. Army Corps of Engineers' Emsworth Back Channel Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *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–13084–000) 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.

j. *Description of Existing Facilities and Proposed Project:* The proposed project using the existing U.S. Army Corps of Engineers' Emsworth Back Channel Dam would consist of: (1) A new 200-foot long, 200-foot wide, 50-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the northern bank of the back channel, on Neville Island; (3) five turbine/generator units with a combined installed capacity of 32.7 megawatts; (4) a new 2.47-mile-long transmission line extending from the switchyard near the powerhouse to an interconnection point with an existing transmission line located southwest of the powerhouse; and (5) appurtenant facilities. The proposed project would have an average annual generation of 141.3 gigawatt-hours.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction 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 g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. E8–3725 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13094–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 22, 2008.

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.:* 13094–000.

c. *Date Filed:* January 9, 2008.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 13'' Project.

f. *Location:* The project would be located in a section of the Yukon River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

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–13094–000) 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 consists of: (1) 10 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 10 megawatts, (2) a proposed transmission line no greater than 2000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 65.745 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice 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 under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3759 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13095–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 22, 2008.

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.:* 13095–000.

c. *Date Filed:* January 9, 2008.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 36'' Project.

f. *Location:* The project would be located in a section of the Yukon River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

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–13095–000) 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 consists of: (1) 10 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 10 megawatts, (2) a proposed transmission line no greater than 2000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 65.745 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice 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 under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3760 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13096–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

February 22, 2008.

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.:* 13096–000.

c. *Date Filed:* January 9, 2008.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 18'' Project.

f. *Location:* The project would be located in a section of the Yukon River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue, #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

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–13096–000) 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 consists of: (1) 10 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 10 megawatts, (2) a proposed transmission line no greater than 2,000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 65.745 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice 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 under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3761 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1881–050]

PPL Holtwood, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

February 21, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to increase the installed capacity.

b. *Project No.:* 1881–050.

c. *Date Filed:* December 20, 2007, and supplemented on January 4 and February 20, 2008.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and e-mail: *linda.stewart@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 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.

The Commission's Rules of Practice and Procedure require all intervenors filling 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 Request:*

(i) *Amendment to Project Design:* PPL Holtwood proposes to increase the

installed capacity of the Holtwood Project by constructing a new powerhouse with two turbine generator units, installing two new generating units in the existing powerhouse, and refurbishing four generating units in the existing powerhouse (Units 1, 2, 4, and 7). The total installed capacity of the project would increase from 107.2 megawatts to 195.5 megawatts and the total hydraulic capacity of the project would increase from 31,500 cubic feet per second to approximately 61,460 cubic feet per second. PPL Holtwood also proposes to construct a new skimmer wall upstream of the powerhouses, and to perform excavation in the forebay to replace deteriorating infrastructure as well as enable flows to enter the new generating units. In order to improve fish passage at the project, PPL Holtwood proposes to: (1) Modify the existing fish lift; (2) reroute the discharge of Unit 1 in the existing powerhouse; and (3) excavate in the project tailrace and spillway. PPL Holtwood also proposes to implement additional measures to enhance migratory fish passage, provide for minimum flows, and perform studies and evaluations. PPL Holtwood requests the modification of license articles that are related to the above proposed design changes

(ii) *Extension of Term of License:* PPL Holtwood requests a 16-year extension of the current license term to September 1, 2030.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov*/docs-filing/esubscription.asp to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3726 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–76–000]

Northern Natural Gas Company; Prior Notice of Activity Under Blanket Certificate

February 22, 2008.

Take notice that on February 20, 2008 Northern Natural Gas Company (NNG) filed a prior notice request pursuant to Sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, and NNG's blanket certificate issued in Docket No. CP82–401–000 on September 1, 1982, for authorization to: Install approximately one mile of 36-inch mainline and approximately 3.67 miles of 6-inch branch line, including appurtenant facilities; and, uprate the maximum allowable operating pressures (MAOP) on three system branch lines, including appurtenant facilities on certain of the branch lines in conjunction with the MAOP uprate, all as more fully described in the application.

Any questions regarding the application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs for NNG, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

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 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 comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3757 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 21, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–628–001, ER07–629–001, ER07–630–001.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Services, Inc. on behalf of Entergy Arkansas Inc submits corrected Second Revised Sheet 49 et al to First Revised Rate Schedule 103 to comply with Order 614.

Filed Date: 02/15/2008.

Accession Number: 20080220–0036.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER07–671–005.

Applicants: Trigen-St. Louis Energy Corporation.

Description: Trigen-St. Louis Energy Corp submits a Supplement to its 1/14/08 filing of a notice of non-material change in status.

Filed Date: 02/15/2008.

Accession Number: 20080220–0078.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–283–001.

Applicants: New York Independent System Operator, Inc.

Description: New York ISO, Inc submits an errata to correct ministerial errors to the tariff sheets filed 11/30/07.

Filed Date: 02/14/2008.

Accession Number: 20080220–0037.

Comment Date: 5 p.m. Eastern Time on Thursday, March 06, 2008.

Docket Numbers: ER08–335–002.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits an amendment to FPL Rate Schedule FERC 312 which is in the Short Term Agreement for Partial Electric Requirements Services.

Filed Date: 02/15/2008.

Accession Number: 20080220–0038.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–455–000.

Applicants: PJM Interconnection, L.L.C.

Description: Motion to Intervene and Protest of Tenaska Power Services Co., The Tenaska Fund Parties, the Mirant Parties, Calpine Corporation, and LS Power Associates, L.P.

Filed Date: 02/15/2008.

Accession Number: 20080215–5106.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–509–000.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Company submits Transmission and Ancillary Services Wholesale Revenue Allocation Agreement with the Connecticut Light and Power Company.

Filed Date: 01/31/2008.

Accession Number: 20080204–0121.

Comment Date: 5 p.m. Eastern Time on Monday, March 3, 2008.

Docket Numbers: ER08–516–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the Reliability Pricing Model at section 510 et al of Attachment DD of the PJM OATT.

Filed Date: 02/14/2008.

Accession Number: 20080219–0094.

Comment Date: 5 p.m. Eastern Time on Thursday, March 06, 2008.

Docket Numbers: ER08–567–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a new Master Fringe Service Agreement with the City of Anaheim.

Filed Date: 02/15/2008.

Accession Number: 20080220–0040.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–568–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy on behalf of Northern States Power Co submits a Notice of Termination of the Transmission Capacity and Planning Agreement.

Filed Date: 02/15/2008.

Accession Number: 20080220–0041.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–569–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits revisions to its Credit Policy set forth in Attachment Q to the PJM OATT.

Filed Date: 02/15/2008.

Accession Number: 20080220–0042.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–570–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits revisions to the PJM Credit Policy Attachment Q of the PJM OATT, FERC Electric Tariff, Sixth Revised Volume No.1.

Filed Date: 02/15/2008.

Accession Number: 20080220–0043.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–571–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc et al jointly submit revised tariff sheets and supporting testimony.

Filed Date: 02/15/2008.

Accession Number: 20080220–0044.

Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–572–000.

Applicants: Entergy Services Inc.

Description: Entergy Services on behalf of Entergy Operating Companies submits amendments to the agreement executed on 11/17/06 with Southwest Power Pool Inc.

Filed Date: 02/15/2008.
Accession Number: 20080220–0045.
Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–573–000; ER08–574–000.
Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.
Description: Virginia Electric and Power Co submits revised Attachment H–16D to the OATT.
Filed Date: 02/15/2008.
Accession Number: 20080220–0203.
Comment Date: 5 p.m. Eastern Time on Friday, March 07, 2008.

Docket Numbers: ER08–509–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company submits Transmission and Ancillary Services Wholesale Revenue Allocation Agreement with the Connecticut Light and Power Company et al under ER08–509.
Filed Date: 01/31/2008.
Accession Number: 20080204–0121.
Comment Date: 5 p.m. Eastern Time on Thursday, February 21, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E8–3721 Filed 2–27–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–40–000]

Niagara Mohawk Power Corporation; Notice of Filing

February 21, 2008.

Take notice that on February 13, 2008, Niagara Mohawk Power Corporation d/b/a/ National Grid pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission filed a Petition for Declaratory Order. National Grid requests that the Commission issue a declaratory order directing the NYISO to revise the invoices for energy purchased in the NYISO market between March and August 2005 to eliminate the impact of late-introduced and erroneous consumption data that appeared late in the invoicing cycle.

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 email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 14, 2008.

Kimberly D. Bose,
Secretary.
[FR Doc. E8–3723 Filed 2–27–08; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–8–000; ER02–2001–000]

Revised Public Utility Filing Requirements, Electric Quarterly Reports; Supplemental Notice of Electric Quarterly Reports Technical Conference

February 21, 2008.

On January 7, 2008, the Commission issued a Notice of Electric Quarterly Reports (EQR) Technical Conference regarding recent changes associated with the EQR Data Dictionary. During the technical conference, Commission staff will review the EQR Data Dictionary and address questions from EQR users. An agenda for the conference is attached.

On September 24, 2007, the Commission issued Order No. 2001-G, the Electric Quarterly Report (EQR) Data Dictionary.[1] The Commission issued an order on rehearing, Order No. 2001-H, on December 21, 2007. These orders may be found at *http://elibrary.ferc.gov*.

The technical conference will be held Tuesday, February 26, 2008, in the

[1] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, Order No. 2001–G, 120 FERC ¶ 61,270 (Sep. 24, 2007), 72 Fed. Reg. 56735 (Oct. 4, 2007).

Commission Meeting Room at 888 First Street, NE., Washington, DC and via teleconference. The conference will run from 10 a.m. to 3 p.m. (EST).

All interested persons are invited to participate in the technical conference by attending in person or by dialing in. Those interested in participating are asked to register on the FERC Web site at *https://www.ferc.gov/whats-new/registration/eqr-02-26-form.asp*. Please indicate whether you will be attending in person or plan to dial in. There is no registration fee. Information and further details about the technical conference will be sent to registered participants.

For additional information, please contact Christie Kim of FERC's Office of Enforcement at (202) 502–8216 or by e-mail at *eqr@ferc.gov*.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. Requests for accessibility accommodations should be sent by e-mail to *accessibility@ferc.gov* or by calling toll free (866) 208–3372 (voice), 202–502–8659 (TTY), or by sending a fax to 202–208–2106.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3722 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–6–000]

Columbia Gas Transmission; Notice of Intent To Prepare an Environmental Assessment for the Planned Ohio Storage Expansion Project and Request for Comments on Environmental Issues

February 22, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Ohio Storage Expansion Project, involving construction and operation of natural gas facilities by Columbia Gas Transmission (Columbia) in Ashland, Fairfield, Hocking, and Holmes Counties, Ohio. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on April 7, 2008. Instructions on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a Columbia representative about the acquisition of an easement to construct, operate, and maintain the planned project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Columbia could initiate condemnation proceedings in accordance with Ohio state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

With this notice, we [1] are inviting other 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 EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Summary of the Proposed Project

Within the Crawford Storage Field (Fairfield and Hocking Counties, Ohio), Columbia seeks authorization to:

- Construct 16 new storage wells;
- Convert 11 existing counter storage wells to active storage wells;
- Convert 10 existing observation wells to counter or active storage wells,;
- Convert 2 high pressure wells to counter storage wells;
- Purchase 6 production wells and convert to storage wells;
- Install 13.6 miles of interconnecting pipeline; and
- Make minor modifications at Columbia's Crawford Compressor Station.

Within the Weaver Storage Field (Ashland and Holmes Counties, Ohio), Columbia seeks authorization to:

- Construct 4.1 miles of field storage pipeline;
- Replace 1.7 miles of field storage pipeline;
- enhance the deliverability work on 26 existing storage wells;
- Install one gate valve setting;
- Install a measurement station; and
- Install a regulation station.

The storage project would provide an additional 103,400 dekatherms per day of storage deliverability for service in the eastern United States. Appendix A presents detailed maps identifying all facilities associated with this project.[2]

Land Requirements for Construction

For new well installation, Columbia would disturb a 400-foot-square. For reconditioned wells, a 300-foot-square would be necessary. Columbia plans to use between a 50-foot and 70-foot-wide construction right-of-way for installation of its pipelines (ranging from 4 to 10 inches in diameter). Based on preliminary information, construction of the pipelines and storage facilities would disturb about 359 acres of land. Following construction, about 331 acres would be maintained as permanent right-of-way. The remaining temporary workspace would be restored and allowed to revert to its former use.

The EA Process

We are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during the preparation of the EA. As part of our Pre-Filing review, Columbia previously sponsored public open houses in the project areas to explain its project, the environmental review process, and take comments about the

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices are being sent to all those receiving this notice in the mail. Requests for detailed maps of the facilities should be made directly to Dominion.

project from interested stakeholders (January 23 and 24, 2008).

The EA will discuss impacts that could occur as a result of the construction and operation of the planned project under the following general headings:

- Geology and soils;
- Water resources;
- Wetlands;
- Vegetation, fisheries, and wildlife (including threatened and endangered species);
- Cultural resources;
- Land use and visual quality;
- Air quality and noise; and
- Reliability and safety.

We note that 12 of the wells to be reconditioned in the Weaver Storage Field are located within the boundary of Mohican Memorial State Forest. Further, construction of the Ohio Storage Expansion Project would require the removal of potential Indiana bat roost trees. Additionally, we will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published for distribution and mailed to federal, state, and local agencies; elected officials; public interest groups; interested individuals; affected landowners; newspapers and libraries in the project area; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under the Commission's Pre-Filing Process. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives (including alternative locations and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- 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 the comments for the attention of Gas Branch 1;
- Reference Docket No. PF08–6–000;
- Mail your comments so that they will be received in Washington, DC on or before April 7, 2008.

Please note that the Commission strongly encourages electronic filing of comments. See Title 18 of the Code of Federal Regulations (CFR) Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your computer's hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for comment. If you are interested in receiving it, please return the Mailing List Form (Appendix B). If you do not return the Mailing List Form, you will be removed from the mailing list.

Once Columbia formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you received this notice, you are on the environmental mailing list for this project. If you do not want to send comments at this time, but still want to remain on our mailing list, please return the Mailing List Form (Appendix B). If you do not return the Information Request, you will be removed from the Commission's environmental mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.*, PF08–6), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FercOnlineSupport@ferc.gov*. 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 rule makings.

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 the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, any public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request additional information by calling Kelly Merritt at Columbia at (304) 357–2283.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3755 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–44–002; CP07–45–001]

Southeast Supply Header, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Amendment Hi Field Lateral Project and Request for Comments on Environmental Issues

February 21, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the amendment Southeast Supply Header (SESH) is proposing. The requested amendment would approve the proposed Hi Fields Lateral Project, consisting of an 11-mile 16-inch outside diameter natural gas lateral pipeline between the SESH mainline pipeline in Mobile County, Alabama and the Daniel Electric Generating Plant in Jackson County, Mississippi. Additional equipments would be installed as part of the proposed amendment. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on March 24, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

SESH proposes to construct approximately 11 miles of new 16-inch outside diameter natural gas pipeline that would be installed from the SESH mainline pipeline in Mobile County, Alabama, extending directly in a southwesterly direction to Southern Company's Daniel Electric Generating Plan facilities in Jackson County, Mississippi. Description of the proposed facilities will include the following:

- Approximately 11 miles of new 16-inch outside diameter natural gas pipeline;
- installing a new gas chromatograph building and satellite communications equipment within Southern Company existing Plant Daniel meter and regulation (M&R) station, which is located within the Daniel Electric Generating Plant; and
- installing two mainline valves on either end of the Hi Fields lateral.

All project activities would be contained in Mobile County Alabama, and Jackson County Mississippi. Construction of the proposed project would affect approximately 177 acres of land. The cost for constructing the proposed project would be approximately $19.4 million.

The general location of the proposed facilities is shown in Appendix 1.[1]

The EA Process

We[2] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes SESH's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative compressor station sites, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's *Web site* at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to El Paso.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 2, PJ–11.2;
- Reference Docket No. CP07–44–002 & CP07–45–001; and
- Mail your comments so that they will be received in Washington, DC on or before March 24, 2008.

The Commission encourages electronic filing of comments. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

We may mail the EA for public comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

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, then 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 also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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 the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3728 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–65–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Concord Lateral Expansion Project, Request for Comments on Environmental Issues, and Notice of Site Visit

February 22, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Concord Lateral Expansion Project involving construction and operation of natural gas pipeline facilities by Tennessee Gas Pipeline Company (Tennessee) in Hillsborough and Merrimack Counties, New Hampshire. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on March 24, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Tennessee's Concord Lateral Expansion Project would provide 30,000 dekatherms per day of incremental transportation capacity to serve Energy North Natural Gas, Inc. d/b/a KeySpan

Energy Delivery New England. To accomplish this, Tennessee proposes to:

- Construct a new 6,130 horsepower compressor station, designated Compressor Station 270B1, on its Line 200 system in Pelham, New Hampshire; and
- Modify the station inlet piping to accommodate the additional gas capacity at the Laconia Meter Station in Concord, New Hampshire.

The general location of the proposed facilities is shown in appendix 1.[1]

Land Requirements for Construction

For the proposed Compressor Station 270B1, Tennessee would utilize 6.8 acres for construction, within an approximately 11.6 acre site. Approximately 4.2 acres would be permanently maintained during operation. The proposed compressor station site is owned by Tennessee and adjacent land is zoned as industrial.

The upgrades to the Laconia Meter Station would require approximately 0.8 acre. All of the piping modifications would be located within the existing, fenced meter station. Tennessee would utilize approximately 0.3 acre of construction workspace outside of its existing 0.5 acre meter station.

The EA Process

We [2] are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA), which requires the Commission to take into account the environmental impact that could result if it authorizes Tennessee's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on important environmental issues. By this Notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use and visual quality
- Cultural resources
- Vegetation and wildlife (including threatened and endangered species)
- Air quality and noise
- Reliability and safety

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; local libraries and newspapers; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative compressor station sites, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. CP08–65–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 24, 2008.

The Commission encourages electronic filing of comments. See Title 18 of the Code of Federal Regulations, Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the Commission's process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Site Visit

On April 2, 2008, the Office of Energy Projects' (OEP) staff will conduct a pre-certification site visit of Tennessee's proposed Pelham Compressor Station in Pelham, New Hampshire. We will view Tennessee's proposed compressor

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Tennessee.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

station site and possibly alternative sites that are being considered for the proposed project. Staff will tour these proposed project areas by automobile and on foot. Representatives of Tennessee will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. If you are interested in attending the site visit, please meet us at 9:00 AM in the parking lot of Dunkin' Donuts, 98 Indian Rock Road, Windham, New Hampshire (off of Exit 3 southbound on Rte. 93).

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Environmental Mailing List

As described above, we may mail the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Mailer (appendix 3). If you do not return the Environmental Mailing List Mailer, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

Additional Information

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, then 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 also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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 the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3756 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–63–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Fitchburg Expansion Project, Request for Comments on Environmental Issues, and Notice of Site Visit

February 22, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Fitchburg Expansion Project involving construction and operation of natural gas pipeline facilities by Tennessee Gas Pipeline Company (Tennessee) in Worcester and Middlesex Counties, Massachusetts. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on March 24, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Tennessee's Fitchburg Expansion Project would increase the size of a portion of its Fitchburg Lateral and install some minor facilities in order to provide 12,300 dekatherms per day of firm transportation service for the Massachusetts Development Financial Agency. To accomplish this, Tennessee proposes to:

- Replace approximately 5.15 miles of 6-inch-diameter pipeline with 12-inch-diameter pipeline on Tennessee's Line 268–100 (Fitchburg Lateral) in Worcester County, Massachusetts;
- Install a pig [1] launcher at the existing mainline valve at the beginning of the Fitchburg Lateral in Framingham, Massachusetts; and
- Install a pig receiver at the existing Unitil Meter Station at the terminus of the Fitchburg Lateral (milepost 5.13) in Lunenburg, Massachusetts.

The general location of the proposed facilities is shown in appendix 1.[2]

Land Requirements for Construction

Tennessee proposes to utilize a 70-to 80-foot-wide construction right-of-way. This includes the existing permanent right-of-way that varies between 20 and 30 feet, which would continue to be maintained after construction. A total of 55.19 acres would be affected during construction and 15.95 acres would be affected during operation. The pig launcher and receiver would be constructed adjacent to existing Tennessee aboveground structures.

The EA Process

We [3] are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA), which requires the Commission to take into account the environmental impact that could result if it authorizes Tennessee's proposal. By this notice, we are also asking federal, state, and local agencies with

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[1] A pig is an internal tool that can be used to clean and/or inspect a pipeline for damage or corrosion. A pig launcher/receiver is an aboveground facility where pigs are inserted into and or retrieved from the pipeline.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Tennessee.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on important environmental issues. By this Notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use and visual quality.
- Cultural resources.
- Vegetation and wildlife (including threatened and endangered species).
- Air quality and noise.
- Reliability and safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; local libraries and newspapers; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative pipeline routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. CP08–63–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 24, 2008.

The Commission encourages electronic filing of comments. See Title 18 of the Code of Federal Regulations, Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the Commission's process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Site Visit

On April 1, 2008, the Office of Energy Projects' (OEP) staff will conduct a pre-certification site visit of the proposed Fitchburg Expansion Project. We will view Tennessee's proposed pipeline route, route variations, and aboveground facilities that are being considered for the proposed project. Staff will tour the proposed project area by automobile and on foot. Representatives of Tennessee will accompany the OEP staff.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. If you are interested in attending the site visit, please meet us at 9 a.m. in the parking lot of the Target at 86 Orchard Hill Park Drive, Leominster, MA.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Environmental Mailing List

As described above, we may mail the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Mailer (appendix 3). If you do not return the Environmental Mailing List Mailer, you will be taken off the mailing list. All individuals who provide written comments will remain on our environmental mailing list for this project.

Additional Information

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, then 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 also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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 the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3763 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR04–6–005; PR04–6–006; PR07–5–002; PR07–5–003]

Cranberry Pipeline Corporation; Notice of Compliance Filings

February 21, 2008.

Take notice that on February 13, 2008, Cranberry Pipeline Corporation (Cranberry) made two filings to comply with the letter order issued on December 14, 2007, (December 14, 2007 order).[1] In Docket Nos. PR04–7–005 and PR07–5–002, Cranberry filed a Report of Refunds in compliance with the Commission's December 14, 2007 order, and in Docket Nos. PR04–7–006 and PR07–5–003, Cranberry filed a revised Statement of Operating Conditions in compliance with the Commission's December 14, 2007 order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, 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 email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 26, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3727 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Letter Order issued December 14, 2007, in Docket Nos. PR04–6–002, PR04–6–003, PR04–6–004, PR07–5–000 and PR07–5–001, (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No 2713–073]

Erie Boulevard Hydropower, L.P.; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

February 22, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2713–073.

c. *Date Filed:* December 28, 2007.

d. *Submitted By:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oswegatchie Hydroelectric Project.

f. *Location:* On the Oswegatchie River, within St. Lawrence County New York. No federal lands are involved.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Thomas Skutnik, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2789.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

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 paragraph o 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. With this notice, we are designating Erie Boulevard Hydropower, L.P. as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Erie Boulevard Hydropower, L.P. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued the Scoping Document for the proposed Thomson Project on February 22, 2008.

n. A copy of the PAD and the scoping document 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 in the docket number field 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. A copy is also available for inspection and reproduction at the address 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 setting the effective date for the commencement of licensing proceeding as February 26, 2008, and soliciting comments on the PAD and the scoping document, as well as study requests. All comments on the PAD and the scoping document, and

study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) 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 (Oswegatchie Project) and number (P–2713–073), 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 PAD or the scoping document, and any agency requesting cooperating status must do so by April 25, 2008.

Comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. 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: Tuesday, March 25, 2008.

Time: 6 p.m. (EST).

Location: Best Western Hotel, 90 E Main St, Canton, NY 13617.

Phone: (315) 386–8522.

Daytime Scoping Meeting

Date: Wednesday, March 26, 2008.

Time: 10 a.m.

Location: Same location.

The scoping document, which outlines the issues to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, and may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, Scoping Document 2 may or may not be issued.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency 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 requests by 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 PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

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. E8–3762 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–516–002]

PJM Interconnection, L.L.C.; Notice of Filing

February 22, 2008.

Take notice that on February 7, 2008, PJM Interconnection, L.L.C. submitted revisions to the Reliability Pricing Model of its Open Access Transmission Tariff filed on January 31, 2008.

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 February 28, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3758 Filed 2–27–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0145; FRL–8534–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; National-Scale Activity Survey (N–SAS); EPA ICR No. 2293.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0145. 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: Zachary Pekar, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–3704; fax: 919–541–0237; e-mail: *pekar.zachary@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0145, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2008–0145.

Affected entities: Entities potentially affected by this action are adults age 35

and older living in metropolitan areas that experience episodes of high ozone pollution levels in the summer.

Title: National-Scale Activity Survey (N–SAS).

ICR numbers: EPA ICR No. 2293.01, OMB Control No. 2060–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA, along with State and regional air quality regulators support the Air Quality Index (AQI), to notify the public of health hazards associated with air pollution, primarily ozone and particulate matter pollution (PM). EPA, and specifically the Office of Air Quality Planning and Standards, which manages the AQI program, is interested in assessing the public's awareness, knowledge and both stated and actual behavioral response to AQI warnings. To address this need, OAQPS wishes to conduct the longitudinal National-Scale Activity Surveys (N–SAS) to gather information on the public's perceptions, awareness, attitudes, and stated and actual behaviors in response to AQI warnings. The survey data will be used to evaluate whether the AQI warnings effectively inform the public about health hazards associated with high levels of ozone and to measure behavior change on high ozone days. The information will also be used to help improve outreach efforts to this population. The survey will be administered to a susceptible subpopulation of concern, adults age 55 and older who engage in some level of physical activity living in cities with ozone pollution problems. The survey will also be administered to a similar sample of adults age 35 and older for comparison purposes. The data will be collected through a Web-based survey of members from Knowledge Network's Web panel. Response to the survey is voluntary. The respondents will be anonymous to EPA and contractor staff and Knowledge Networks keeps identity of respondents confidential.

The longitudinal N–SAS consists of a series of nine surveys. A screening survey at the beginning and a debriefing survey at the end will provide information on the respondents, their awareness and knowledge of air pollution and the AQI, risk perceptions regarding health effects, and reported behaviors on high ozone days. After the screening survey, panelists will be administered a set of seven activity diaries administered on both high and low ozone days to collect information on actual behavior.

In addition to assessing the effectiveness of AQI-based ozone warnings, the data will also be used to supplement the limited data available to develop exposure profiles for older Americans and to identify behaviors that may affect exposure analysis, for example identifying populations that report altering their behavior on high air pollution days or reported behavior by individuals who live in a particular area such as near major roadways. The responses will also provide information for future studies of the economic benefits of air quality improvements by identifying behavioral changes and other potential costs associated with high levels of air pollution.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 800 complete all surveys, 1,858 starting sample size.

Frequency of response: On occasion, up to 9 surveys total.

Estimated total average number of responses for each respondent: 9.

Estimated total annual burden hours: 2.24 hours for each respondent to complete all 9 surveys, for the original sample of 1,858 the average burden across all respondents is 1.04 hours.

Estimated total annual costs: $53,000. This includes an estimated burden cost of $53,000 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

This is a new request.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 20, 2008.

Karen M. Martin,

Acting Director, Health and Environmental Impacts Division.

[FR Doc. E8–3787 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2007–0976; FRL–8535–2]

Notice of Expert Peer-Review Meeting on the Framework for Determining a Mutagenic Mode of Action for Carcinogenicity: Using EPA's 2005 Cancer Guidelines and Supplemental Guidance for Assessing Susceptibility From Early-Life Exposure to Carcinogens External Review Draft

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) is announcing an external peer-review meeting to review the draft document titled, ''Framework for Determining a Mutagenic Mode of Action for Carcinogenicity: Using EPA's 2005 Cancer Guidelines and Supplemental Guidance for Assessing Susceptibility From Early-Life Exposure to Carcinogens'' (or Framework). The draft document was prepared by the Mutagenic Mode of Action Workgroup of EPA's Risk Assessment Forum and

has recently undergone public review and comment. Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific review, will convene an independent panel of experts and organize and conduct a peer-review meeting. The panel will review the draft document and may consider public comments received in the official public docket for this activity under docket ID number EPA–HQ–OA–2007–0976, as well as comments made by the public at the external peer review meeting. The draft document and peer-review charge are available at *http://www.epa.gov/osa/mmoaframework/index.htm.* In preparing a final document, EPA will consider the public comments submitted to EPA's docket during the public comment period, and the comments and recommendations from the external peer-review meeting, including any oral public comments made at the meeting.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by the EPA. It does not represent and should not be construed to represent any Agency policy or determination.

This notice announces the external peer-review meeting location and dates, and how to pre-register as an observer and how to sign up to make oral comments at the meeting.

DATES: The external peer-review meeting will begin on Friday, April 4, 2008. The meeting is scheduled to begin at approximately 8:30 a.m. and end at approximately 5:30 p.m., Eastern Time. Members of the public may attend the peer-review meeting as observers. Time will be set aside on the morning of April 4, 2008 for registered attendees who wish to make brief oral comments (for more information refer to the instructions for participation below).

ADDRESSES: The peer-review meeting will be held at the Navy League Building, 2300 Wilson Boulevard, Arlington, Virginia 22201.

How Can I Request To Participate In This Meeting?

Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific review, will convene an independent panel of experts and organize and conduct a peer-review meeting to review this draft document. To attend the meeting, register by Tuesday, March 25, 2008 by visiting *https://www2.ergweb.com/projects/conferences/moa/register-moa.htm.* You may also register by calling ERG's conference line between the hours of 9 a.m. and 5:30 p.m. EST at (781) 674–7374 or toll free at (800) 803–2833, or by faxing a registration request to (781) 674–2906 (please reference the ''Mutagenic Mode of Action Peer-Review Meeting'' and include your name, title, affiliation, full address and contact information), or by sending an e-mail to *Meetings@erg.com* (Subject line: Mutagenic Mode of Action Peer-Review Meeting; Body: include your name, title, affiliation, full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for pre-registration is Tuesday, March 25, 2008. If space allows, registrations will continue to be accepted after this date, including on-site registration. Time will be set aside to hear comments from observers, and individuals will be limited to a maximum of five minutes during the morning of the day of the meeting. When you register, please inform ERG that you wish to make comments during the comment period.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics for the external peer review meeting should be directed to Eastern Research Group, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: (781) 674–7374 or toll-free at (800) 803–2833; facsimile: (781) 674–2906; e-mail: *Meetings@erg.com.* If you have questions about the draft document, please contact Dr. Kathleen Raffaele, Office of the Science Advisor, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–2180; fax number: (202) 564–2070; e-mail: *raffaele.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is submitting the draft document titled ''Framework for Determining a Mutagenic Mode of Action for Carcinogenicity: Using EPA's 2005 Cancer Guidelines and Supplemental Guidance for Assessing Susceptibility From Early-Life Exposure to Carcinogens'' (or Framework) for independent, external peer review. On September 27, 2007, the draft document was announced in the **Federal Register** and made available for a 60-day public comment period (72 FR 54910). On November 16, 2007, the comment period was extended for 30 days (72 FR 64617). Public comments received in the docket will be shared with the external peer review panel for their consideration. The public release of this draft document is solely for the purpose of seeking public comment and peer review. This draft document does not represent and should not be construed to represent any EPA policy, viewpoint, or determination.

In response to requests from numerous stakeholders following EPA's release of the ''Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens'' in 2005, the Risk Assessment Forum has prepared a framework document that expands and clarifies characteristics used to determine a chemical's potential for a mutagenic mode of action (MOA) for carcinogenicity. This determination affects consideration of adjusting cancer potencies via age-dependent adjustment factors when exposures to these carcinogens occur in children.

The Framework is meant to complement EPA's 2005 ''Guidelines for Carcinogen Risk Assessment'' (Cancer Guidelines) and chemicals of interest must already have a weight-of-evidence determination for carcinogenicity. The Framework does not provide an approach to hazard identification. Rather, it gives information useful to determining whether MOAs by which the chemical causes cancer include mutagenicity as an early key event; ''key event'' is a term of art described in the MOA framework in the Cancer Guidelines.

Dated: February 25, 2008.

George M. Gray,

EPA Science Advisor.

[FR Doc. E8–3788 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8534–6]

National Advisory Council for Environmental Policy and Technology Environmental Technology Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meetings.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of two teleconference meetings of the Environmental Technology Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues. The Environmental Technology

Subcommittee was formed to assist EPA in evaluating its current and potential role in the development and commercialization of environmental technologies by suggesting how to optimize existing EPA programs to facilitate the development of sustainable private sector technologies, and by suggesting alternative approaches to achieving these goals. The purpose of the teleconference meetings is to discuss the Subcommittee's latest report on actions EPA can take to engage more effectively with venture capitalists, and other members of the financial services sector, who invest in the development and commercialization of environmental technologies.

DATES: The NACEPT Environmental Technology Subcommittee will hold a teleconference meeting on Tuesday, March 18 from 3 to 5 p.m. Eastern, and on Tuesday, March 25 from 3 to 5 p.m. Eastern. The teleconferences may end before 5 p.m. on both days if the Subcommittee doesn't require two full hours to complete its discussions.

ADDRESSES: Meeting rooms will not be available, and anyone wishing to participate in the teleconferences should request the call-in number and the teleconference access code from Mark Joyce at the contact information below.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov,* 202–564–2130, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Subcommittee should be sent to Mark Joyce, Designated Federal Officer, at the contact information above by Friday, March 14. The public is welcome to attend all portions of the teleconference meetings.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–564–2130 or *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 20, 2008.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E8–3803 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8534–9]

Proposed CERCLA Agreement and Covenant Not To Sue the State of Montana

AGENCY: Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: Notice is hereby given of a proposed Agreement and Covenant Not To Sue the State of Montana concerning the McLaren Tailings Site at Cooke City, Park County, Montana. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States. The State of Montana Department of Environmental Quality (''MDEQ'') enters into this Agreement pursuant to CERCLA, the Montana Comprehensive Environmental Cleanup and Responsibility Act (''CECRA''), as amended, 75–10–701 et seq., Montana Code Annotated (''MCA''); Title IV of the Surface Mining control and Reclamation Act of 1977 (''SMCRA''), 30 U.S.C. 1231 et seq., and Title 82, Chapter 4, Part 3 MCA.

This Agreement and Covenant Not to Sue (''Agreement''), is designed to settle and resolve MDEQ's potential liability for existing contamination at the Site, which would otherwise result from its acquisition of the Site.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before March 31, 2008.

ADDRESSES: The proposed Agreement and additional background information relating to the settlement are available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Carol Pokorny (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the McLaren Tailings Site Agreement and Covenant Not to Sue the State of Montana and the EPA docket number, CERCLA–08–2008–0004.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129,(303) 312–6970.

SUPPLEMENTARY INFORMATION: Regarding the proposed Agreement: In accordance with CERCLA, notice is hereby given that the terms of the Agreement have been agreed to by the U.S. Environmental Protection Agency, the U.S. Department of Justice, and the State of Montana Department of Environmental Quality. By the terms of the proposed Agreement, in exchange for the United States' Covenant Not to Sue, MDEQ agrees to acquire the Site, at no cost to the United States, and agrees to implement the cleanup activities and the Institutional Controls for the Site.

It is so Agreed:

Dated: February 21, 2008.

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. E8–3802 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8534–8]

Proposed CERCLA Settlement Agreement for Recovery of Past Response Costs Incurred at the McLaren Tailings Site at Cooke City, Park County, MT

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed settlement agreement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), concerning the McLaren Tailings Site at Cooke City, Park County, Montana. This settlement, embodied in a CERCLA section 122(h) Agreement for Recovery of Past Response Costs

(''Agreement''), is designed to resolve Camjac, Inc.'s liability at the Site for past response costs incurred at the Site through covenants under section 107 of CERCLA, 42 U.S.C. 9607. The proposed Agreement requires Camjac, Inc. to pay a total of $5,000.00 to the EPA Hazardous Substances Superfund and transfer the property that it owns which is part of the Site to the State of Montana.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before March 31, 2008.

ADDRESSES: The proposed Agreement and additional background information relating to the settlement are available for public inspection at EPA Region 8's Central Records Center, 1595 Wynkoop Street, 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Carol Pokorny (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the McLaren Tailings Site Settlement Agreement and the EPA docket number, CERCLA–08–2008–0002.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Regarding the proposed administrative settlement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Agreement have been agreed to by Camjac, Inc., the U.S. Environmental Protection Agency, and the U.S. Department of Justice. By the terms of the proposed Agreement, Camjac, Inc. will pay a total of $5,000.00 to the Hazardous Substance Superfund and will transfer the property it owns, which is part of the Site, to the State of Montana. To be eligible to enter in the Agreement, Camjac, Inc. was required to submit a response to EPA's Request for Information, including financial information, to substantiate its claim of an inability-to-pay past response costs.

It is so Agreed:

Dated: February 21, 2008.

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. E8–3804 Filed 2–27–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 20, 2008.

SUMMARY: The Federal Communications Commission (Commission or FCC), as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 28, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) contact Jerry Cowden via e-mail at *PRA@fcc.gov* or at 202–418–0447.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None.

Title: Information Collection Regarding Redundancy, Resiliency and Reliability of 911 and E911 Networks and/or Systems as set forth in the Commission's Rules (47 CFR 12.3).

Form No.: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 74 respondents; 74 responses.

Estimated Time per Response: 105.3 hours (120 hours for local exchange carriers, 72 hours for commercial mobile radio service providers, and 40 hours for interconnected Voice over Internet Protocol service providers).

Frequency of Response: One-time reporting.

Obligation to Respond: Mandatory (47 CFR 12.3).

Total Annual Burden: 7,792 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: This information collection does not affect individuals or households, and therefore a privacy impact assessment is not required.

Nature and Extent of Confidentiality: These reports will contain sensitive data and, for reasons of national security and the prevention of competitive injury to reporting entities, Section 12.3 of the Commission's rules specifically states that all reports will be afforded confidential treatment. Data in these reports will be considered confidential information that is exempt from routine public disclosure under the Freedom of Information Act (FOIA) Exemption 4. See 47 CFR 0.457 and 5 U.S.C. 552(b)(4); see also Homeland Security Presidential Directive 7, Part 10. These reports will be shared pursuant to a protective order with only the following three entities, if the entities file a request for the information: The National Emergency Number Association, The Association of Public Safety Communications Officials, and The National Association of State 9–1–1 Administrators. All other access to these reports must be sought pursuant to procedures set forth in 47 CFR 0.461. Notice of any requests for inspection of these reports will be provided to the filers of the reports pursuant to 47 CFR 0.461(d)(3).

Needs and Uses: The Commission, in order to help fulfill its statutory obligation to make wire and radio communications services available to all people in the United States for the purpose of the national defense and promoting safety of life and property, released an Order (FCC 07–107) that adopted a rule requiring analysis of 911 and E911 networks and/or systems and reports to the Commission on the redundancy, resiliency and reliability of those networks and/or systems (47 CFR 12.3). It is critical that Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service. These analyses and reports on the redundancy, resiliency, and dependability of 911 and E911 networks and systems will further this goal. This requirement will serve the public interest and further the Commission's statutory mandate to promote the safety of life and property through the use of wire and radio communication. See 47 U.S.C. 151. This rule obligates local exchange carriers (LECs), commercial mobile radio service (CMRS) providers that are required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules, and interconnected Voice over Internet Protocol (VoIP) service providers to analyze their 911 and E911 networks and/or systems and file a detailed report to the Commission on the redundancy, resiliency and reliability of those networks and/or systems. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule. The reports are due 120 days from the date that the Commission or its staff announces activation of the 911/E911 network and system reporting process.

Description of Information Collection: The Commission delegated authority to the Public Safety and Homeland Security Bureau (Bureau) to implement and activate a process through which these reports will be submitted. The Bureau will collect these reports via a web-based database that will have a separate table for each entity type subject to Section 12.3 of the Commission's rules (LECs, CMRS providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules, and interconnected VoIP service providers). This data collection system will carefully restrict access to the data. Users will be able to input and see data for their company but will not be able to see or input data for another company. The system will also allow users to input other information they may wish to provide about the redundancy, resiliency and dependability of their 911 and E911 networks and systems.

The Commission also delegated authority to the Bureau to establish the specific data that will be required. The following is the information that the Bureau will require from LECs, CMRS providers and interconnected VoIP service providers pursuant to Section 12.3.

LECs (including incumbent LECs and competitive LECs). Each LEC will be asked to provide the FCC Registration Number(s) of the responding carrier and the OCN (LERG assigned service provider number) Number(s) of the responding carrier. For each state in which LECs provide service, they will be asked to provide the following information on a state-by-state basis.

LECs will be required to provide information about switches to Selective Routers, specifically, information about those switches that they own or operate. LECs must report the percent of switches that they own or operate in the network from which 911 calls originate. With respect to those switches, LECs must identify the percent of switches with logically diverse paths to their primary Selective Routers. Logical diversity is achieved when redundant circuits are assigned between the source node and the destination node. For switches for which they have not provided or made arrangements for a logically diverse path, LECs must discuss the circumstances, including why logically diverse paths are not provisioned, and any plans to provide logically diverse paths in the future. With respect to those switches that a LEC owns or operates in the network from which 911 calls originate, LECs must also report the percent of switches with physically diverse connections to their primary Selective Routers. Physical diversity is achieved when geographically separated redundant facilities are assigned between the source node and the destination node. For those switches for which LECs have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse paths are not provisioned and any plans to provide physically diverse connections in the future. Finally, with respect to those switches that a LEC owns or operates in the network from which 911 calls originate, LECs must report the percent of switches with mostly physically diverse connections to their primary Selective Routers. Mostly physically diverse connectivity means that facilities are diverse for at least 95% of the length (but not for the entire length). For example the facilities could be physically diverse except for a bridge crossing or passing through the same Digital Cross Connect System. For those switches for which LECs have not provided or made arrangements for mostly physically diverse connections, they must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

LECs must also provide information if they own or operate Selective Routers. They must provide the percent of Selective Routers with at least one alternate Selective Router for at least 50% of the 911 traffic. If they have not provided or made arrangements for alternate selective routers for at least 50% of 911 traffic, they must discuss the circumstances including why an alternate selective router for at least 50% of 911 traffic is not provisioned and any plans to provide an alternate selective router in the future.

With respect to Selective Routers to public safety answering points (PSAPs), LECs must provide the following information if they own or operate Selective Routers but only for the PSAPs supported by those Selective Routers. LECs must state the number of PSAPs supported by their Selective Routers and the percent of PSAPs with an alternate (back-up) Selective Router in addition to the primary Selective Router. For those PSAPs for which a LEC has not provided or made arrangements for an alternate (back-up) Selective Router in addition to the primary Selective Router, the LEC needs to discuss the circumstances including why an alternative (back-up) selective router is not provisioned and any plans to provide an alternate (back-up) selective router in the future. LECs must also identify the percent of PSAPs with logically diverse paths to their primary Selective Router. For those PSAPs for which a LEC has not provided or made arrangements for logically diverse paths to the primary Selective Router, they must discuss the circumstances including why logically diverse paths are not provisioned, and any plans to provide logically diverse paths in the future. LECs must also report the percent of PSAPs with physically

diverse connections to their primary Selective Router. For those PSAPs for which they have not provided or made arrangements for physically diverse connections to the primary Selective Router, LECs must discuss the circumstances including why physically diverse paths are not provisioned and any plans to provide physically diverse paths in the future.

Further, LECs must report the percent of PSAPs with logically diverse paths to their primary Selective Router in which the interoffice portion of the connections to the primary Selective Router is physically diverse. The interoffice network consists of facilities and transmission equipment that interconnects switching offices in a telecommunications inter-exchange network. For those PSAPs with logically diverse paths to the primary Selective Router for which they have not provided or made arrangements for physical diversity in the interoffice portion of the connections to the primary Selective Routers, LECs must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide such logical diversity in the future. LECs will also need to provide the percent of PSAPs where the connection between the PSAP and the primary Selective Router is physically diverse from the connection between the PSAP and the alternate Selective Router. For those PSAPs for which the connection between the PSAP and the primary Selective Router is not physically diverse from the connection between the PSAP and the alternate Selective Router, LECs must discuss the circumstances including why such physically diverse connections are not provisioned and any plans to provide such physically diverse connections in the future. Finally, LECs must provide the percent of PSAPs where the interoffice portion of the connection from the PSAP to the primary Selective Router is physically diverse from the interoffice portion of the connection from the PSAP to the alternate Selective Router. For those PSAPs where the interoffice portion of the connection from the PSAP to the Selective Router is not physically diverse from the interoffice portion of the connection from the PSAP to the alternate Selective Router, LECs must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide physical diversity in the future.

Additionally, LECs that own or operate Selective Routers must provide information about alternate PSAPs, but only for the PSAPs supported by those Selective Routers. These LECs will be required to provide the percent of PSAPs for which traffic is automatically rerouted to another PSAP if the PSAP is unavailable. For those PSAPs without automatic re-routing, they need to discuss the circumstances including why automatic re-routing to another PSAP is not provisioned and any plans to provide such automatic re-routing in the future.

LECs will also be required to provide specific information if they own or operate Automatic Location Information (ALI) databases. LECs must provide the number of ALI Database pairs (redundant). An ALI database pair is a configuration of two ALI databases that will operate seamlessly even if one of the two databases fails. LECs that own or operate ALI databases will also be required to state the percent of PSAPs supported by ALI database pairs in which the connections from the ALI databases to the PSAP are physically diverse. For those PSAPs supported by ALI database pairs in which the connections from the ALI databases to the PSAP are not physically diverse, LECs must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. LECs that own or operate ALI databases must also provide the percent of PSAPs supported by ALI database pairs in which the interoffice portion of the connections from the ALI databases to the PSAP are physically diverse. For those PSAPs supported by ALI database pairs in which the interoffice portion of the connections from the ALI databases to the PSAP are not physically diverse, they must discuss the circumstances including why such physical diversity is not provisioned and any plans to provide such physical diversity in the future.

CMRS Providers. Each CMRS provider will be asked to provide the FRN Number or Numbers of the responding provider and the OCN Number or Numbers of the responding provider. CMRS providers must provide information for each area in which the CMRS provider serves.

Regarding Mobile Switching Centers (MSCs) to Selective Routers, CMRS providers must provide information for the MSCs that they own or operate. This information includes the: (1) Percent of MSCs in network that have Phase I E911 capability; (2) percent of MSCs in network that have Phase II E911 capability; and (3) percent of MSCs with logically diverse paths to primary Selective Routers. For those MSCs for which CMRS providers have not provided or made arrangements for logically diverse paths, they are required to discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. CMRS providers must also report the percent of MSCs with physically diverse connections to their primary Selective Routers. For those MSCs for which they have not provided or made arrangements for physically diverse connections, CMRS providers must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Further, CMRS providers will be required to provide the percent of MSCs with mostly physically diverse connections to their primary Selective Routers. For those MSCs for which they have not provided or made arrangements for mostly physically diverse connections, CMRS providers must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

CMRS providers must also provide information about MSCs to Mobile Positioning Centers (MPCs) or Gateway Mobile Location Centers (GMLCs). They must report the percent of MSCs connected to a pair of MPCs/GMLCs. MSCs can be connected to a pair of MPCs/GMLCs for redundancy. In configurations like this, the MSC will continue to provide positioning information even if one of the MPCs/GMLCs suffers an outage. CMRS providers must also state the percent of MSCs with logically diverse paths to their primary MPCs/GMLCs. For MSCs for which they have not provided or made arrangements for logically diverse paths to the primary MPCs/GMLCs, CMRS providers must discuss the circumstances, including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. They must also provide the percent of MSCs with physically diverse connections to their primary MPCs/GMLCs. For those MSCs for which CMRS providers have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Additionally, CMRS providers will be required to report the percent of MSCs with mostly physically diverse connections to their

primary MPCs/GMLCs. For those MSCs for which they have not provided or made arrangements for mostly physically diverse connections, CMRS providers must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

Further, CMRS providers must report the percent of MSCs where the connection from the MSC to the primary MPC/GMLC is physically diverse from the connection to the alternate MPC/GMLC. For those MSCs where the connection from the MSC to the primary MPC/GMLC is not physically diverse from the connection to the alternate MPC/GMLC, providers must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. CMRS providers will be required to provide the percent of MSCs where the connection from the MSC to the primary MPC/GMLC is mostly physically diverse from the connection to the alternate MPC/GMLC. For those MSCs where the connection from the MSC to the primary MPC/GMLC is not mostly physically diverse from the connection to the alternate MPC/GMLC, they must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

CMRS providers that own or operate MPCs/GMLCs must report additional information, including the percent of MPCs/GMLCs for which there is an alternate MPC/GMLC. This question is concerned with the percentage of MPCs/GMLCs that are backed up. An earlier question asked about the percentage of MSCs that are served by a pair of MPCs/GMLCs. Both questions address the redundancy of MPCs/GMLCs but this one addresses MPC/GMLC pairing while the previous one addressed redundant access from MSCs to MPC/GMLC pairs. For those MPCs/GMLCs that do not have alternates, CMRS providers must discuss the circumstances including why alternate MPCs/GMLCs are not provisioned and any plans to provide alternate MPCs/GMLCs in the future. CMRS providers must also state whether they are able to pass location information from more than one MPC/GMLC. For those cases in which they are not able to do so, they must discuss the circumstances including why the capability to pass location information from more than one MPC/GMLC is not provisioned and any plans to provide this capability in the future.

CMRS providers that own or operate MPCs/GMLCs must also report whether there are logically diverse paths from each MPC/GMLC to either the primary ALI database or the back-up ALI database. For those cases where they have not provided or made arrangements for logically diverse paths, CMRS providers must discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. Additionally, CMRS providers that own or operate MPCs/GMLCs must state whether there are physically diverse connections from each MPC/GMLC to either the primary ALI database or the back-up ALI database. For those cases where they have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Finally, CMRS providers that own or operate MPCs/GMLCs will have to report whether there are mostly physically diverse connections from each MPC/GMLC to either the primary ALI database or the back-up ALI database. For those cases in which they have not provided or made arrangements for mostly physically diverse connections, CMRS providers must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

Interconnected VoIP Service Providers. Each responding interconnected VoIP service provider will be asked to report their FRN Number or Numbers, if any, and OCN Number or Numbers, if any. Interconnected VoIP providers will have to provide information about interconnection to Selective Routers and third-party providers. They must report the percent of switches wherein 911 service is provided by the interconnected VoIP provider; where the VoIP provider has a direct connection to Selective Routers. Additionally, interconnected VoIP service providers will be required to report the percent of switches wherein 911 service is provided by a third party; where another company is utilized to route 911 calls.

Interconnected VoIP service providers that have direct connections to Selective Routers must report the percent of switches with logically diverse paths to their primary Selective Routers—for cases when the VoIP provider has direct connections to Selective Routers. For switches for which they have not provided or made arrangements for logically diverse paths, they must discuss the circumstances, including why logically diverse connections are not provisioned and any plans to provide logically diverse paths in the future. Interconnected VoIP service providers that have direct connections to Selective Routers must also report the percent of switches with physically diverse connections to their primary Selective Routers. For those switches for which they have not provided or made arrangements for physically diverse connections, they must discuss the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Finally, Interconnected VoIP service providers that have direct connections to Selective Routers will be required to provide the percent of switches with mostly physically diverse connections to their primary Selective Routers. For those switches for which they have not provided or made arrangements for mostly physically diverse connections, they must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

Interconnected VoIP service providers that use a third party to provide connections to Selective Routers must report the percent of switches with logically diverse paths to their primary access points—for cases when the VoIP provider uses a third party. For switches for which they have not provided or made arrangements for logically diverse paths to their primary access points, they must discuss the circumstances including why logically diverse paths are not provisioned and any plans to provide logically diverse paths in the future. Interconnected VoIP service providers that use a third party to provide connections to Selective Routers are also required to report the percent of switches with physically diverse connections to their primary access points. For those switches for which they have not provided or made arrangements for physically diverse connections to their primary access points, they must describe the circumstances including why physically diverse connections are not provisioned and any plans to provide physically diverse connections in the future. Finally, interconnected VoIP service providers that use a third party to provide connections to Selective

Routers are required to report the percent of switches with mostly physically diverse connections to their primary access points. For those switches for which they have not provided or made arrangements for mostly physically diverse connections to their primary access points, they must discuss the circumstances including why mostly physically diverse connections are not provisioned and any plans to provide mostly physically diverse connections in the future.

Responding LECs, CMRS providers and interconnected VoIP service providers must also provide information regarding disaster planning for the resiliency and reliability of 911 architecture. All respondents must state whether they have a contingency plan that addresses the maintenance and restoration of 911/E911 service during and following disasters. If the answer is ''yes,'' the respondent will be asked to describe its contingency plan including those elements that address the maintenance and restoration of 911/E911 service. If the answer is ''no,'' the respondent will be asked to discuss the circumstances including why it does not have a contingency plan that addresses 911/E911 maintenance and restoration and any plans to develop such a contingency plan in the future.

Respondents that do have a contingency plan that addresses the maintenance and restoration of 911/E911 service must state whether they regularly test their plan. If respondents answer ''yes'' to this question, they must describe the program for testing their contingency plan, including the extent to which they periodically test to ensure that the critical components (e.g., automatic re-routes, PSAP Make Busy Key) included in contingency plans work as designed and the extent they involve PSAPs in tests of their contingency plan. Respondents that answer ''no'' will be asked to discuss the circumstances including why they do not test their contingency plan and any plans to test their plan in the future.

All respondents must state whether they have a routing plan so that, in the case of a lost connection of dedicated transport facilities between the originating switch/MSC and the Selective Router, 911 calls are routed over alternate transport facilities. Respondents that answer ''yes'' must describe their routing plan. Respondents that answer no must discuss the circumstances and any plans to develop such a plan in the future.

All responding LECs, CMRS providers and interconnected VoIP service providers must state whether, in cases where 911 service is disrupted, they make test calls to assess the impact as part of the restoration process. If the answer is ''no,'' respondents must discuss the circumstances including why they do not make test calls as part of the restoration process and any plans to do so in the future. Respondents must also state whether their company makes additional test calls when service is restored and, if not, they must discuss why they do not make additional test calls.

All respondents must describe any current plans they have to migrate to next generation 911 (NG911) architecture once a standard for NG911 has been developed. Finally, respondents are asked to provide any additional relevant information regarding steps they have taken to ensure redundancy, resiliency and reliability of their 911/E911 facilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–3702 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

February 22, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 31, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC, or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0311.

Title: 47 CFR 76.54, Significantly Viewed Signals, Method to Be Followed for Special Showings.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time per Response: 1–60 hours.

Total Annual Burden: 20,610 hours.

Total Annual Costs: $200,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.54(b) states significant viewing in a cable television or satellite community for signals not shown as significantly viewed under 47 CFR 76.54(a) or (d) may be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. 47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. 47 CFR 76.54(e) and (f), are used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.

OMB Control Number: 3060–0991.

Title: AM Measurement Data.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,900.

Estimated Hours per Response: 0.50–25 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Total Annual Burden: 29,255 hours.

Total Annual Cost: $73,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In order to control interference between stations and assure adequate community coverage, AM stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The following rule sections are included with this collection.

47 CFR 73.54(c) requires that AM licensees file a letter notification with the FCC when determining power by the direct method. In addition, Section 73.54(c) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station.

47 CFR 73.54(d) requires AM stations using direct reading power meters to either submit the information required by (c) or submit a statement indicating that such a meter is being used.

47 CFR 73.61 requires that each AM station using directional antennas make field strength measurement as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary.

47 CFR 73.62(b) requires an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of variance of operating parameters from allowed tolerances.

47 CFR 73.68(b) requires that licensees of existing AM broadcast stations with antenna monitor sampling systems meeting the performance standards specified in the rules may file informal requests for approval of their sampling systems.

47 CFR 73.68(d) requires that a request for modification of the station license be submitted to the FCC on FCC 302–AM when the antenna sampling system is modified or components of the sampling system are replaced. Immediately prior to modification or replacement of components of the sampling system and after a verification that all monitoring point values and operating parameters are within the limits or tolerances, the licensee is required to record certain indications for each radiation pattern.

47 CFR 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Media Bureau in Washington, DC, when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within a 120 day period. This request is filed in conjunction with Section 73.3549.

47 CFR 73.69(d)(1) requires that AM licensees with directional antennas request to obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters.

47 CFR 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement.

47 CFR 73.154 requires the result of the most recent partial proof of performance measurements and analysis to be retained in the station records and made available to the FCC upon request. Maps showing new measurement points shall be associated with the partial proof in the station's records and shall be made available to the FCC upon request.

47 CFR 73.158(b) requires a licensee of an AM station using a directional antenna system to file a request for a corrected station license when the description of monitoring point in relation to nearby landmarks as shown on the station license is no longer correct due to road or building construction or other changes. A copy of the monitoring point description must be posted with the existing station license.

47 CFR 73.3538(b) requires a broadcast station to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure.

47 CFR 73.3549 requires licensees to file with the FCC requests for extensions of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the Emergency Alert System codes. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–3785 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 08–7; DA 08–282]

Extension of Time To File Comments on Petition for Declaratory Ruling That Text Messages and Short Codes are Title II Services or Are Title I Services Subject to Section 202 Non-Discrimination Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document extends the time period for filing comments on a petition for declaratory ruling (Petition) filed by Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG (Petitioners). The Petitioners ask the Federal Communications Commission (Commission) to clarify the regulatory status of text messaging services, including short-code based services sent from and received by mobile phones, and declare that these services are governed by the anti-discrimination provisions of Title II of the Communications Act.

DATES: Interested parties may file comments on or before March 14, 2008, and reply comments on or before April 14, 2008.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–7, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of an Order released on February 1, 2008. The full text of the Order is available for public inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th St., SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

On December 11, 2007, Petitioners filed a joint petition for declaratory ruling, asking the Commission to clarify the regulatory status of text messaging services, including short-code-based services sent from and received by mobile phones, and declare that these services are governed by the anti-discrimination provisions of Title II of the Communications Act. On January 14, 2008, the Commission established a pleading cycle for the Petition, with comments due on February 13, 2008 and replies due on March 14, 2008, 73 FR 4866.

On January 25, 2008, CTIA-The Wireless Association (CTIA) filed a motion for an extension of time to file comments and replies. CTIA requested a 30-day extension of the deadline for filing comments and a corresponding 30-day extension of the deadline to file reply comments. CTIA stated that ''additional time is necessary for parties to consider the important issues raised by the Petition and to fully prepare submissions enabling the Commission to make an informed decision based on a fully developed record.''

On February 1, 2008, the Wireless Bureau issued an Order granting CTIA's motion for an extension of time to file comments and replies based on its finding that additional time would be beneficial to the development of a complete record on the issues. As a result of the Order, comments on the petition are due by March 14, 2008, and reply comments are due by April 14, 2008.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

Fred B. Campbell, Jr.,

Chief, Wireless Telecommunications Bureau.

[FR Doc. E8–3595 Filed 2–27–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork.

Proposed Project: SF–424D (Assurances—Construction Programs) Form—Extension—OMB No. 4040–0009—*Grants.Gov.*

Abstract: The SF–424D (Assurances—Construction Programs) form is utilized by up to 26 Federal grantmaking agencies. The SF–424D is used to provide information on required assurances when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
USDA	916	1	15/60	229
DOI	318	1.227	30/60	195
VA	141	1	15/60	35
DOC	505	1	15/60	126
Total	1,880			586

John L. Leeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 08–883 Filed 2–27–08; 8:45 am]

BILLING CODE 4151–AE–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer. All comments must be faxed to OMB at 202–395–6974.

Proposed Project: Hospital Preparedness Program (HPP) Data Collection Instrument (DCI)–0990–NEW—Office of the Assistant Secretary for Preparedness and Response.

Abstract: The Office of the Assistant Secretary, Hospital Preparedness Program (HPP) formerly Healthcare Systems Bureau (HSB), Division of Healthcare Preparedness (DHP), is proposing a Data Collection Instrument (DCI) to gather critical information from the 62 Awardees which include: States or political subdivisions of a State (cities and counties), and territories participating in HPP.

The DCI will capture information related to: performance measures, critical benchmarks, minimal levels of readiness, program statistics, policies and procedures, surge capacity elements, surge capacity as measured by exercises, and other pertinent information for programmatic

improvement and tracking performance. The data will be gathered from mid-year progress reports on annual activities, final reports on annual activities, and progress indicator reports submitted to HPP.

Awardees will indicate the progress made toward each of the financial and programmatic objectives noted on their cooperative agreement application (CAA) on the mid-year progress report. The final report on annual activities will require Awardees to provide additional details on how objectives were achieved and how the program funds were spent toward achieving the program's critical benchmarks.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Mid-Year Report	States or political subdivisions of a State (cities and counties), and territories.	62	1	16	992
End-of-Year Report	States or political subdivisions of a State (cities and counties), and territories.	62	1	16	992
Total					1984

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3736 Filed 2–27–08; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork.

Proposed Project: SF–424C (Budget Information—Construction Programs) Form—Extension—OMB No. 4040–0008—Grants.Gov.

Abstract: The SF–424C (Budget Information—Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424C is used to provide budget information when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
VA	179	1	15/60	45
DOI	258	1.28	30/60	165
USDA	934	1	3	2,802
DOC	505	1	15/60	126
DOT	1,650	1	3	4,950
Total				8,088

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3741 Filed 2–27–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the

proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork.

Proposed Project: SF–424B (Assurances—Non-Construction Programs) Form—Extension—OMB No. 4040–0007—Grants.Gov.

Abstract: The SF–424B (Assurances—Non-Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424B is used to provide information on required assurances when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title, and date submitted. A 2-year clearance is requested. Frequency of data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
USDA	6,172	1	15/60	1,543
NARA	145	1	15/60	36
CNCS	10	1	30/60	5
Treas	191	1	15/60	48
DOI	1,053	2.764	11/60	533
VA	184	1	15/60	46
DOC	4,880	1	15/60	1,220
EPA	3,816	1	4	15,264
Total				18,691

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3743 Filed 2–27–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork.

Proposed Project: SF–424A (Budget Information—Non-Construction Programs) Form—Extension—OMB No. 4040–0006—Grants.Gov.

Abstract: The SF–424A (Budget Information—Non-Construction Programs) form is utilized by up to 26 Federal grant making agencies. The SF–424A provides budget information when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. A 2-year clearance is requested. Frequency of the data collection varies by Federal agency.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
CNCS	10	1	4	40
DOI	258	1.28	30/60	165
DOS	150	1	5/60	13
EPA	3,816	1	4	15,264
SSA	700	2	30/60	700
Treas	191	1.445	1	276

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
VA	184	1	15/60	46
USDA	6,951	1	3	20,853
DOC	4,880	1	20/60	1,627
DOT	50	1	1.6	80
Total				39,063

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3744 Filed 2–27–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork.

Proposed Project: SF–424 Research & Related (R&R) Form—Revision–OMB No. 4040–0001—Grants.Gov.

Abstract: The SF–424 (R&R) is the government-wide data set for research grant applications. The data set provides information to assist Federal program staff and grants officials in assessing the adequacy of applicant's proposals to accomplish project objectives and determine whether grant applications reflect program needs. Agencies will not be required to collect all of the information in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package. The proposed data set incorporates proposed revisions adopted by the cross-agency R&R working group. This working group established the original proposed data set (4040–0001) in 2004. The instructions will also be revised.

We propose two major changes in our revision request. The first major change is to remove the Project/Performance Site Location(s) form from the collection. This form will be revised and included in a separate OMB-approved collection. The Project/Performance Site Locations(s) forms will be required with all SF–424 form families with the exception of the SF–424 Individual form. The second major change is to incorporate into this collection the Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Information form (OMB Number 0925–0001). The existing SBIR/STTR Information form (OMB No. 0925–0001) will be discontinued once this R&R collection is renewed. We are requesting a 3-year extension of the revised form. The affected public may include Federal, State, Local, or tribal governments, business or other for profit, and not for profit institutions.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOC	2,300	1	25/60	958
DOE	8,000	1	1.5	12,000
ED	1,200	1	40	48,000
HHS	60,000	1	60	3,600,000
DOD	2,500	5	1.0676	13,345
NASA	10,000	1	1.5	15,000
USDA	6,000	1	1.25	7,500
NSF	40,000	1	120	4,800,000
DHS	350	1	120	42,000
Total				8,538,803

John Teeter,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3745 Filed 2–27–08; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held Tuesday, March 25, 2008 and Wednesday, March 26, 2008. The meeting will be held from 9 a.m. to approximately 5 p.m. on both days.

ADDRESSES: Department of Health and Human Services, Room 800, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Barnes, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW., Room 727G, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205–2311. More detailed information about PACHA can be obtained by accessing the Council's Web site at *http://www.Pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV and AIDS.

The agenda for this Council meeting is being developed. The meeting agenda will be posted on the Council's Web site when it is drafted.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished online by accessing the PACHA Web site, *http://www.Pacha.gov.*

Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment. any individual who wishes to participate in the public comment session must register online at *http://www.Pacha.gov;* registration for pubic comment will not be accepted by telephone. Public comment will be limited to three minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members for discussion at the meeting should submit, at a minimum, one copy of the materials to the Committee Manager, PACHA no later than close of business on March 21, 2008. Contact information for the PACHA Committee Manager is listed above.

Dated: February 21, 2008.

Mary (Marty) McGeein,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 08–884 Filed 2–27–08; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Epidemiology and Disease Prevention; Urban Indian Communities

Announcement Type: Competitive.

Funding Announcement: HHS–IHS–2008–EPI–0001.

Catalog of Federal Domestic Assistance Number: 93.231.

Key Dates:

Application Deadline Date: April 4, 2008.

Review Date: April 11, 2008.

Anticipated Start Date: May 1, 2008.

I. Funding Opportunity

The Department of Health and Human Services (HHS) Indian Health Service (IHS) announces competitive cooperative agreement applications are now being accepted by the Division of Epidemiology and Disease Prevention (DEDP) to establish a Tribal Epidemiology Center (TEC) for American Indians/Alaska Natives (AI/AN) and urban Indian organizations in California. This program is authorized under Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1621m of the Indian Health Care Improvement Act. This announcement limits competition to all eligible entities within the California Area. To obtain details regarding eligibility, please refer to Section III below.

The purpose of this cooperative agreement is to fund an organization that will provide epidemiological support and development for the AI/AN population in the state of California through the augmentation of existing programs with expertise in epidemiology and a history of regional administrative support. It is the intent of IHS to have a TEC in all of the 12 IHS Administrative Areas. This announcement seeks to establish a TEC in the California Area which will meet the aforementioned intent of IHS.

The TEC will be acting under a cooperative agreement with the IHS to operate the TEC within the California Area. In the conduct of this activity, the TEC may receive Protected Health Information (PHI) for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death and the conduct of public health surveillance, public health investigation, and public health interventions for Tribal communities that they serve. Further, the IHS considers this to be a public health activity for which disclosure of PHI covered entities is authorized by 45 CFR 164.512(b) of the Privacy Rule.

Epidemiology activities will include, but are not limited to, enhancement of surveillance for disease condition; epidemiologic analysis; interpretation, and dissemination of surveillance data; investigation of disease outbreaks; development and implementation of epidemiologic studies; development and implementation of disease control and prevention programs; and coordination of activities of other public health authorities in the region. The proposed activities are intended to benefit, as much as possible, the entire AI/AN population in California.

To achieve the purpose of this cooperative agreement, the recipient will be responsible for the activities under item number *1. Recipient Activities* and IHS will be responsible for conducting activities under item *2. IHS Activities.*

1. *Recipient Activities:*

(a) Assist and facilitate AI/AN communities, Tribal organizations, and urban Indian organizations in implementing and enhancing disease surveillance systems, identifying their height priority health status objectives based on epidemiologic data, and monitoring progress toward meeting the health status objectives of HHS (as described in Healthy People 2010) and of the constituent AI/AN communities, Tribes, and urban Indian organizations in the region. Assist and facilitate reporting of nationally notifiable disease conditions to public health authorities in the region.

(b) Provide health specific data and community health profiles for Tribal entities in their respective catchment areas.

(c) Participate in the development of systems for sharing, improving, and disseminating aggregate health data at a national level for purposes of advocacy for AI/AN communities, and meeting such national goals as described by Healthy People 2010, or for IHS for the Government Performance and Results Act (GPRA), and other national-level activities.

(d) Collaborate with national HHS programs in the development of standardized health profiles, surveillance and data monitoring methods and data sets.

(e) Support responses to public health emergencies in collaboration with the IHS, DEDP state, local, Tribal, and other Federal health authorities.

(f) Support the IHS Director's Health Promotion and Disease Prevention (HP/DP) Initiatives. This information can be obtained through the Internet at the following Web site: *http://www.ihs.gov/NonMedicalPrograms/HPDP*.

(g) Develop and implement epidemiological studies that have practical application in improving the health status of constituent communities. Studies may require Institutional Review Board approval if human subjects are involved.

(h) Develop and implement disease control and prevention programs in cooperation with other public health entities. Make recommendations for prioritizing public health services needed by constituents.

(i) Establish a broad-based advisory council that consists of technical experts in epidemiology and public health, community members, health care providers, and others who can provide overall program direction and guidance.

(j) Produce and disseminate letters of notification to all participating Tribal urban programs describing each new project involving area-wide PHI.

(k) Ensure that the TEC staff has appropriate expertise in epidemiology and health sciences (for example: A medical epidemiologist at least one-half on the time, biostatistician consultant on contract as needed).

(l) Provide a mid-year report and an annual report (no more than 10 pages respectively) at the end of the year.

(m) Develop an agreement with the Area Office within 90 days after the award is made to the eligible entity that delineates:

(1) ''Routine'' activities for which the TEC will have blanket access (e.g. injuries, immunizations, and surveillance data).

(2) Activities for which they will need additional permission such as special studies and research for publication.

(3) Language which outlines HIPAA and Privacy Act protection.

(4) The mechanism used to track both #1 (suggests TEC tracks self) and #2 above.

(5) Reports that show the entity's access it IHS data.

2. *Indian Health Service Activities:*

(a) Convene a TEC workshop/conference of funded organizations every year for information sharing and problem solving.

(b) Provide consultation and technical assistance for the funded TEC. Provide technical assistance with implementation and evaluation of the comprehensive program as described under *Recipient Activities* above. Consultation and technical assistance will include, but is not limited to, the following area:

(1) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2010 Objectives, and other disease control activities and;

(2) Design and implementation of each program component (surveillance, epidemiologic analysis, outbreak investigation, development of epidemiologic studies, development of disease control programs, and coordination of activities and;

(3) Overall operational planning and program management.

(c) Provide opportunities for training fellowship at DEDP and other programs in IHS, if funds permit.

(d) Conduct site visits to TECs to assess data security, compliance with Federal and applicable state laws and regulations, program progress and mutually resolve problems, as needed, and/or coordinate reverse site visits to IHS in Albuquerque, New Mexico.

(e) If funds and personnel are available, assign personnel from the DEDP Senior Staff Field Placement (SSFP) Program to TECs in lieu of a portion of the financial assistance.

(f) Coordinate all epidemiologic activities on a national scope.

(g) DEDP will increase project funding if additional funds become available.

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: Estimated available funds will be $350,000.

The total amount identified for Fiscal Year 2008 is $350,000. The project will be awarded for three years with 12 months, per budget period. Future year funding levels will be determined based on availability of funds.

Anticipated Number of Awards: One award will be made under this program announcement.

Project Period: May 1, 2008 to April 30, 2011.

Award Amount: Up to $350,000 total, including indirect costs. Awards under this announcement are subject to the availability of funds. Continuation awards will be issued annually based on satisfactory performance, availability of funds, and program priorities of the IHS.

Funding Information:

As part of the effort to establish TECs throughout the nation, these funds will be used to support activities on a regional basis. Priority will be given to applicants proposing to provide services to a large region with many Tribes. Collaborative efforts among other Tribal organizations, Federal/State local governments, and university based organizations are encouraged to apply. the funds awarded under this cooperative agreement are not intended to support a loose collaboration of independent organizations.

It is anticipated that funding will be available to fund one applicant at $350,000 per year. If available, and at the request of the applicant, SSFP personnel may be assigned to the TEC. Only a single cooperative agreement will be funded for this announcement. This cooperative agreement will be funded on a yearly basis for the base and two additional years, subject to the availability of funding.

Programmatic Involvement: See IHS Activities.

III. Eligibility Information

1. *Eligible Applicants:* Federally-recognized Tribes, Tribal organizations as defined by 25 U.S.C. 1603(e), and intertribal consortia that provide services to the California Area AI/AN population will be eligible for this cooperative agreement. Such entities must present and/or serve a population of at least 60,000 AI/AN to be eligible. The figure must be substantiated by documentation describing IHS user

populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid. An intertribal consortium or AI/AN organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health, and serving the IHS California Area American Indian Tribes. Collaborations with regional IHS, Centers for Disease Control, State and local health departments, and universities are encouraged to apply.

The following documentation is required when submitting your application.

(a) Letters of support from each Tribe that the epicenter will be serving acknowledging the types of activities that involve the TEC. All letters of support must be signed by Tribal Chairman, President, or Governor to meet this requirement because they are acting as elected representative of the Tribe. No formal letters will be accepted.

(b) Evidence of the size of the population proposed to be served.

(c) A signed document from the Tribe acknowledging the types of activities that the TEC will be engaged in, and the types of PHI that will be utilized.

(d) A draft of the agreement with the Area Office that will be finalized within 90 days after the award is made will include the following:

(1) ''Routine'' activities for which the TEC will have blanket access (e.g. injuries immunization, and surveillance data).

(2) Activities for which they will need additional permission such as special studies and research for publication.

(3) Language which outlines Health Insurance and Portability and Accountability Act (HIPAA) Privacy and Security Standards.

(4) The mechanism used to track both #1 (suggest TEC tracks self) and #2 above.

(5) Reports that show the entity's access to IHS data.

2. *Cost Sharing or Matching:* DEDP does not require matching funds or cost sharing. However, the program does require an in-kind contribution from the applicant organization. Therefore, the administrative support will be the responsibility of the applicant organization, and may include such expenses as work space, rental/leasing cost, participant cost for research studies, and stipends for members of the executive or advisory council.

IV. Application and Submission Information

Address to request application package

(a) Applicant package may be found in Grants.gov (*www.grants.gov*) or at: *http://www.ihs.gov/NoMedicalPrograms/gogp/gogp_funding.asp.* Information regarding the electronic application process may be directed to Michelle G. Bulls, at (301) 443–6290.

(b) Content and Form of Application Submission.

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed seven typed pages that includes the other submission requirements below. The seven page narrative does not include the work plan, standard forms, Tribal resolutions, and letters of support, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with exception of Lobbying and Discrimination public policy. For applicants that have obtained a waiver to submit a hard copy application, please submit it on the following forms.

- *Standard Form 424,* Application for Federal Assistance.
- *Standard Form 424A*, Budget Information-Non-Construction Programs, pages 1 and 2.
- *Standard Form 424B*, Assurances-Non-Constructions Programs (front and back).
- Certification (pages 17–19).
- Project Executive Summary (one page or less).
- Table of Contents.
- Introduction and Need for Assistance.
- Project Objectives(s) to include a spreadsheet with Objective, Time-Line, Approach, and Results & Benefits.
- Project Evaluation Plan.
- Applicant's organizational capabilities addressing *Recipient's Activities.*
- Recipient Activities.
- Budget Narrative and Justifications to support costs outlined in the proposal.
- Resumes of key staff or biosketches.
- Position descriptions for key staff.
- Organizational chart.
- All letters of support from potential collaborators.
- Copy of current Department of Interior-negotiated indirect cost rate agreement (required) in order to receive Indirect Cost (IDC).
- A map of the areas to benefit from the project.

(c) Submission Dates and Times.

Application must be submitted electronically through Grants.gov by the close of business on Thursday, April 4, 2008, 12 midnight Eastern Time (EST). If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Grants Policy Staff at least fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (e-mails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in SEction IV, letter (f) above. Applications that are not submitted through Grants.gov, without an approved waiver, will be returned to the applicant without review or consideration. Late applications will not be accepted for processing, and it will be returned to the applicant and will not be considered for funding.

(d) Intergovernmental Review.

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

(e) Funding Restrictions.

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award of if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- Administrative support will be the responsibility of the applicant organization, and may include such expenses as work space, rental leasing cost, participant cost for research studies and stipends for members of the executive or advisory council. This support will be considered an administrative in-kind contribution from the grantee to the TEC.
- Only one cooperative agreement will be awarded.
- IHS will not acknowledge receipt of applications.
- The specified costs for the following items will be part of the IDC agreement or the responsibility of the parent organization and will not be charged as direct costs under this

cooperative agreement: stipends for the executive or advisor council, participant cost for studies, leasing or rental cost.

(f) Other Submission Requirements.

Electronic Submission

The preferred method of receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request for timely assistance with technical issues will not be able to submit non-electronic applications.

To submit an application electronically, please use the *http://www.Grants.gov.* and select ''Apply for Grants'' link on the home page. Download a copy of the application package, on the Grants.gov website, complete it offline, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to the IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please contact directly Grants.gov Customer Support at *http://www.grants.gov/CustomerSupport.*
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver request from Grants Policy must be obtained.
- If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov.* Please include a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application must be downloaded by the applicant from Grants.gov, and submitted directly to Ms. Sylvia Ryan, Grants Management Specialist, Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852, by April 4, 2008.
- Upon entering the Grants.gov site, there is information available that outlines the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, the applicant must have a Data Universal Numbering System (DUNS) Number and register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- You must ensure that all required documents are submitted prior to the stated timelines within this announcement or the application will not be considered for funding.
- Please us the optional attachment feature in Grants.gov to attached additional documentation that may be requested by IHS.
- Your application must comply with any page limitation requirements described in the program announcement. After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. Division of Grants Operations (DGO) will download your application from Grants.gov and provide necessary copies to the DEDP Program Office. DGO will not notify applicants that the application has been received.
- You may access the electronic application for this program on *http://www.grants.gov.*
- You may search for the downloadable application package by either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–IHS–2008–EPI–0001.
- E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–800–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge. Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.ccr.gov/.* More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

1. Criteria.

Introduction, Current Capacity, and Need for Assistance (10 points)

(a) Describe the applicant's current public health activities including whether the applicant has a history of providing public health related programs, how long it has been operating, what programs or services are currently provided, and interactions with other public health authorities in the regions (State, local, or Tribal), history and the capacity to communicate with all Tribes in California. Specifically describe current epidemiologic capacity and history of support for such activities.

(b) Provide a physical location of the proposed TEC and area to be served by the proposed project including a map (include the map in the attachment).

(c) Describe the relationship between this program and other funded work planned, anticipated, or underway.

(d) If applicable, identify the past three years of grants with current Tribal management grants including past awarded cooperative agreements from the DEDP, dates of funding, and project accomplishments (do not include copies of reports).

(e) Describe how the epicenter will ensure compliance with the Privacy Act, HIPAA, and computer data security.

(f) Describe how Tribal and urban programs will be notified of specific studies involving PHI.

Project Objective(s) (30 Points)

Approach, Results, and Benefits, for the entire 1-year funding period

(a) State in measurable and realistic terms the objectives and appropriate activities to achieve each objective for the projects as listed in the *Recipient Activities.*

(b) Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

(c) Include a work plan for each objective that indicates when the

objectives and major activities will be accomplished and who will conduct the activities on a calendar timeline. The work plan must include the process of hiring staff with appropriate leadership skills and expertise in epidemiology, medicine, and program administration.

(d) Specify who will review and accept the work to be performed by consultants or contractors.

Project Evaluation (20 Points)

(a) State how project objectives will be achieved.

(b) Define the criteria to be used to evaluate results.

(c) Explain the methodology that will be used to determine if the needs identified for the project are being met and if the outcomes identified are being achieved.

Organization Capabilities and Qualifications (25 points)

(a) Explain the management and administrative structure of the organization including documentation of current certified financial management systems from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant and an updated organizational chart (include chart in the attachments).

(b) Describe the ability of the organization to manage a project of the proposed scope. An organizational chart must be included.

(c) Provide position descriptions and resumes/biosketches of key personnel, including those of consultants or contractors in the appendix. Position descriptions should clearly describe each position and its duties, indicating desired qualifications and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities.

Budget (15 points)

(a) Provide a detailed line-item budget for the proposed year.

(b) Provide a detailed line-item budget justification including sufficient cost and other details to facilitate the determination of cost allowable and relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project.

(c) Describe where the TEC will be housed, i.e., facilities and equipment available.

(d) If use of consultants or contractors are proposed or anticipated, provide a detailed scope of work that clearly defines the deliverables or outcomes anticipated.

2. Review and Selection Process.

Applications submitted by the closing date and verified by electronic submission or the postmark under this program announcement will undergo a review to determine that:

(a) The applicant is eligible in accordance with the Eligibility Information section of this application.

(b) Letters of support/collaboration are included.

(c) The application executive summary, forms and materials submitted are adequate to allow the review panel to undertake an in-depth evaluation.

(d) The application is responsive to this announcement.

Applications that are deemed ineligible or unresponsive will be returned without consideration.

Competitive Review of Accepted Applications

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by an Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The reviews will be conducted in accordance with the HHS objective review requirements. The ORC may include up to 40% IHS employees, with the remaining 60% made up of non-IHS, Federal or non-Federal personnel. Applications will be evaluated and rated on the basis of the list above. These criteria's will be used to evaluate the quality of the proposal and to assign a numerical score to each application. The comments from the ORC will be advisory only.

3. Anticipated Announcement and Award Dates.

The results of the objective review will be forwarded to the Director, Office of Public Health Support (OPHS) for final review and consideration. The OPHS Director will make recommendations for approval and funding to the IHS Director who will then make the final decision on all applications. Applicants will be notified in writing of approval or disapproval within approximately 30 days. For disapproved applications, a brief explanation of the reasons why the application was not approved will be provided along with the name of the IHS official to contact if more information is desired. *Award Date:* May 1, 2008.

VI. Award Administration Information

1. The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to the entity that is approved for funding under this announcement. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document between the IHS and the recipient.

2. Administrative Requirements

Grants are administrated in accordance with the following documents:

- This Program Announcement.
- Administrative Requirements: 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations''.
- Grants Policy Guidance: HHS Grants Policy Statement, January 2007.
- Cost Principles: OMB Circular A–87, ''State, Local, and Indian (Title 2 part 225)''.
- Cost Principles: OMB circular A–122, ''Non-profit Organizations, OMB Circular A–87, State, Local, and Tribal governments (Title 2 Part 230)''.
- Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-profit Organizations''.

3. *Indirect Cost:* This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part 11–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to the award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGO.

4. Reporting.

(a) *Progress Report.* Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments toward reaching the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report

must be submitted within 90 days of the expiration of the budget/project period.

(b) *Financial Status Report.* Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

(c) *Reports.* Grantees must submit semi-annual Progress Reports and Financial Status Reports. Financial Status Reports (SF–269) are due 90 days after each budget period. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) the imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at TTY 301–443–6394.

Dated: February 15, 2008.

Robert McSwain

Acting Director, Indian Health Service.

[FR Doc. 08–863 Filed 2–27–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs

Announcement Type: Initial.

Funding Opportunity Number: HHS–2006–IHS–SP–0001.

CFDA Numbers: 93.971, 93.123, and 93.972.

Key Dates

Application Deadline: March 28, 2008, for Continuing students.

Application Deadline: April 28, 2008, for New students.

Application Review: May 19–23, 2008.

Application Notification: First week of June, 2008.

Award Start Date: August 1, 2008.

I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarships authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), as amended.
- The Indian Health Professions Pregraduate Scholarships authorized by section 103 of the IHCIA, as amended.
- The Indian Health Professions Scholarships authorized by section 104 of the IHCIA, as amended. Full-time and part-time scholarships will be funded for each of the three scholarship programs.

II. Award Information

Awards under this initiative will be administered using the grant mechanism of the IHS.

Estimated Funds Available: An estimated $13.6 million will be available for FY 2008 awards.

Anticipated Number of Awards: Approximately 194 awards will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $24,366. An estimated 338 awards will be made under the Indian Health Professions Scholarship Program. The awards are for 12 months in duration and the average award to a full-time student is approximately $38,236. In FY 2008, an estimated $10.5 million is available for continuation awards, and an estimated $3.1 million is available for new awards.

Project Period—The project period for the Health Professions Preparatory Scholarship support is limited to 2 years for full-time students and the part-time equivalent of 2 years, not to exceed 4 years for part-time students. The project period for the Health Professions Pregraduate Scholarship Support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students. The Indian Health Professions Scholarship support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students.

III. Eligibility Information

This announcement is a limited competition for awards made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and state recognized Tribal members), or Alaska Natives only.

1. Eligible Applicants

The Health Professions Preparatory Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and State recognized Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum.

The Health Professions Pregraduate Scholarship awards are made to American Indians (Federally recognized Tribal members, first and second degree descendants of Tribal members, and state recognized Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine, pre-dentistry and pre-podiatry.

The Indian Health Professions Scholarship may be awarded only to an individual who is a member of a Federally recognized Indian Tribe or Alaska Native as provided by section 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Professions Scholarship an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA.

2. Cost SharinglMatching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

IV. Application and Submission Information

1. Address To Request Application Package

Applicants are responsible for contacting and requesting an application packet from their IHS Area Scholarship coordinator. They are listed on the IHS Web site at *http://www.ihs.gov/JobsCareerDevelop/DHPS/Scholarships/SCoordinator_Directory.asp*. This information is

listed below. Please review the following list to identify the appropriate IHS Area Scholarship Coordinator for your state. Application packets may be obtained by calling or writing to the following individuals listed below:

IHS area office and states/locality served	Scholarship coordinator/address
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Kim Annis, IHS Area Coordinator, Aberdeen Area IHS, 115 4th Avenue, SE, Aberdeen, SD 57401, Tele: (605) 226–7466.
Alaska Native Tribal Health Consortium: Alaska	Ms. Rea Bevilla, Alternate: Ms. Krista Hepworth, IHS Area Coordinator, 4000 Ambassador Drive, Anchorage, AK 99508, Tele: (907) 729–1332.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Cora Boone, IHS Area Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, Tele: (505) 248–4418.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Tony Buckanaga, IHS Area Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW., Room 209, Bemidji, MN 56601, Tele: (218) 444–0486.
Billings Area IHS: Montana, Wyoming	Mr. Delon Rock Above, Alternate: Ms. Bernice Hugs, IHS Area Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North., Suite 400, Billings, MT 59103, Tele: (406) 247–7100.
California Area IHS: California, Hawaii	Ms. Mona Celli, IHS Area Coordinator, California Area IHS, 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814, Tele: (916) 930–3981.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Gina Blackfox, IHS Area Coordinator, Nashville Area IHS, 711 Stewarts Ferry Pike, Nashville, TN 37214, Tele: (615) 467–1500.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Roselinda Allison, IHS Area Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tele: (928) 871–1358.
Oklahoma City Area IHS: Kansas, Oklahoma, Missouri	Ms. Melissa Langley, IHS Area Coordinator, Oklahoma City Area IHS, Five Corporate Plaza, 3625 NW., 56th Street, Oklahoma City, OK 73112, Tele: (405) 951–6040.
Phoenix Area IHS: Arizona, Nevada, Utah	Ms. Kimberly Honahnie, IHS Area Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #510, Phoenix, AZ 85004, Tele: (602) 364–5253.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Laurie Veitenheimer, IHS Area Coordinator, Portland Area IHS, 1220 SW Third Avenue, Room 476, Portland, OR 97204–2892, Tele: (503) 326–6983.
Tucson Area IHS: Arizona, Texas	Ms. Kimberly Honahnie, IHS Area Coordinator, Tucson Area IHS, 2 Renaissance Square, 40 N. Central Ave., #510, Phoenix, AZ 85004, Tele: (602) 364–5253.

2. Content and Form of Application Submission

Each applicant will be responsible for submitting a completed application and 1 copy (Forms IHS–856–1, through 856–8) to the IHS Scholarship Program office, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852. Electronic applications are being accepted for this cycle. Go to *www.scholarship.ihs.gov* for more information on how to apply electronically. The application will be considered complete if the following documents (original and 1 copy) are included:

- Completed Signed Application Checklist.
- Original Signed Complete Application Form IHS–856 (For Continuation Students—Data Sheet in place of IHS–856).
- Current Letter of Acceptance from College/Proof of Application to Health Professions Program.
- Official Transcripts for All Colleges.
- Cumulative GPA: Applicant's Calculation.
- Documents for Indian Eligibility.

A. If you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary ofthe Interior, acting through the Bureau ofIndian Affairs (BIA Certification: Form 4432—Category A or D, whichever is applicable); or

(2) In the absence ofBIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

B. If you are a member of a Tribe terminated since 1940 or a State recognized Tribe, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. If you are not a Tribal member but are a natural child or grandchild of a Tribal member from a Federally recognized Tribe or Alaska Native, you must submit: (1) Evidence of that fact, e.g., your birth certificate and/or your parent's birth certificate showing the name of the Tribal member; and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Failure to submit the required documentation will result in the application not being accepted for review.

Note: If you meet the criteria of B or C you are eligible only for the Preparatory or Pregraduate Scholarships.

- Two FacultylEmployer Evaluations with original signature.
- Reasons for Requesting Scholarship.
- Delinquent Debt Form.
- 2007 W–4 Form with original signature.
- Course Curriculum Verification with original signature.
- Acknowledgment Card.
- Curriculum for Major.

Health Professions Applicants Only:

- Health Related Experience (MPH only)—Optional Form.

3. Submission Dates and Times

Application Receipt Date: The application deadline for continuing applicants is Friday, March 28, 2008; for new applicants it is Monday, April 28, 2008. Applications (original and 1 copy) shall be considered as meeting the deadline if they are received at the IHS Headquarters, Scholarship Branch, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, on the deadline date or postmarked on or before the deadline date.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding. Once the application is received, the applicant will receive an ''Acknowledge of Receipt of Application'' (IHS–815) card that is included in the application packet.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR Parts 136.320, 136.330 and 136.370 incorporated in the application materials; and for Health Professions Scholarship Program for Indians.

6. Other Submission Requirements

New Applicants are responsible for contacting and requesting an application packet from their IHS Area Scholarship Coordinator. Electronic applications are being accepted for this award cycle. Go to *www.scholarship.ihs.gov* for more information on how to apply electronically. The Division of Grants Operations will mail continuation students an application packet and if you do not receive this information please contact your IHS Area Scholarship Coordinator to request a continuation application.

V. Application Review Information

I. Criteria

Applications will be reviewed and scored with the following criteria:

- Needs of the IHS (Health Manpower needs in Indian Country).

Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

- Academic Performance (40 points).

Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgement of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to receive an award.

- Faculty/Employer Recommendations (30 points).

Applicants are rated according to evaluations by faculty members, current and/or former employers and Tribal officials regarding the applicant's potential in the chosen health related professions.

- Stated Reasons for Asking for the Scholarship and Stated Career Goals (30 points).

Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. The applicant's narrative will be judged on how well it is written and its content.

- Applicants who are closest to graduation or completion are awarded first.

For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

- Priority Categories.

The following is a list of health professions that will be funded in each scholarship program in FY 2008.

- Health Professions Preparatory Scholarships.

A. Pre-Clinical Psychology (Jr. & Sr. undergraduate years).
B. Pre-Dietetics.
C. Pre-Engineering.
D. Pre-Medical Technology.
E. Pre-Nursing.
F. Pre-Occupational Therapy.
G. Pre-Pharmacy (Jr. and Sr. undergraduate years).
H. Pre-Physical Therapy (Jr. and Sr. undergraduate years).
I. Pre-Sanitation.
J. Pre-Social Work (Jr. and Sr. undergraduate years).

- Health Professions Pregraduate Scholarships.

A. Pre-Dentistry.
B. Pre-Medicine.
C. Pre-Podiatry

- Indian Health Scholarships (Professions).

A. Chemical Dependency Counseling: Baccalaureate and Masters Level.
B. Clinical Psychology: Ph.D. Program.

C. Coding Specialist.
D. Dental Hygiene: B.S.
E. Dentistry: D.D.S. or D.M.D.
F. Diagnostic Radiology Technology: Certificate, Associate, and B.S.
G. Dietitian: B.S.
H. Environmental Health & Engineering: B.S.
I. Health Care Administration: Bachelors & Masters Level.
J. Health Education: Bachelors & Masters Level.
K. Health Records: R.H.I.T. and R.H.I.A.
L. Injury Prevention Specialist: Certificate.
M. Medical Technology: B.S.
N. Medicine: Allopathic and Osteopathic.
O. Nurse: Associate & Bachelor Degrees & advanced degrees in Psychiatry, Geriatric, Women's Health, Pediatric Nursing, Nurse Anesthetist, & Nurse Practitioner.

*(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the IHCIA)

P. Occupational Therapy: B.S.
Q. Optometry: O.D.
R. Pharmacy: Pharm D.
S. Physician Assistant: PAC.
T. Physical Therapy Assistant: Associate degree.
U. Physical Therapy: M.S. and D.P.T.
V. Podiatry: D.P.M.
W. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health with concentration in Epidemiology).
X. Public Health Nutrition: Masters Level only.
Y. Respiratory Therapy: Associate.
Z. Social Work: Masters Level only (Direct Practice and Clinical concentrations).
AA. Ultrasonography (Prerequisite: Diagnostic Radiology Technology).

2. Review and Selection Process

The applications will be reviewed and scored by the IHS Scholarship Programs' Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her area or his/her own Tribe. Each application will be reviewed by three reviewers. The average score of the three reviews provide the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship, health discipline, date of graduation, and score. If several students have the same date of graduation and score within the same discipline, the computer ranking list will be randomly sorted and will not be sorted by alphabetical name. Selections for recommendation given to the Director, IHS, are then made from the top of each ranking list, to the extent that funds allocated by the IHS to the three Scholarship Programs are available for obligation.

VI. Award Administration Information

1. Award Notices

It is anticipated that applicants will be notified in writing during the month of June, 2008. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reasons the application was not successful and provide the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Regulations at 42 CFR 136.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Professions Scholarships. Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 136.330.

Recipients shall incur a service obligation prescribed under section 338A ofthe Public Health Service Act (42 U.S.C. 2541) which shall be met by service:

(1) In the Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Pub. L. 93–638) and its amendments;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; or

(4) In a private practice option of his or her profession, if the practice: (a) Is situated in a health professional shortage area, designated in regulations promulgated by the Secretary; and (b) addresses the health care needs of a substantial number (51%) of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 102–573), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 2541) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Professions Scholarship are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Public Law 94–437, as amended by Public Law 100–713, and Public Law 102–573.

3. Reporting

Scholarship Program Minimum Academic Requirements

It is the policy of the IHS that a scholarship recipient awarded under the Health Professions Scholarship Program of the IHCIA maintain a 2.0 cumulative grade point average (GPA) each semester/quarter and be a full-time student (minimum of 12 credit hours considered by your school as full-time). A recipient of a scholarship under the Health Professions Pre-Graduate and Health Professions Preparatory Scholarship authority must maintain a good academic standing each semester/quarter and be a full-time student (minimum of 12 credit hours or the number of credit hours considered by your school as full-time). In addition to the two requirements stated above, a Health Professions Scholarship program grantee must be enrolled in an approved/accredited school for a health professions degree. Part-time students for the three scholarship programs must also maintain a 2.0 cumulative GPA and must take at least 6 credit hours each semester/quarter but less than the number of hours considered full-time by your school. Scholarship grantees must be approved for part-time status at the time of scholarship award. Scholarship grantees may not change from part-time status to full-time status or vice versa in the same academic year.

The following reports must be sent to the IHS Scholarship Program at the identified time frame. Each scholarship grantee will be provided with an IHS Scholarship Handbook where the below needed reports are located. If a scholarship grantee fails to submit these reports as required, they will be ineligible for continuation of

scholarship support and scholarship award payments will be discontinued.

A. Recipient's Enrollment and Initial Progress Report

Within thirty (30) days from the beginning of each semester or quarter, scholarship grantees must submit a Recipient's Enrollment and Initial Progress Report (Form F–02 of the student handbook).

B. Transcripts

Within thirty (30) days from the end of each academic period, i.e., semester, quarter, or summer session, scholarship grantees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem/Change

If at any time during the semester/quarter, scholarship grantees are advised to reduce the number of credit hours for which they are enrolled below the minimum of 12 (or the number of hours considered by their school as full-time) for a full-time student or at least 6 hours for part-time students; or if they experience academic problems, they must submit this report (page F–04 of student handbook).

D. Change of Status

• Change of Academic Status.

Scholarship Grantees must immediately notify the IHS Area Scholarship Coordinator if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).

• Change of Health Discipline.

Scholarship Grantees may not change from the approved IHS Scholarship Program health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.

• Change in Graduation Date.

Any time that a change occurs in a scholarship grantee's expected graduation date, they must notify their IHS Area Scholarship Coordinator immediately in writing. Justification must be attached from the school advisor.

VII. Agency Contacts

Please address application inquiries to the appropriate IHS Area Scholarship Coordinator. Other programmatic inquiries may be addressed to RADM Robert E. Pittman, Director, Division of Health Professions Support, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll free number.) For grants information, contact the Grants Scholarship Coordinator, Division of Grants Operations, lndian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–0243. (This is not a toll-free number.)

VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010*, (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2010* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 [Telephone (202) 783–3238].

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2008–2009 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: February 15, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 08–864 Filed 2–27–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act of 1974; Report of a New System of Records; Sanitation Facilities Construction Individual Applicant Records

AGENCY: Department of Health and Human Services (HHS), Indian Health Service (IHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Sanitation Facilities Construction Individual Applicant Records (SFCIA), System No. 09–17–004.'' Under the provisions of the Indian Sanitation Facilities Act, Pub. L. 86–121 (42 U.S.C. 2004a), IHS is charged with carrying out the functions to determine basic individual and home eligibility for sanitation services. The primary purpose of this system is to determine eligibility of individuals and homes for sanitation services; budget justification for appropriation and project development to serve eligible homes and persons with sanitation facilities; to monitor, track and report status and progress of services provided; to maintain records on and to verify individuals' eligibility for services; and to link with the IHS Resource and Patient Management System (RPMS) for purposes of verifying and determining individuals' eligibility.

Information retrieved from this system may be disclosed to: (1) Congressional offices in response to a verified inquiry; (2) other Federal agencies or Tribes that provide funding for or are involved in providing sanitation facilities to individuals or communities, and may be disclosed to individuals or communities, and may be disclosed to individuals specifically involved in the process of providing sanitation facilities, including but not limited to Tribal officials, Tribal housing authorities, Tribal utilities, contractors, State and local entities and consultants; (3) support litigation involving the agency; (4) referrals to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order; (5) HHS contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records; (6) other Federal or Tribal entities that provide sanitation facilities at the request of these entities in conjunction with a computer-matching program conducted by these entities to detect or curtail fraud and abuse in similar types of program services; and (7) appropriate Federal agencies and Departmental contractors in the event of data breaches either suspected or confirmed.

Effective Dates: IHS filed a new system report with the Chair of the House Committee on Oversight and Government Reform, 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 February 28, 2008. To ensure that all parties have adequate time in which to comment, the new 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, which is later,

unless IHS invites comments on all portions of this notice.

ADDRESSES: The public should address comments to: Mr. William Tibbitts, IHS Privacy Act/Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer, Division of Regulatory Affairs, Office of Management Services, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852–1627; call non-toll-free (301) 443–1116; send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *William.Tibbitts@ihs.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald C. Ferguson, Director, Division of Sanitation Facilities Construction, Office of Environmental Health and Engineering, 801 Thompson Avenue, TMP Suite 610, Rockville, MD 20852–1627, Telephone (301) 443–1046.

SUPPLEMENTARY INFORMATION: Under the provisions of 25 U.S.C. 1632, it is IHS policy that all Indian communities and Indian homes, new and existing, shall be provided with safe and adequate water supply systems and sanitary sewage waste disposal for preventive health measures.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

09–17–0004

SYSTEM NAME:

Indian Health Service Sanitation Facilities Construction Individual Applicant Records, HHS/IHS/OEHE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Each Indian Health Service (IHS) Area and local Sanitation Facilities Construction (SFC) office. (See Appendix 1).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting and/or receiving services from sanitation facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, home and/or mailing address, e-mail address, telephone number, Social Security Number, Tribal roll/census number, request for service application to obtain sanitation facilities and all pertinent documents necessary to determine eligibility for such services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- Indian Health Care Improvement Act, Pub. L. 94–437, as amended.
- The Indian Sanitation Facilities Act, Pub. L. 86–121; 42 U.S.C. 2004a.
- Indian Lands Open Dump Cleanup Act, 25 U.S.C. 3901 *et seq*.
- Section 321 of the Public Health Service Act as amended, 42 U.S.C. 248.
- Department Regulation, 5 U.S.C. 301.
- Privacy Act of 1974 as amended, 5 U.S.C. 552a, and
- Federal Records Act, 44 U.S.C. 2901.

PURPOSE(S):

The purposes of this system of records are:

1. To determine basic individual and home eligibility for sanitation services provided by the SFC Program under Pub. L. 86–121.
2. Budget justification for appropriation and project development to serve eligible homes and persons with sanitation facilities.
3. To monitor, track and report status and progress of services provided.
4. To maintain records on and to verify individuals' eligibility for services.
5. To link with the IHS RPMS for purposes of verifying and determining individuals' eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b), other routine uses are as follows:

1. IHS may disclose records to a Congressional office in response to a verified inquiry from the Congressional office made at the written request of the subject individual.
2. IHS may disclose records to other Federal agencies or Tribes that provide funding for or are involved in providing sanitation facilities to individuals or communities. In addition, records may be disclosed to individuals specifically involved in the process of providing sanitation facilities, including but not limited to Tribal officials, Tribal housing authorizes, Tribal utilities, contractors, State and local entities and consultants.
3. IHS and/or HHS may disclose information from this system of records to the Department of Justice (DOJ), or to a court or other tribunal, when (a) HHS, or any component thereof, or (b) any HHS employee in his or her official capacity, or (c) any HHS employee is his or her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigations is likely to affect HHS or any of its components, is a party of litigation or has an interest in such litigation, and HHS determines that the use of such records by the DOJ, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.
4. In the event that a system of records maintained by the IHS to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.
5. IHS may disclose records contained in this system of records to HHS contractors and subcontractors for the purpose of collecting, compiling, aggregating, analyzing, or refining records in the system. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to such records.
6. Pursuant to applicable legal authority, IHS may disclose records contained in this system of records to other Federal or tribal entities that provide sanitation facilities at the request of these entities in conjunction with a computer-matching program conducted by these entities to detect or curtail fraud and abuse in similar types of program services.
7. To appropriate Federal agencies and Departmental contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in folders and/or ledgers. Electronic records are stored on computer servers.

RETRIEVABILITY:

Records, which identify individual persons, are indexed by name; address;

phone number; Social Security Number; Tribal/Census or SFC identification numbers.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties. Paper records are stored in locked standard file cabinets. Electronic records are stored on servers and access or updates to information require a system password, thereby preserving the integrity of the data. All IHS personnel who make use of records contained in this system are made aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

RETENTION AND DISPOSAL:

For individuals who receive IHS sanitation facility services, the proposed IHS Records Disposition Authority (Schedule 3, section 11, Item No. 11–11a) states the following: Transfer to the Federal Records Center (FRC) when administrative value ends, or after 10 years of inactivity, whichever is sooner. Destroy 20 years after retirement to FRC.

For individuals who do not receive IHS sanitation facility services, the proposed IHS Records Disposition Authority (Schedule 3, section 11, Item No. 11–11b) states the following: Transfer to the Federal Records Center (FRC) when administrative value ends, or after 10 years of inactivity, whichever is sooner. Destroy 20 years after retirement to the FRC.

SYSTEM MANAGERS AND ADDRESSES: SEE APPENDIX 1.

POLICY COORDINATING OFFICIAL:

Director, Division of Sanitation Facilities Construction (DSFC), Office of Environmental Health and Engineering (OEHE), IHS, 801 Thompson Avenue, TMP–610, Rockville, Maryland 20852. The IHS Area Office Sanitation Facilities Construction (SFC) Director or designee is the System Manager for all SFC officers located within their respective IHS Area. Each SFC Office Manager is the System Manager for the respective local IHS SFC office within an Area and is the point of contact for written request(s) from the individual of the record. The local IHS SFC Office Manager will process the written request by locating all or parts of the records stored either physically or electronically.

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, send a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Social Security Number, Tribal/census ID and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should make a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Social Security Number, Tribal/Census ID and signature.

CONTESTING RECORD PROCEDURES:

Send a written request to the IHS Area SFC Director, local IHS SFC Office Manager or designee at the appropriate location. A list of all locations is provided in Appendix 1.

Individuals must provide their full name, current address and telephone number, Social Security Number, Tribal/census ID and signature.

Provide a reasonable description of the record, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information will be collected from the following sources:

- From the individual and/or a by individual's family member or designated representative.
- RPMS.
- Tribal governments and/or organizations.
- Tribal housing authorities.
- Tribal utilities.
- Other Federal and/or non-federal agencies, including but not limited to the Bureau of Indian Affairs, State or local governments or non-governmental entities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained

Director, Aberdeen Area IHS, Attention: Division of Sanitation Facilities Construction, 115 4th Avenue Southeast, Aberdeen, South Dakota 57401.

Director, Belcourt Hospital IHS, Attention: Sanitation Facilities Construction, P.O. Box 160, Belcourt, North Dakota 58316.

Director, Martin Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box F, Martin, South Dakota 57551.

Director, Minot Field Office IHS, Attention: Sanitation Facilities Construction, Federal Building Room 302, Minot, North Dakota 58701.

Director, Mobridge Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box 159, Mobridge, South Dakota 57601.

Director, Pierre Field Office IHS, Attention: Sanitation Facilities Construction, 420 South Garfield, Suite 200, Pierre, South Dakota 57501.

Director, Rosebud Hospital IHS, Attention: Sanitation Facilities Construction, P.O. Box 400, Rosebud, South Dakota 57570.

Director, Sioux City Field Office IHS, Attention: Sanitation Facilities Construction, 6th and Douglas, Room 207 Box 19, Sioux City, Iowa 51101.

Director, Alaska Area Native Health Service, OEHE-Division of Sanitation Facilities Construction, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508.

Director, Albuquerque Area IHS, Attention: Sanitation Facilities Construction, 5300 Homestead Road, NE., Albuquerque, New Mexico 87110.

Director, Albuquerque Service Unit IHS, Attention: Sanitation Facilities Construction, 801 Vassar Drive, NE., Albuquerque, New Mexico 87106.

Director, Santa Fe Service Unit IHS, Attention: Sanitation Facilities Construction, 1700 Cerrillos Road, Santa Fe, New Mexico 87505.

Director, Southern Ute Service Unit IHS, Attention: Sanitation Facilities Construction, 322 Buckskin Charlie, Ignacio, Colorado 81137.

Director, Bemidji Area IHS, Attention: Sanitation Facilities Construction, 522 Minnesota Avenue, NW., Room 216, Bemidji, Minnesota 56601.

Director, Ashland Field Office IHS, Attention: Sanitation Facilities Construction, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806.

Director, Minnesota District Office IHS, Attention: Sanitation Facilities Construction, 522 Minnesota Avenue, NW., Room 216, Bemidji, Minnesota 56601.

Director, Rhinelander District Office IHS, Attention: Sanitation Facilities Construction, 9A South Brown Street, Rhinelander, Wisconsin 54501.

Director, Sault St. Marie Field Office IHS, Attention: Sanitation Facilities Construction, 2847 Ashmun Street, Suite 1, Sault Ste. Marie, Minnesota 49783.

Director, Billings Area IHS, Attention: Sanitation Facilities Construction, 2900 4th Avenue North Box 36600, Billings, Montana 59107.

Director, PHS Indian Hospital, Attention: Sanitation Facilities Construction, P.O. Box 760, Browning, Montana 59417.

Director, Crow Agency PHS Indian Hospital, Attention: Sanitation Facilities Construction, P.O. Box 9, Crow Agency, Montana 59022.

Director, Wind River Service Unit IHS, Attention: Sanitation Facilities Construction, #76 Black Cole Drive, Box 128, Fort Washakie, Wyoming 82514.
Director, Harlem PHS Indian Hospital, Attention: Sanitation Facilities Construction, RR1 Box 67, Harlem, Montana 59526.
Director, Lame Deer PHS Indian Health Center, Attention: Sanitation Facilities Construction, Lame Deer, Montana 59043.
Director, Wolf Point PHS Indian Health Center, Attention: Sanitation Facilities Construction, Chief Redstone Health Center #729, Wolf Point, Montana 59201.
Director, California Area IHS, Attn: Division of Sanitation Facilities Construction, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814.
Director, Arcata Field Office IHS, Attention: Sanitation Facilities Construction, 1125 16th Street, Suite 100, Arcata, California 95521.
Director, Escondido District Office IHS, Attention: Sanitation Facilities Construction, 1320 West Valley Parkway, Suite 309, Escondido, California 92029.
Director, Fresno Field Office IHS, Attention: Sanitation Facilities Construction, 1551 East Shaw Avenue, Suite 117B, Fresno, California 93710.
Director, Redding District Office IHS, Attention: Sanitation Facilities Construction, 1900 Churn Creek Road, Suite 210, Redding California 96002.
Director, Ukiah Field Office IHS, Attention: Sanitation Facilities Construction, 609 South State Street, Suite A, Ukiah, California 95482.
Director, Nashville Area IHS, Attn: Division of Sanitation Facilities Construction, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634.
Director, Atmore Field Office IHS, Attention: Sanitation Facilities Construction, 5811 Jack Springs Road, Atmore, Alabama 46502.
Director, Bangor Field Office IHS, Attention: Sanitation Facilities Construction, 304 Hancock Street #3H, Bangor, Maine 04401-6573.
Director, Opelousas Field Office IHS, Attention: Sanitation Facilities Construction, 2341 Larkspur Lane, Suite 2, Opelousas, Louisiana 70570.
Director, Manlius Field Office, Attention: Sanitation Facilities Construction, 122 East Seneca Street, Manlius, New York 13104.
Director, Navajo Area IHS, Attn: Director, Division of Sanitation Facilities Construction, P.O. Box 9020 (Physical Address: Hwy 264 & St. Michael Road), Window Rock, Arizona 86515.
Director, Crownpoint Health Care Facility, Attention: Sanitation Facilities Construction, P.O. Box 680, Crownpoint, New Mexico 87313.
Director, Farmington Field Office IHS, Attention: Sanitation Facilities Construction, 300 West Arrington, Suite 121, Farmington, New Mexico 87401.
Director, Flagstaff Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box KK, Flagstaff, Arizona 86002.
Director, Fort Defiance Indian Hospital, Attention: Sanitation Facilities Support Center, P.O. Box 648, Fort Defiance, Arizona 86504.
Director, Gallup Indian Medical Center IHS, Attention: Sanitation Facilities Construction, 3412 East Highway 66, Gallup, New Mexico 87301.
Director, Kayenta Indian Health Center, Attention: Sanitation Facilities Construction, P.O. Box 368, Kayenta, Arizona 86033.
Director, Many Farms Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box 694, Many Farms, Arizona 86538.
Director, Northern Navajo Medical Center IHS, Attention: Sanitation Facilities Construction, P.O. Box 160, Shiprock, New Mexico, 87420.
Director, Tuba City Regional Health Care Center, Attention: Sanitation Facilities Construction, P.O. Box 600, Tuba City, Arizona 86045.
Director, Winslow Indian Health Care Center, Attention: Sanitation Facilities Construction, 500 N. Indiana Avenue, Winslow, Arizona 86047.
Director, Oklahoma City Area IHS, Attn: Director, Division of Sanitation Facilities Construction, Five Corporate Plaza, 3625 NW., 56th Street, Oklahoma City, Oklahoma 73112.
Director, Clinton Field Office IHS, Attention: Sanitation Facilities Construction, Route 1, Box 3060, Clinton, Oklahoma 73601.
Director, Holton Field Office IHS, Attention: Sanitation Facilities Construction, 324 New York Avenue, Holton, Kansas 66436.
Director, Lawton Indian Hospital IHS, Attention: Sanitation Facilities Construction, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73507.
Director, Miami Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box 1498, Miami, Oklahoma 74354.
Director, Okmulgee Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box 67, Okmulgee, Oklahoma 74447.
Director, Pawnee Field Office IHS, Attention: Sanitation Facilities Construction, 1201 Heritage Circle, Pawnee, Oklahoma 74058.
Director, Shawnee Field Office IHS, Attention: Sanitation Facilities Construction, 14106 Highway 177, Shawnee, Oklahoma 74804.
Director, Phoenix Area IHS, Attn: Director, Division of Sanitation Facilities Construction, Two Renaissance Square, Suite 720, 40 North Central Avenue, Phoenix, AZ 85004–4424.
Director, Elko Field Office IHS, Attention: Sanitation Facilities Construction, 557 W. Silver Street, Suite 204, Elko, Nevada 89801.
Director, Fort Duchesne Indian Health Center, Attention: Sanitation Facilities Construction, P.O. Box 489, Fort Duchesne, Utah 84026.
Director, Eastern Arizona District Office IHS, Attention: Sanitation Facilities Construction, 5448 S. White Mountain Road, Suite 220, Lakeside, Arizona 85929.
Director, Hopi Health Care Center, Attention: Sanitation Facilities Construction, P.O. Box 4000, Polacca, Arizona 86042.
Director, San Carlos PHS Indian Hospital, Attention: Sanitation Facilities Construction, P.O. Box 208, San Carlos, Arizona 85550.
Director, Reno District Office IHS, Attention: Sanitation Facilities Construction, 1395 Greg Street, Suite 101, Sparks, Nevada 89431.
Director, Western Arizona District Office IHS, Attention: Sanitation Facilities Construction, 1553 West Todd Drive, Suite 107, Tempe, Arizona 85283.
Director, Whiteriver PHS Indian Hospital, Attention: Sanitation Facilities Construction, P.O. Box 860, Whiteriver, Arizona 85941.
Director, Fort Yuma PHS Indian Hospital, Attention: Sanitation Facilities Construction, P.O. Box 1368, Yuma, Arizona 85364.
Director, Portland Area IHS, Attn: Director, Division of Sanitation Facilities Construction, 1220 SW., Third Ave., Room 476, Portland, Oregon 97204.
Director, Olympic District Office IHS, Attention: Sanitation Facilities Construction, 4060 Wheaton Way, Suite E, Bremerton, Washington 98310.
Director, Fort Hall Field Office IHS, Attention: Sanitation Facilities Construction, P.O. Box 717—Mission Road, Fort Hall, Idaho 83203.
Director, Port Angeles Field Office IHS, Attention: Sanitation Facilities Construction, 1601 East Front Street, Building B, Suite C, Port Angeles, Washington 98362.
Director, Western Oregon Service Unit IHS, Attention: Sanitation Facilities Construction, 3750 Chemawa Road NE., Salem, Oregon 97305.
Director, Seattle District Office IHS, Attention: Sanitation Facilities Construction, 2201 Sixth Avenue, Room 300, Seattle, Washington 98121.
Director, Spokane District Office IHS, Attention: Sanitation Facilities Construction, 1919 E. Francis Ave., Spokane, Washington 99208.
Director, Tucson Area IHS, Attn: Director, Division of Sanitation Facilities Construction, 7900 S.J. Stock Road, Tucson, Arizona 85746–7012.
Director, Western District Office IHS, Attention: Sanitation Facilities Construction, 2250 North Pinal Avenue, Suite 4, Casa Grande, Arizona 85222.
Director, Sells Service Unit IHS, Attention: Sanitation Facilities Construction, P.O. Box 548—Mesquite Street, Sells, Arizona 85634.

Dated: February 15, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. 08–865 Filed 2–27–08; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0066]

Privacy Act of 1974: USCIS; Verification Information System (VIS) System of Records Notice

AGENCY: Department of Homeland Security.

ACTION: Notice to alter a Privacy Act system of records.

SUMMARY: The Department of Homeland Security is republishing the Privacy Act system of records for the Verification and Information System (VIS) previously published on April 9, 2007 (72 FR 17569) in order to: (1.) Add two new categories of records one derived from the Computer Linked Application Information Management System (CLAIMS 4) (62 FR 11919), and the other derived from the Redesigned Naturalization Automated Caseworker Systems (RNACS) (67 FR 20996); (2.) update the category of records derived from Treasury Enforcement Communication Systems (TECS) (66 FR 52984) to include Real Time Arrivals (RTA) data; (3.) correct the categories of individuals to include United States (U.S.) citizens; (4.) reflect changes to the verification process of expanded use of the Photo Screening Tool to make it mandatory for all employers that are verifying employment eligibility of their non-U.S. citizen employees if the individual's photo is on file with United States Citizenship and Immigration Service (USCIS) in the Biometric Storage System (72 FR 17172); and (5.) update the routine uses to remove routine use L. for the sharing of VIS data because the other routine uses cover the allowable extent of sharing from VIS. These changes are more thoroughly spelled out in an accompanying Privacy Impact Assessment (PIA) update and a PIA update that was published on September 5, 2007, both of which can be found on the DHS Privacy Web site (*http://www.dhs.gov/privacy).*

DATES: Written comments must be submitted on or before March 31, 2008.

ADDRESSES: You may submit comments, identified by Docket Number DHS 2007–0066 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this system of records notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information on the program please contact: Claire Stapleton, Privacy Branch Chief, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 470 L'Enfant Plaza East, SW., Suite 8204, Washington, DC 20024. For privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. USCIS Verification Information System

Congress mandated that USCIS establish a system that can be used to verify citizenship and immigration status of individuals seeking government benefits and establish a system for use by employers to determine whether an employee is authorized to work in the United States at the time that he or she begins working. Authority for having a system for verification of citizenship and immigration status of individuals seeking government benefits can be found in the Immigration Reform and Control Act of 1986 (IRCA), *Public Law* (Pub. L.) 99–603, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), *Public Law* 104–193, 110 Stat. 2168, and in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009. Authority for having a system establish employment eligibility can be found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009. The Basic Pilot program's operation was extended by statute twice; See Basic Pilot Extension Act, Public Law No. 107–128 (2002); and Basic Pilot Program Extension and Expansion Act, Public Law No. 108–156 (2003).

USCIS implemented these mandates through the Systematic Alien Verification for Entitlements (SAVE) program for government benefits and the ''Basic Pilot Program'' for determining whether an employee is authorized to work in the United States. The ''Basic Pilot Program'' has recently been renamed ''E–Verify''. A coordinated outreach program launched in August of 2007 began informing participating employers of the new name and screen formatting changes and this outreach effort will be continued. ''E–Verify'' will be used in lieu of ''Basic Pilot'' for the remainder of this document.

The Verification Information System (VIS) is the technical infrastructure that enables USCIS to operate SAVE and E–Verify. VIS is a nationally accessible database of selected immigration status information containing in excess of 100 million records. Government agencies use information from the SAVE program in order to determine whether an individual is eligible for any public benefit, license or credential based on individual's citizenship or immigration status. Private employers and government users use E–Verify to confirm whether a newly hired employee is authorized to work in the United States.

A necessary corollary to having the ability to determine if an individual is authorized to gain government benefits or legal employment is the ability to determine if the verification processes are being abused or misused: and when appropriate, to seek legal or administrative redress against those committing fraud or otherwise misusing the verification processes. Consequently, the information in VIS is retained and analyzed for ten years, the length of time equivalent to the statute of limitations for the most typical types of fraud or misuse of this type of system or documents (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship or naturalization documents), or longer if the information is part of an active and ongoing investigation.

VIS is currently comprised of citizenship, immigration and employment status information from several DHS systems of records, including records contained in the U.S. Customs and Border Protection (CBP) Treasury Enforcement Communication Systems (TECS) (66 FR 52984), Biometric Storage System (BSS) (72 FR 17172), the USCIS Central Index System (CIS) (72 FR 1755), and the USCIS Computer Linked Application Information Management System (CLAIMS 3) (62 FR 11919). As described in the previous system of records notice, USCIS now has the technical capability to add data from Immigration and Customs Enforcement's (ICE) Student

and Exchange Visitor Information System (SEVIS) (70 FR 14477). VIS also includes information from the Social Security Administration's (SSA) NUMIDENT System (71 FR 1796).

This System of Records Notice is replacing the System of Records Notice previously published in the **Federal Register** on April 9, 2007 (72 FR 17569).

A. SAVE Program

The SAVE Program, which is supported by VIS, provides government agencies with citizenship and immigration status information for use in determining an individual's eligibility for government benefits. Government agencies input biographic information into VIS for government benefit eligibility determinations. If VIS has a record pertaining to the individual, the government agency will receive limited biographic information, on the citizenship and immigration status of the individual applying for a benefit. If VIS does not have a record pertaining to the individual, VIS automatically notifies a USCIS Immigration Status Verifier (ISV). The ISV then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would provide citizenship and immigration status. If the ISV finds additional relevant information, citizenship and immigration status data is provided to the requesting government agency user through VIS. The ISV will also update the appropriate record in the USCIS CIS database. The REAL ID Act requires that beginning May 11, 2008, or later if the date is extended, all state Departments of Motor Vehicles (DMV) routinely utilize the USCIS SAVE program to verify the legal immigration status of applicants for driver's licenses and identification cards.

B. E-Verify

VIS also supports the E-Verify Program, a free and voluntary program allowing participating employers to verify the employment eligibility of newly hired employees. The program is a collaboration between the SSA and USCIS.

After an individual, whether U.S. citizen or non-U.S. citizen, is hired by an E-Verify participating employer and the individual completes the Form I–9, the employer inputs information from Sections 1 and 2 of the Form I–9 into the E-Verify portion of VIS. This query is first sent from VIS to SSA to verify Social Security information. If SSA cannot verify the employee's social security information, SSA will send a SSA Tentative Non-Confirmation (TNC) response to VIS, which in turn will notify the employer of SSA's inability to automatically verify the information provided by employee. The employer is then required to provide information to the employee about the employee's option to contest and the contact information for the SSA office in order to clear up the mismatch and resolve any issues.

If SSA is able to verify the employee information and the individual is a non-U.S. citizen, the VIS system continues the process in order to verify employment authorization. For any participating employer whose non-U.S. citizen employees present an I–551 or I–766 card for their Form I–9 documentation and whose information is successfully verified by SSA and USCIS, the employer will be able to use the USCIS photo tool to compare the photographs on the documents presented by the employee with the photographs stored in the BSS system of records, if available. If VIS is able to return a photograph, the employer will then compare the photograph made available by the VIS photo tool and determine if it matches the photograph on the document presented by the employee. If the employer determines the photos do not match or if the employer cannot make a determination whether there is a photo match, the employer is then required to provide information to the employee about how the employee may contact USCIS to resolve any issues.

After the process of verifying the employment authorization concludes, regardless of whether or not the photo tool has been utilized, USCIS (through VIS) provides the employer with a case verification number and the disposition of whether an employee is authorized to work. If a mismatch of information occurs with DHS, VIS automatically notifies an ISV, who then conducts a manual search of other DHS databases to determine whether there is any other information pertaining to that individual that would help to establish employment authorization. If the ISV cannot determine the person's work authorization, VIS sends a ''DHS Tentative Non-Confirmation'' (TNC) response notifying the employer that the employee has the option to contact USCIS in order to clarify the information discrepancy. DHS TNCs are issued when the ISV is unable to determine the person's work authorization based on DHS immigration-related records. The employer may not terminate or take any adverse employment action against the employee on the basis of either a DHS or SSA TNC while the issue is being further investigated. If a Final Non-Confirmation (FNC) response is issued, the employer may terminate the employee or they may choose to retain the employee and notify DHS that they intend to do so, subject to potential penalties for knowingly employing an unauthorized alien. If the employer does not choose to retain the employee after receiving a Final Non-Confirmation response they are not required to notify DHS.

Performing a verification query through the E-Verify system is only legally permissible after an offer of employment has been extended to an employee. The earliest the employer may initiate a query is after an individual accepts an offer of employment and after the employee and employer complete the Form I–9. For new employees, the employer must initiate the query no later than the end of the third business day after the new hire's actual start date. Under the terms governing employers' participation in E-Verify, the system cannot be used to pre-screen job applicants or to re-screen individuals whose work eligibility has already been determined.

C. Changes to VIS SORN

The VIS SORN is being revised to reflect changes to the categories of data in VIS. In order to improve the accuracy of VIS and to reduce the number of TNCs or data mismatches issued by E-Verify, as well as reduce the number of Additional Verification Requests issued by the SAVE program, USCIS is adding data from two systems which it did not previously receive data—USCIS RNACS, USCIS CLAIMS 4— and automated access to data from a system which it previously received other information—Real Time Arrival (RTA) data from CBP's TECS. These changes are described more fully in the PIA dated September 4, 2007 and clarified in the VIS PIA and Person Centric Query (PCQ) PIA to be published concurrently with this SORN.

RNACS will provide VIS with information on individuals who applied for naturalization or citizenship, who applied to replace naturalization certificates under the Immigration and Nationality Act, as amended, and who have submitted fee payments with such applications, from 1986 through 1996. Use of RNACS will reduce the high volume of TNCs resulting from SSA's inability, in some cases, to confirm citizenship for naturalized citizens, because naturalized citizens often fail to update their information with the SSA. After the initial query, and before SSA returns a TNC based on inability to confirm citizenship, all naturalization

databases will be queried (including CLAIMS 4, CIS and RNACS). Records in the system may include dated documents filed or received with the legacy Immigration and Naturalization Service (INS). This additional information will improve VIS's ability to confirm employment authorization upon initial verification for individuals with documents issued between 1986 and 1996.

CLAIMS 4 will provide VIS with verification of naturalization status through the Person Centric Query (PCQ) Service. Currently this information is only reviewed and used if there is a TNC.

Automated access to TECS RTA data will provide VIS with the most current information on individuals who have entered the country. Currently, VIS has access to this information but only about two weeks after a potential employee actually arrived in the United States. This change will provide VIS with automatic access to the most current data to ensure rapid and accurate processing of verification. This change is described more fully in the PIA published concurrently with this SORN.

The VIS SORN is being revised to correct previous VIS SORNs which state that VIS contained information on individuals covered by provisions of the Immigration and Nationality Act. However, because VIS is used to establish employment authorization for all employees from an employer that participates in the program, it necessarily includes data on both U.S. citizen and non-U.S. citizen employees. Section (b) of 8 U.S.C 1324a specifically describes the requirements for collecting and using the employment and identity verification information. This correction is further described in the PIA to publish currently with this SORN.

The VIS SORN is being updated to reflect the fact that VIS will begin requiring the use of the Photo Screening Tool for all employers verifying employment eligibility of their non-U.S. citizen employee, if a photo is on file with USCIS in the ISRS and/or BSS (when the latter is deployed) system. The use of the photo will add an additional step to further ensure that the employee is actually the person who they are claiming to be and to detect certain cases of document fraud such as superimposing a new photograph on a valid immigration document. This issue is described in the VIS PIA dated September 4, 2007.

Finally, the VIS SORN is being revised to remove routine use L. which covered sharing ''To Federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure''. This routine use was found to go beyond the E-Verify and SAVE's legal authority for sharing. The other routine uses appropriate cover all sharings.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United Stated Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular assigned to an individual.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals reading the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the agency.

III. Privacy Impact Assessments

DHS is publishing a PIA update to coincide with this SORN. This PIA update reflects many of the changes that are discussed in this SORN. Other changes were discussed more fully in the PIA update, dated September 4, 2207, which did not accompany a SORN. These updates, when taken together with the PIA dated April 1, 2007, analyze the current privacy risks to VIS.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

SYSTEM OF RECORDS DHS/USCIS–004

SYSTEM NAME:

U.S. Citizenship and Immigration Services Verification Information System (VIS).

SYSTEM LOCATION:

The Verification Information System (VIS) database is housed in a contractor-owned facility in Meriden, CT. The system is accessible via the Internet, Web services, Secure File Transfer Protocol (SFTP) batch, and through a computer via analog telephone line, and is publicly accessible to participants of the Systematic Alien for Verification Entitlements (SAVE) program and the E-Verify Employer Verification program, including authorized USCIS personnel, other authorized government users, participating employers, and other authorized users.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on individuals, both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States including but not limited to individuals who have been lawfully admitted to the United States, individuals who have been granted U.S. citizenship and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, whose employers have submitted to the E-Verify program their employees identification documentation upon initial employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Data originating from the USCIS Central Index System (CIS), including the following information about the individual who comes before USCIS: Alien Registration Number (A-Number), Name (last, first, middle), Date of birth, Date entered United States (entry date), Country of birth, Class of Admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), Provision of Law code cited for employment authorization, office code where the authorization was granted, Date employment authorization decision issued, Date employment authorization may begin (start date), Date employment authorization expires (expiration date), and Date employment authorization was denied (denial date).

B. Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A-Number, Name (last, first, middle), Date alien's status was changed (status change date), Date of birth, Class of Admission Code, Date admitted until, Country of citizenship, Port of entry, Date entered United States (entry date),

Departure date, I–94 Number, Visa Number.

C. Data originating from the Redesigned Naturalization Automated Casework System (RNACS). RNACS is a database that includes information from individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications. The naturalization records in the RNACS database house information from 1986 to 1996. Information that identifies individuals named above, e.g., name and address, date of birth, and alien registration number. Records in the system may also include information such as date documents were filed or received in INS, status, codes of admission, and locations of record.

D. Data originating from the Computer Linked Applications Information Management System (CLAIMS 4) including the following information about the individual; First Name, Last Name, Date of Birth, Social Security Number, and naturalization date.

E. Data originating from the USCIS Biometric Storage System (BSS), including: Receipt Number, Name (last, first, middle), Date of Birth, Country of Birth, Alien number, Form number, for example Form I–551 (Lawful Permanent Resident card) or Form I–766 (Employment Authorization Document), Expiration Date, and Photo.

F. Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: Receipt number, Name (last, first, middle), Date of Birth, Country of Birth, Class of Admission Code, A-number, I–94 number, Date entered United States (entry date), and Valid To Date.

G. Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), Name (last, first, middle), Date of Birth, Country of Birth, Class of Admission Code, I–94 number, Date entered United States (entry date), and Valid To Date.

H. Data originating from Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.

I. Information collected from the benefit applicant by a federal, state, local or other benefit-issuing agency to facilitate immigration status verification that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, Name (last, first, middle), Date of birth, User Case Number, DHS document type, DHS document expiration date, SEVIS ID and Visa Number.

J. Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the Agency: Agency name, Address, Point(s) of Contact, Contact telephone number, Fax number, E-mail address, Type of benefit(s) the agency issues (i.e. Unemployment Insurance, Educational Assistance, Driver Licensing, Social Security Enumeration, etc.).

K. Information collected from the benefit-issuing agency about the Individual Agency User including: Name (last, first, middle), Phone Number, Fax Number, E-mail address, User ID for users within the Agency.

L. System-generated response, as a result of the SAVE verification process including: Case Verification Number, Entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from BSS, and Immigration status (e.g. Lawful Permanent Resident).

M. Information collected from the employee by the Employer User to facilitate employment eligibility verification may include the following about the Individual employee: Receipt Number, Visa Number, Foreing Passport number, A-Number, I–94 Number, Name (last, first, middle initial, maiden), Social Security Number, Date of birth, Date of hire, Claimed citizenship status, Acceptable Form I–9 document type, and Acceptable Form I–9 Document expiration date.

N. Information Collected About the Employer, including: Company name, Physical Address, Employer Identification Number, North American Industry Classification System code, Number of employees, Number of sites, Parent company or Corporate company, Name of Contact(s), Phone Number, Fax Number, and E-mail Address.

O. Information Collected about the Employer User (e.g., Identifying users of the system at the Employers), including: Name, Phone Number, Fax Number, E-mail address, and User ID.

P. System-generated response information, resulting from the E-Verify employment eligibility verification process, including: Case Verification Number; VIS generated response: Employment authorized, Tentative non-confirmation, Case in continuance, Final non-confirmation, Employment unauthorized, or DHS No Show; Disposition data from the employer includes Resolved Unauthorized/Terminated, Self Terminated, Invalid Query, Employee not terminated, Resolved Authorized, and Request additional verification, which includes why additional verification is requested by the employer user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for the maintenance of records in the system is found in 8 U.S.C. 1324a, 8 U.S.C. 1360, 42 U.S.C. 1320b–7 and the Immigration Reform and Control Act of 1986 (IRCA), *Public Law* (Pub. L.) 99–603, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193, 110 Stat. 2168, and in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009.

PURPOSE(S):

This system of records is used to provide immigration and citizenship status information to Federal, State, and local government agencies for immigrants, non-immigrants, and naturalized U.S. citizens applying for Federal, State, and local public benefits.

It is also used to provide employment authorization information to employers participating in the E-Verify/Employment Eligibility Verification Program.

Lastly this system of records may be used to monitor for the commission of fraud or other illegal activity related to misuse of either the SAVE or E-Verify program including as investigating duplicate registrations by employers, inappropriate registration by individuals posing as employers, verifications that are not performed within the required 3-day verification time limit, and cases referred to E-Verify or SAVE by the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To a federal, state, tribal, or local government agency, or to a contractor

acting on the agency's behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning: (1) Determination of eligibility for a federal, state, or local public benefit; (2) issuance of a license or grant; or (3) government-issued credential.

B. To employers participating in the E-Verify Employment Verification Program in order to verify the employment eligibility of their employees working in the United States.

C. To other Federal, State, tribal, and local government agencies seeking to verify or determine the citizenship or immigration status of any individual within the jurisdiction of the DHS as authorized or required by law.

D. To contractors, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish a DHS mission function related to this system of records, in compliance with the Privacy Act of 1974, as amended.

E. To a Congressional office, from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

F. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To a former employee of the Department for purposes of: (1) Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To the DOJ, Civil Rights Division, for the purpose of responding to matters within the DOJ's jurisdiction to include allegations of fraud and/or nationality discrimination.

I. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) it is determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons when reasonably necessary to assist in connection with efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

J. To the United States Department of Justice (including United States Attorney offices) or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to the court or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation: (1) DHS; (2) any employee of DHS in his or her official capacity; (3) any employee of DHS in his or her individual capacity where DOJ or DHS has agreed to represent said employee; or (4) the United States or any agency thereof;

K. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Data is stored in computer accessible storage media and hardcopy format.

RETRIEVABILITY:

Agency records are retrieved by name of applicant or other unique identifier to include: verification number, A–Number, I–94 Number, Visa Number, SEVIS ID, or by the submitting agency name. Employer records are retrieved by verification number, A–Number, I–94 Number, Receipt Number, Passport (U.S. or Foreign) number or Social Security Number of the employee, or by the submitting company name.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws and policies, including the DHS information technology security policies and the Federal Information Security Management Act (FISMA). All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel on a need-to-know basis, using locks, and password protection features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature, which provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Information maintained by DHS contractors for this system is also safeguarded in accordance with all applicable laws and regulations, including DHS IT security policies and FISMA. Access is controlled through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

The following proposal for retention and disposal is being prepared to be sent to the National Archives and Records Administration for approval. Records collected in the process of establishing immigration and citizenship status or employment authorization are stored and retained in the VIS Repository for ten (10) years, from the date of the completion of the verification unless the records are part of an on-going investigation in which case they may be retained until completion of the investigation. This period is based on the statute of limitations for most types of misuse or fraud possible using VIS (under 18 U.S.C. 3291, the statute of limitations for false statements or misuse regarding passports, citizenship or naturalization documents).

Once the web user views the photo, the image is discarded and not retained on the web user's computer. Photocopies mailed to DHS in response to a TNC will be maintained as long as necessary to complete the verification process, and the duration of the benefit granted, but not limited to possible investigation and prosecution of fraud in the case of detected photo substitution.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Verification Division, U.S. Citizenship and Immigration Services,

470–490 L'Enfant Plaza East, SW., Suite 8206, Washington, DC 20024.

NOTIFICATION PROCEDURES:

Please address your inquiries about the VIS system in writing to the system manager identified above. To determine whether this system contains records relating to you, provide a written request containing the following information:

1. Identification of the record system;
2. Identification of the category and types of records sought; and
3. The requesting individual's signature and verification of identity pursuant to 28 U.S.C. 1746, which permits statements to be made under penalty of perjury. Alternatively, a notarized statement may be provided.

Address inquiries to the system manager at: Chief, Verification Division, U.S. Citizenship and Immigration Services, 470–490 L'Enfant Plaza East, SW., Suite 8206, Washington, DC 20024, or to the Freedom of Information/ Privacy Act Office, USCIS, National Records Center, P.O. Box 6481010, Lee Summit, MO 64064–8010.

RECORD ACCESS PROCEDURES:

In order to gain access to one's information stored in the VIS database, a request for access must be made in writing and addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at USCIS. Individuals who are seeking information pertaining to them are directed to clearly mark the envelope and letter ''Privacy Act Request.'' Within the text of the request, the subject of the record must provide his/her account number and/or the full name, date and place of birth, and notarized signature, and any other information which may assist in identifying and locating the record, and a return address. For convenience, individuals may obtain Form G–639, FOIA/PA Request, from the nearest DHS office and used to submit a request for access. The procedures for making a request for access to one's records can also be found on the USCIS Web site, located at *http://www.uscis.gov*.

An individual who would like to file a FOIA/PA request to view their USCIS record may do so by sending the request to the following address: U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064–8010.

CONTESTING RECORD PROCEDURES:

Individuals have an opportunity to correct their data by submitting a redress request directly to the USCIS Privacy Officer who refers the redress request to the USCIS Office of Records. When a redress request is made, any appropriate change is added directly to the existing records stored in the underlying DHS system of records from which the information was obtained. Once the record is updated in the underlying DHS system of records, it is downloaded into VIS. If an applicant believes their file is incorrect but does not know which information is erroneous, the applicant may file a Privacy Act request to access their record as detailed in the section titled ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained comes from several sources: (A.) Information derived from the following DHS systems of records, USCIS's CIS, CLAIMS3, CLAIMS4, RNACS, ISRS and/or BSS (when the latter system is deployed); CBP's TECS; and ICE's SEVIS, (B.) Information derived from the SSA, (C.) Information collected from agencies and employers about individuals seeking government benefits or employment with an employer using an employment verification program, (D.) Information collected from system users at either the agency or the employer used to provide account access to the verification program, and (E.) Information developed by VIS to identify possible issues of misuse or fraud.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–3833 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form G–1054, Request for Fee Waiver Denial Letter; OMB Control No. 1615–0089.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 28, 2008.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0089 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies 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 submission of responses.

Overview of this Information Collection:

(1) Type of Information Collection: Extension of a currently approved information collection.

(2) Title of the Form/Collection: Request for Fee Waiver Denial Letter.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form G–1054; U.S. Citizenship and Immigration Services (USCIS).

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The regulations at 8 CFR 103.7(c) allows U.S. Citizenship and Immigration Services (USCIS) to waive fees for benefits under the Immigration

and Nationality Act (Act). This form is used to maintain consistency in the adjudication of fee waiver requests, to collect accurate data on amounts of fee waivers, and to facilitate the public-use process.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 16,000 responses at 1.25 hours (75 minutes) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 20,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 25, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–3752 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection Under Review: Form I–777, Application for Issuance or Replacement of Northern Mariana Card; OMB Control No. 1615–0042.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 28, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control No. 1615–0042 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies 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 submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Issuance or Replacement of Northern Mariana Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–777. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection is used by applicants applying for a Northern Mariana identification card if they received United States citizenship pursuant to Public Law 94–241 (Covenant to Establish a Commonwealth of the Northern Mariana Islands).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*. We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 25, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–3753 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, OMB Control No. 1615–0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 28, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to (202) 272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0070 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies 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 submission of responses.

Overview of This Information Collection:

(1) Type of Information Collection: *Extension of a currently approved information collection.*

(2) Title of the Form/Collection: Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I–643. U.S. Citizenship and Immigration Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals or Households. The primary purpose of the information collected on this form is for use in the Office of Refugee Resettlement Report to Congress (8 U.S.C. 1523). The USCIS is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 195,000 responses at 55 minutes (.916 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 178,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 25, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–3754 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–865, Sponsor's Notice of Change of Address; OMB Control Number 1615–0076.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 28, 2008.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0076 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 agencies' 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 submission of responses.

Overview of This Information Collection:

(1) Type of Information Collection: Extension of a currently approved information collection.

(2) Title of the Form/Collection: Sponsor's Notice of Change of Address.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I–865. U.S. Citizenship and Immigration Services (USCIS).

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals or Households. This form will be used by every sponsor who has filed an Affidavit of Support under section 213A of the Immigration and Nationality Act to notify the USCIS of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100,000 responses at .25 hours (15 minutes) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.* We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: February 25, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–3764 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2008–N0027]
[40120–1112–0000–F5]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with threatened and endangered species.

DATES: We must receive written data or comments on the application at the address given below, by *March 31, 2008.*

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, HCP Coordinator).

FOR FURTHER INFORMATION CONTACT: David Dell, telephone 404/679–7313; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). This notice is provided under section 10(c) of the Act. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to *david_dell@fws.gov*. Please include your name and return address in your e-mail message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

Before including your address, telephone 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. 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.

Applicant: Archbold Biological Station, Lake Placid, Florida, TE083085.

The applicant requests authorization to amend an existing permit to collect seeds of scrub plum (*Prunus geniculata*) from throughout the species range in Florida for use in propagation and research.

Applicant: Robert Shane Prescott, Compliance Monitoring Labs, Inc., Chapmanville, West Virginia, TE148279.

The applicant requests authorization to survey, capture and attach radiotransmitters to Virginia big-eared bat (*Corynorhinus townsendii virginianus*), gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*). Activities will occur throughout West Virginia, Virginia, Tennessee, North Carolina, and Kentucky.

Applicant: Jack D. Wilhide, Compliance Monitoring Labs, Inc., Chapmanville, West Virginia, TE148282.

The applicant requests authorization to survey, capture and attach radiotransmitters to Virginia big-eared bat (*Corynorhinus townsendii virginianus*), gray bat (*Myotis grisescens*), and Indiana bat (*Myotis sodalis*). Sampling will occur throughout West Virginia, Virginia, Kentucky, North Carolina, Tennessee, and Arkansas.

Applicant: Byron J. Freeman, Institute of Ecology, University of Georgia, Athens, Georgia, TE132114.

The applicant requests amendment of an existing permit to capture and sacrifice for genetic research, amber darter (*Percina antesella*), from the Etowah River and the Conasauga River. The applicant also requests to collect Cherokee darter (*Etheostoma scotti*) from Hickory Log Creek. The applicant also seeks permission to hold *Etheostoma scotti* from multiple locations, collect trematode parasites and release the fish.

Applicant: Gary D. Schnell, University of Oklahoma, Norman, Oklahoma, TE040080.

The applicant requests authorization to amend an existing permit to add Texas to their authorized work area. Activities authorized are the capture, tagging and translocation of American burying beetle (*Nicrophorus americanus*).

Applicant: Carol E. Johnston, Auburn University, Auburn, Alabama, TE163433.

The applicant requests authorization to study spawning of the Cape Fear shiner (*Notropis mekistocholas*) in Chatham and Lee Counties, North Carolina.

Applicants: Steven Bradford Cook, Tennessee Technological University, Cookeville, Tennessee, TE083014. Matt A. Kulp, National Park Service, Tennessee, TE148237.

The applicant requests an amendment to his current permit to capture, mark, and monitor spotfin chub (*Erimonax monachus*), duskeytail darter (*Etheostoma percnurum*), smoky madtom (*Noturus baileyi*), and yellowfin madtom (*Noturus flavipinnis*) in Abrams Creek watershed, Sevier County, Tennessee.

Applicant: Stuart W. McGregor, Geological Survey of Alabama, Tuscaloosa, Alabama, TE027346.

The applicant requests an amendment to his current permit to salvage shells of endangered and threatened fresh water mollusks via wading, snorkeling, or scuba diving in the Chattahoochee River drainage in Alabama and Georgia.

Applicant: Paul D. Johnson, Alabama Aquatic Biodiversity Center, Marion, Alabama, TE130300.

The applicant requests an amendment to his current permit to collect, identify, sacrifice, temporarily hold, permanently hold, and release the following mollusks and fish species: rough pigtoe (*Pleurobema plenum*), black clubshell (*Pleurobema curtum*), Alabama heelsplitter (*Potamilus inflatus*), and Alabama sturgeon (*Scaphirhynchus suttkusi*). The activities will occur while conducting surveys, population estimates and genetic, morphological, anatomical, and captive propagation studies.

Applicant: Thomas S. Risch, Arkansas State University, Jonesboro, Arkansas, TE075913.

The applicant requests an amendment to his current permit to conduct mist netting of Indiana bats (*Myotis sodalis*)

in Arkansas, Kentucky, western Virginia and eastern Ohio for population surveys.

Applicant: Steven E. Buler, Auburn University, Auburn, Alabama, TE163451.

The applicant requests authorization to capture and sacrifice blue shiner (*Cyprinella caerulea*), palezone shiner (*Notropis albizonatus*), Cahaba shiner (*Notropis cahabae*), slackwater darter (*Etheostoma boschungi*), boulder darter (*Etheostoma wapiti*), goldline darter (*Percina aurolineata*), and snail darter (*Percina tanasi*) as voucher specimens from streams throughout Alabama.

Applicant: Arthur C. Benke, University of Alabama, Tuscaloosa, Alabama, TE163435.

The applicant requests authorization to capture and release the following species: cylindrical lioplax (*Lioplax cyclostomaformis*); flat pebblesnail (*Lepyrium showalteri*); round rocksnail (*Leptoxis ampla*); fine-lined pocketbook (*Lampsilis altilis*), and orange-nacre mucket (*Lampsilis perovalis*) for research and surveys on Cahaba River National Wildlife Refuge, Bibb County, Alabama.

Applicant: Barry S. Payne and Mark D. Farr, USACE/ERDC, Vicksburg, Mississippi, TE163434.

The applicants request authorization to capture and release fat threeridge mussels (*Amblema neislerii*) as part of a study to determine depth distribution of the species in the Apalachicola River, Florida.

Applicant: Lee E. Carolan, Palmer Engineering. Winchester, Kentucky, TE156345.

The applicant requests permission to conduct presence/absence surveys on a contract basis for four endangered bat species, seven threatened or endangered bird species, two threatened reptiles, thirty endangered mussels, twelve threatened or endangered fish, one endangered snail, four endangered insects, one endangered crustacean and seven threatened or endangered plants. Depending on the contracts let, species may be sampled in Missouri, Ohio, Illinois, Indiana, Kentucky, Tennessee, West Virginia, and Virginia.

Applicant: Ya Yang, University of Michigan, Ann Arbor, Michigan, TE156323.

The applicant requests permission to collect leaf samples from *Chamaesyce deltoidea, Chamaesyce garberi, Chamaesyce hooveri,* and *Euphorbia telephioides* as well as two herbarium vouchers for each species. All species will be collected in Dade, Monroe, or Collier County, Florida for research purposes.

Applicant: Andrew Case Miller, Ecological Applications, Tallahassee, Florida, TE156374.

The applicant requests authorization to capture and release the endangered threeridge mussel (*Amblema neislerii*) for population surveys in the Apalachicola River, Florida.

Applicant: Peter Scott Floyd, Sr., Pascagoula, Mississippi, TE156426

The applicant requests authorization to trap, radio-tag, and release the endangered Alabama redbellied turtle (*Pseudemys alabamensis*), for research and surveys throughout the species range in Alabama.

Applicant: Gerald R. Dinkins, Dinkins Biological Consulting, Powell, Tennessee, TE069754.

The applicant requests renewal of his permit to capture, identify, and release federally listed fish and mussels for population surveys throughout their ranges in Georgia, Alabama, Tennessee, North Carolina, Kentucky, Virginia, West Virginia, Indiana, Illinois, Missouri, Ohio, Iowa, and Minnesota.

Applicant: Roberg Environmental Consulting Services, Cabot, Arkansas, TE105626.

The applicant requests renewal and amendment of his current permit to capture, mark, and release the American burying beetle for population surveys throughout the species range in Arkansas and Oklahoma.

Dated: January 30, 2008.

Jeffrey M. Fleming,

Acting Regional Director.

[FR Doc. E8–3768 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–310–08–1610–DO–061D]

Notice of Intent

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: The Bureau of Land Management (BLM), Upper Snake Field Office, intends to prepare a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the Upper Snake Field Office of the Idaho Falls District in eastern Idaho. Publication of this Notice also initiates a public scoping period to extend until 15 days after the last public scoping meeting. The RMP will address management of approximately 1.8 million acres of public land and will replace the following land use plans: Big Desert Management Framework Plan (MFP) (1980), Big Lost MFP (1983), Little Lost-Birch Creek MFP (1985) and the Medicine Lodge RMP (1985).

DATES: A formal public scoping period will commence with publication of this Notice and extend until 15 days after the last public scoping meeting. The BLM will announce public open-house scoping meetings through the local news media and the BLM Web site at: *http://www.blm.gov/id/st/en/fo/upper_snake/Planning/upper_snake_rmp.html*. To encourage local community participation and involvement, public open houses will be held in the following locations: Idaho Falls, Rexburg, and Arco, Idaho. Specific dates and locations for these open houses are expected to be published in the Post Register, the Rexburg Standard Journal, and the Arco Advertiser in the spring of 2008.

Formal scoping will end 15 days after the last scoping open house meeting date. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

The public will have additional opportunities to participate in open houses throughout the planning process to work collaboratively with BLM in identifying the full range of issues to be addressed in the RMP/EIS, the planning criteria to be used and development of alternatives to be analyzed in the EIS. The BLM will also provide formal opportunities for public participation upon publication of the Draft RMP/EIS.

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

- *E-mail: upper_snake_rmp@blm.gov*.
- *Fax:* (208) 524–7505.
- *Mail:* Bureau of Land Management, Attn: RMP Project Manager, Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401–2100.

Documents pertinent to this proposal may be examined at the Upper Snake Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, Contact: Wendy Reynolds, Field Office Manager, Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401–2100, Telephone: (208) 524–7500; E-mail: *upper_snake_rmp@blm.gov*.

SUPPLEMENTARY INFORMATION: The Upper Snake Field Office and planning area for this RMP is located in north eastern Idaho, in Blaine, Bingham, Bonneville, Butte, Clark, Fremont, Jefferson, Madison, Power and Teton counties.

The planning area encompasses approximately 1.8 million acres of

public land. The planning process will comply with the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA). The RMP will replace the following land use plans: Big Desert Management Framework Plan (MFP) (1980), Big Lost MFP (1983), Little Lost-Birch Creek MFP (1985) and the Medicine Lodge RMP (1985).

The process this RMP/EIS will use is an open collaborative approach allowing Tribal governments, State and Federal agencies, local elected officials, interested individuals and an interdisciplinary team with BLM subject matter specialists to identify issues and concerns, and develop and analyze a reasonable range of alternatives for management of the public lands. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs, interests and concerns. Agency representatives and interested persons are invited to visit with Upper Snake Field Office officials at any time during the EIS process. In addition, two specific time periods are identified for the receipt of formal comments. These two comment periods are:

(1) During the open house scoping process (ending 15 days after the last open house meeting date), and

(2) During the 90-day formal review period following release of the Draft RMP/EIS. This notice initiates the public scoping process to identify planning issues and to develop planning criteria. The purpose of the public scoping process is to determine relevant issues, concerns and ideas that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. The scoping process includes an evaluation of the existing land use plans in the context of the needs and interests of the public and tribal members.

Public scoping (open houses) to identify specific issues to be addressed in the RMP will offer an opportunity for the public to provide input. Subsequent opportunities for public involvement will occur at specific stages in the planning process. You may submit comments in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments within 15 days after the last public meeting. Individual respondents may request confidentiality, however, all submissions from agencies, organizations or businesses, and from individuals identifying themselves as representatives or officials of agencies, organizations or businesses, will be made available for public inspection in their entirety. 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.

In order to address issues and meet BLM planning requirements for determining public land uses, decisions may be made for air, soil, and water resources; vegetation (including noxious weeds); riparian areas; forestry management (including juniper woodlands); wildlife and fishery habitat; special status species (including threatened, endangered, candidate, and BLM sensitive species); livestock grazing; fire management; lands (including land tenure adjustments and rights-of-way); locatable, leasable, salable and fluid minerals; recreation (travel management); wilderness; visual resources; cultural and paleontological resources; hazardous materials; and special designations (including wild and scenic rivers and areas of critical environmental concern). In addition, decisions may be made regarding the conditions under which future fluid mineral leases will be issued by the field office.

After gathering public comments on which issues the plan should address, the suggested issues will be evaluated for their applicability to the planning process and categorized into one of the following three categories:

(1) Issues to be resolved in the plan;

(2) Issues resolved through policy or administrative action; or

(3) Issues beyond the scope of this plan.

This evaluation and categorization will be described in the plan with associated rationale. In addition to the issues to be resolved in the plan, a number of management questions and concerns will also be addressed. The public is encouraged to help identify these questions and concerns during the scoping period.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resources and issues identified. Specialists with expertise in the disciplines corresponding to these issue areas will be represented and utilized during the planning process.

Dated: February 19, 2008.

Peter J. Ditton,

Associate State Director.

[FR Doc. E8–3677 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–134–1220–AL–241A]

Notice of Public Meetings, McInnis Canyons National Conservation Area Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The McInnis Canyons National Conservation Area (MCNCA) Advisory Council will hold two meetings, scheduled on March 20, 2008 and September 18, 2008. The meetings will begin at 4 p.m. and will be held at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO.

DATES: The meetings will be held on March 20, 2008 and September 18, 2008.

ADDRESSES: For further information or to provide written comments, please contact the Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; (970) 244–3000.

SUPPLEMENTARY INFORMATION: The McInnis Canyons National Conservation Area was established on October 24, 2000 when the President signed the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (Act). The Act required that an Advisory Council be established to provide advice in the preparation and implementation of the Resource Management Plan. The NCA name was congressionally changed at the end of 2004 from Colorado Canyons National Conservation Area to McInnis Canyons National Conservation Area (MCNCA).

The MCNCA Advisory Council will meet on Thursday, March 20, 2008 and Thursday, September 18, 2008, at the Mesa County Administration Building, 544 Rood Avenue, Grand Junction, Colorado, beginning at 4 p.m. The agenda topics for the March meeting are:

(1) Report on River Management program.

(2) Camping in Rabbit Valley.

(3) Managers Update.

(4) Advisory Council field trip schedules.

(5) Public Comment period.

Topics pertaining to all other meetings will be similar in nature. All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak. Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the MCNCA Advisory Council can be obtained from the MCNCA Web site at: *http://www.co.blm.gov/mcnca/index.htm.*, which will be updated following each Advisory Council meeting.

Dated: February 22, 2008.

Paul H. Peck,

Manager, McInnis Canyons National Conservation Area.

[FR Doc. E8–3775 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO620 1820 XH 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. The BLM will consider public nominations for 45 days after the publication date of this notice.

DATES: Send all nominations to the appropriate BLM State Office by no later than *April 14, 2008.*

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the locations to send your nominations.

FOR FURTHER INFORMATION CONTACT: Justin Hall, U.S. Department of the Interior, Bureau of Land Management, Legislative Affairs and Correspondance, 1849 C Street, NW., MS–5654, Washington, DC 20240; 202–208–1423.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA)(43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784. These include three categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for management of natural resources; representatives of Indian Tribes within or adjacent to the area for which the Council is organized; representatives of and employed as academicians involved in natural sciences; and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decisionmaking. The following must accompany all nominations:

—letters of reference from represented interests or organizations,

—a completed background information nomination form, and

—any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC
Sharon Wilson, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (907) 271–4418
Alternate: Pam Eldridge, (907) 271–5555

Arizona

Arizona RAC
Deborah Stevens, Arizona State Office, BLM, One North Central Avenue, Suite 800, Phoenix, Arizona 85004, (602) 417–9215

California

Central California RAC
David Christy, Folsom Field Office, BLM, 63 Natoma Street, Folsom, California 95630, (916) 985–4474
Northeastern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332
Northwestern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Colorado

Front Range RAC
Jon Dow, Royal Gorge Field Office, BLM, 3170 E. Main Street, Canon City, Colorado 81212, (719) 269–8559
Northwest RAC
David Boyd, Glenwood Springs Field Office, BLM, 50629 Highways 6 and 24, Glenwood Springs, Colorado 81601, (970) 947–2800
Southwest RAC
Melodie Lloyd, Grand Junction Field Office, BLM, 2815 H Road, Grand Junction, Colorado 81506, (970) 244–3097

Idaho

Coeur d'Alene District RAC
Lisa Wagner, Coeur d'Alene District Office, BLM, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, (208) 769–5014
Idaho Falls District RAC
Joanna Wilson, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7550
Boise District RAC
MJ Byrne, Boise District Office, BLM, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3393
Twin Falls District RAC

Heather Tiel-Nelson, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352

Montana and Dakotas

Eastern Montana RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen, Miles City, Montana 59301, (406) 233–2831

Central Montana RAC

Craig Flentie, Lewistown Field Office, BLM, 920 Northeast Maine, Lewistown, Montana 59457, (406) 538–1943

Western Montana RAC

Marilyn Krause, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701, (406) 533–7617

Dakotas RAC

Lonny Bagley, North Dakota Field Office, BLM, 99 23rd Avenue West, Suite A, Dickinson, North Dakota 58601, (701) 227–7703

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC

Rochelle Ocava, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502, (775) 861–6588

New Mexico

New Mexico RAC

Theresa Herrera, New Mexico State Office, BLM, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87505, (505) 438–7517

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, Oregon 97208, (503) 808–6306

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, Utah 84101, (801) 539–4195

Henri Bisson,

Deputy Director, Bureau of Land Management.

[FR Doc. E8–3782 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio. Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, April 18, 2008, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, April 18, 2008.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: January 24, 2008.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal, National Historical Park.

[FR Doc. E8–3789 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of two public meetings.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App.2).

DATES: Saturday, March 15, 2008, 9 a.m.

ADDRESSES: Montague Township Office, 277 Clove Road, Montague, NJ 07827.

The agenda will include reports from Citizen Advisory Commission members including committees such as Cultural and Historical Resources, and Natural Resources. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

DATES: Saturday, March 15, 2008, 9 a.m.

ADDRESSES: Montague Township Office, 277 Clove Road, Montague, NJ 07827.

The agenda will include election of Delaware Water Gap National Recreation Area Citizen Advisory Commission officers for the 2008–2009 term.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: January 29, 2008.

John J. Donahue,

Superintendent.

[FR Doc. E8–3807 Filed 2–27–08; 8:45 am]

BILLING CODE 4312–J6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Mililtary Park Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of April 24, 2008 Meeting.

SUMMARY: This notice sets forth the date of the April 24, 2008 meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The public meeting will be held on April 24, 2008 from 7 to 9 p.m.

Location: The meeting will be held at the new Visitor Center/Museum, 1195 Baltimore Pike, Gettysburg, Pennsylvania 17325.

Agenda: The April 24, 2008 meeting will consist of the following Nomination/Election of Chair and Vice-Chair for the 2008 Year; there will be Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which include an update on the new Visitor Center/Museum Complex, also on the Wills House project, Landscape Rehabilitation, and the Shuttle System; and the Citizen's Open Forum where the public makes comments and asks any questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: February 14, 2008.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. E8–3811 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–JT–P

DEPARTMENT OF THE INTERIOR

National Park Service

Remaining 2008 Meetings of the Big Cypress National Preserve Off-road Vehicle (ORV) Advisory Committee

AGENCY: Department of the Interior, National Park Service, ORV Advisory Committee.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, 10), notice is hereby given of the meetings of the Big Cypress National Preserve ORV Advisory Committee for the remainder of 2008.

DATES: The Committee will meet on the following dates:

Monday, May 12, 2008, 3:30–8 p.m.
Monday, July 21, 2008, 3:30–8 p.m.
Tuesday, Sept 23, 2008, 3:30–8 p.m.
Monday, Nov 17, 2008, 3:30–8 p.m.

ADDRESSES: All meetings will be held at the Everglades City Community Center, 205 Buckner Avenue, Everglades City, Florida. Written comments may be sent to: Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, FL 34141–1000, Attn: ORV Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Karen Gustin, Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000; 239–695–1103, or go to the Web site *http://parkplanning.nps.gov/projectHome.cfm?parkId=352&projectId=20437.*

SUPPLEMENTARY INFORMATION: The Committee was established (**Federal Register**, August 1, 2007, pp. 42108–42109) pursuant to the Preserve's 2000 *Recreational Off-road Vehicle Management Plan* and the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix) to examine issues and make recommendations regarding the management of ORVs in the Preserve. The agendas for these meetings will be published by press release and on the *http://parkplanning.nps.gov/projectHome.cfm?parkId=352&projectId=20437* Web site. The meetings will be open to the public, and time will be reserved for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing.

Dated: February 15, 2008.

Karen Gustin,

Superintendent, Big Cypress National Preserve.

[FR Doc. E8–3806 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–U6–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Northwest Area Water Supply Project, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for extension of the public comment period for the Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Reclamation is announcing a 30-day extension of the public comment period for the Northwest Area Water Supply Project Draft Environmental Impact Statement on Water Treatment. The originally announced comment period ends on February 26, 2008, but has been extended until March 26, 2008. The original notice of availability of the DEIS, notice of the public hearings, and additional information on the DEIS were published in the **Federal Register** on December 21, 2007.

DATES: Comments on the DEIS should be postmarked by March 26, 2008.

ADDRESSES: Send comments on the Draft EIS to: Northwest Area Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502.

FOR FURTHER INFORMATION CONTACT: Alicia Waters, telephone: (701) 221–1206 or FAX (701) 250–4326. You may submit e-mail to *awaters@gp.usbr.gov* by March 26, 2008.

SUPPLEMENTARY INFORMATION:

Public Disclosure Statement

Before including your name, 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.

Dated: February 22, 2008.

Donald E. Moomaw,

Assistant Regional Director, Great Plains Region.

[FR Doc. E8–3774 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–497]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2007 Review of Competitive Need Limit Waivers

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

SUMMARY: The public hearing on this matter, scheduled for February 28, 2008, has been cancelled following the withdrawal of requests to appear at the hearing by all scheduled witnesses. The deadline for filing post-hearing briefs and other written submissions (5:15 p.m., March 7, 2008) and all other information as described in the notice of institution of the investigation published in the **Federal Register** of February 4, 2008 (73 F.R. 6526) remains the same as stated in that notice.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Cynthia B. Foreso, Project Leader, Office of Industries (202–205–3348 or *cynthia.foreso@usitc.gov*) or Eric Land, Deputy Project Leader, Office of Industries (202–205–3349 or *eric.land@usitc.gov*). For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://www.usitc.gov/secretary/edis.htm.* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: February 25, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–3739 Filed 2–27–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–003]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 29, 2008 at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1143 (Preliminary)(Small Diameter Graphite Electrodes from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before March 3, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before March 10, 2008.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission:

Issued: February 25, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–3751 Filed 2–27–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on January 28, 2008, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nagahiro Nakamura (individual member), Tokyo, JAPAN has been added as a party to this venture. Also, Optimal Test, Moshav Shdema, ISRAEL; Tom Micek (individual member), Austin, TX; and Tokyo Cathode Laboratory Co., Ltd., Itabashi-ku, Tokyo, JAPAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on November 6, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 20, 2007 (72 FR 72389).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–866 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bain Capital, LLC, Thomas H. Lee Partners, L.P., and Clear Channel Communications, Inc.; Proposed Final Judgement and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Bain Capital, LLC*, Civil Action No. 1:08–cv–00245. On February 13, 2008, the United States filed a Complaint alleging that the proposed acquisition by Bain Capital, LLC and Thomas H. Lee Partners, L.P. of a controlling interest in Clear Channel Communications, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Clear Channel to divest radio stations in Cincinnati, Ohio; Houston, Texas; Las Vegas, Nevada; and San Francisco, California, along with certain related assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481, on the Department of Justice's Web site (*http://www.usdoj.gov/atr*), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the coping fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John Read, Chief, Litigation III section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–307–0462).

Patricia A. Brink,

Deputy Director of Operations.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, Plaintiff, v. *Bain Capital, LLC, 111 Huntington Ave., Boston, MA 02199,* and *Thomas H. Lee Partners, L.P., 100 Federal St. 35th Fl., Boston, MA 02110,* and *Clear Channel Communications, Inc., 200 E. Basse Rd., San Antonio, TX 78209,* Defendants.

Civil Action No.: 1:08–cv–00245
Filed: Feb. 13, 2008
Assigned to: Robertson, James
Assign. Date: 2/13/2008
Description: Antitrust

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Clear Channel Communications Inc. (''Clear Channel'') by a private equity group of investors led by Bain Capital, LLC (''Bain'') and Thomas H. Lee Partners, L.P. (''THL''), and to obtain other relief as appropriate. Plaintiff United States alleges as follows:

I. Nature of the Action

1. Bain and THL, two of the world's leading private investment firms, are planning to acquire, each through various affiliated funds, substantial ownership interests in Clear Channel, the largest operator of radio stations in the United States (the ''transaction''). The anticipated value of the transaction is $28 billion.

2. After the transaction, Bain and THL each would control at least 35 percent of the voting interests in Clear Channel and each would designate four members to the 12 member Clear Channel Board of Directors. Together, Bain and THL would control at least 70 percent of the voting interests of Clear Channel and designate two-thirds of the members of its Board of Directors. Further, Bain and THL, either directly or indirectly through management teams they install, typically manage and operate the assets in which they invest.

3. Bain and THL, through affiliated funds and co-investment vehicles, have substantial ownership interests in Cumulus Media Partners LLC (''CMP''), another large nationwide operator of radio stations. Bain and THL each control 25 percent of the voting interests of CMP and designate two members to its eight member Board of Directors. Together, Bain and THL control 50 percent of the voting interests of CMP and designate one-half of the members of its Board of Directors. CMP operates radio stations that compete head-to-head with Clear Channel radio stations in Cincinnati, Ohio and Houston/Galveston, Texas (''Houston'').

4. After the transaction, Bain and THL would have governance rights in Clear Channel and CMP sufficient to enable Bain and THL, individually or together, to control or influence the companies' competitive decisions to produce an anticompetitive outcome in markets where both Clear Channel and CMS are significant competitors. Accordingly, Bain's and THL's acquisitions of substantial partial ownership interests in Clear Channel would substantially lessen competition between Clear Channel and CMP in the sale of radio advertising in Cincinnati and Houston in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

5. THL, through affiliated funds and co-investment vehicles, currently olds a 20 percent equity interest and a 14 percent voting interest in Univision Communications, Inc. (''Univision''), a large nationwide operator of radio stations that broadcast primarily in Spanish-language format. THL designates three members to Univision's 17 member Board of Directors. Univision operates radio stations that compete head-to-head with Clear Channel's Spanish-language radio stations in Houston; Las Vegas, Nevada; and San Francisco, California.

6. After the transaction, THL would have governance rights in Clear Channel and Univision sufficient to influence the companies' competitive decisions to produce an anticompetitive outcome in markets where both Clear Channel and Univision are significant competitors. Accordingly, THL's acquisition of a substantial partial ownership interest in Clear Channel would substantially lessen competition in the sale of Spanish-language radio advertising in Houston, Las Vegas, and San Francisco in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Jurisdiction and Venue

7. Plaintiff United States brings this action under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

8. Bain and THL, through CMP and Univision, and Clear Channel sell radio advertising to local and national advertisers, a commercial activity that substantially affects and is in the flow of interstate commerce. This court has jurisdiction over the subject matter of this action pursuant to sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

9. Bain, THL, and Clear Channel transact business within the District of Columbia. Venue is therefore proper in this Court pursuant to 15 U.S.C. 22 and 28 U.S.C. 1391.

III. Defendants and Other Relevant Entities

10. Clear Channel is a diversified media company incorporated in Texas and headquartered in San Antonio, Texas. Clear Channel owns various media outlets including radio stations, domestic and international outdoor advertising assets, television stations, and a media representation firm. Radio broadcasting is Clear Channel's largest business segment, representing over 50 percent of Clear Channel's total revenue. As of February 5, 2008, Clear Channel owned 833 radio stations in the United States, 508 of which were located within the top 100 markets as ranked by Arbitron, an international media marketing and research firm, including stations in Cincinnati, Houston, Las Vegas, and San Francisco.

11. Bain is a Delaware limited liability company headquartered in Boston, Massachusetts. Bain is one of the world's leading private investment firms with over $40 billion in assets under management.

12. THL is a Delaware limited partnership headquartered in Boston, Massachusetts and also is one of the world's leading private investment firms. THL currently manages approximately $12 billion of committed capital.

13. Bain and THL raise pools of capital from private investors, controlling and managing that capital through private equity funds and co-investment vehicles that invest in discrete opportunities, such as venture capital, public equity, and leveraged debt assets.

14. CMP is a limited liability company formed in 2005 that is owned by Bain, THL, Cumulus Broadcasting Inc., the Blackstone Group, and their affiliates. As of February 5, 2008, CMP owned 34 radio stations in various markets, including Cincinnati and Houston.

15. Univision is headquartered in New York City and is the largest broadcaster of Spanish-language television programming in the United States. Univision also owns 70 radio stations that broadcast in Spanish language in various markets, including Houston, Las Vegas, and San Francisco. Univision is owned and operated by five private equity firms: THL, Haim Saban, TPG Capital, Providence Equity, Madison Dearborn, and their affiliates.

IV. The Proposed Acquisition

16. Clear Channel, Bain, and THL have agreed that funds and co-investment vehicles under the direction of Bain (collectively ''Bain CC Affiliates'') and funds and co-investment vehicles under the direction of THL (collectively ''THL CC Affiliates'') will purchase a controlling interest in Clear Channel. Under their proposal, Bain and THL each will acquire at least a 35 percent voting and economic interest in Clear Channel, with the remaining interest of up to 30 percent staying in the hands of those current Clear Channel investors and option-holders who elect to retain an equity interest in Clear Channel rather than to receive cash for their shares and/or stock options. Under the purchase arrangement, Bain and THL, through Bain CC Affiliates and THL CC Affiliates, each will also acquire the right to designate four directors of the 12 member Clear Channel Board of Directors. If the transaction is consummated, Bain and THL together will control at least 70 percent of the voting interests of Clear Channel and designated two-thirds of the members of the Board of Directors.

V. Relevant Markets

A. Relevant Product Markets

17. *Radio Advertising.* Radio stations employ various formats for their programming, such as Adult Contemporary, Sports, or Rock. A station's format can be important in determining the size and characteristics of its listening audience. Companies that operate radio stations, like Clear Channel, CMP, and Univision, sell advertising time to local and national advertisers in each geographic market where they operate those stations. Advertising rates charged by a radio station are based primarily on the station's ability to attract listening audiences having certain demographic characteristics in the market area that advertisers want to reach, as well as on the number of stations and the relative demand for radio in the market.

18. Many local and national advertisers purchase radio advertising time because they consider it preferable to advertising in other media to meet their specific needs. They may consider radio advertising time to be more cost-effective than other media to reach their target audiences. They may also consider radio advertising to be more efficient than other media to reach their target audiences. Additionally, radio stations render certain services or promotional opportunities to advertisers that the advertisers cannot exploit as effectively using other media. For these reasons, many local and national advertisers who purchase radio advertising time view radio as a necessary advertising medium, sometimes as a complement to other media. A substantial number of advertisers with strong radio preferences would not turn to other media if faced with a small but significant increase in the price of advertising time on radio stations.

19. Radio stations generally can identify advertisers with strong radio preferences. Radio stations also negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Because of this ability to price discriminate among customers, radio stations may charge higher prices to the substantial number of advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

20. In the event of a price increase in radio advertising time, some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time. However, the existence of such advertisers would not prevent radio stations from profitably raising their prices by a small but significant amount for a substantial number of advertisers that would not switch.

21. Accordingly, the provision of advertising time on radio stations is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

22. *Spanish-language Radio Advertising.* In markets with a large Hispanic population, many local and national advertisers also consider Spanish-language radio to be particularly effective or necessary to reach their desired customers, particularly consumers who listen predominantly or exclusively to Spanish-language radio. A substantial number of these advertisers consider Spanish-language radio, either alone or as complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers would not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio.

23. Accordingly, the provision of advertising time on Spanish-language radio stations to these advertisers is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. Relevant Geographic Markets

24. Local and national advertisers buy radio advertising time on Clear Channel,

CMP, and Univision radio stations within areas defined by an Arbitron Metro Survey Area (''MSA''). An MSA is the geographic unit that is widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic market to use in evaluating radio audience size and composition.

25. Local and National advertising that is placed on radio stations in an MSA is aimed at reaching listening audiences in that MSA. Radio stations in other MSAs do not provide effective access to these audiences. If there were a small but significant price increase within an MSA, an insufficient number of advertisers would switch their advertising time purchases to radio stations outside the MSA to make the price increase unprofitable.

26. In the Houston and Cincinnati MSAs, Clear Channel and CMP stations compete against each other and against other stations in the provision of radio advertising time to advertisers, regardless of the language broadcast over the station. If there were a small but significant increase in radio advertising prices within the Houston or Cincinnati MSA, an insufficient number of advertisers seeking to reach listeners in the Houston or Cincinnati MSA would switch their advertising time purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Houston and Cincinnati MSAs (the ''Overlap Markets'') are each relevant geographic markets within the meaning of section 7 of the Clayton Act.

27. In the Houston, Las Vegas, and San Francisco MSAs, Clear Channel and Univision compete against each other in the provision of Spanish-language radio advertising time to advertisers. If there were a small but significant increase in Spanish-language radio advertising prices in the Houston, Las Vegas, or San Francisco MSAs, an insufficient number of advertisers seeking to reach listeners in the any of those MSAs would switch their Spanish-language advertising purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Houston, Las Vegas, and San Francisco MSAs (the ''Spanish-language Overlap Markets'') are each relevant geographic markets within the meaning of section 7 of the Clayton Act.

VI. Harm to Competition

A. Competition in the Relevant Geographic Markets

1. *Radio Advertising in the Overlap Markets*

28. Advertisers who use radio to reach their target audience select radio stations on which to advertise based upon a number of factors including, among others, the size of the station's audience and the characteristics of its audience. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose listening audience is highly correlated to their target audience.

29. Clear Channel and CMP vigorously compete for listeners and closely monitor each other's competitive position in the Cincinnati and Houston MSAs. Their stations are similarly formatted and programmed with an eye toward attracting listeners from each other.

30. Clear Channel and CMP stations in Houston and Cincinnati also currently compete vigorously for radio advertisers who seek to reach the specific demographic groups listening to their stations. For many local and national advertisers buying radio advertising time in the Houston and Cincinnati markets, Clear Channel and CMP stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers who desire to reach these listeners can benefit from this competition by ''playing off'' Clear Channel and CMP stations against each other to reach better terms.

31. Radio station ownership in Houston and Cincinnati is highly concentrated, with Clear Channel and CMP's combined listener share exceeding 34 percent in Houston and 59 percent in Cincinnati. Additionally, Clear Channel and CMP's combined advertising revenue share exceeds 37 percent in Houston and 65 percent in Cincinnati.

32. Using a measure of market concentration called the Herfindahl-Hirschman Index ('HHI''), explained in Appendix A annexed hereto, concentration in these markets would increase significantly as a result of the acquisition, with post-acquisition HHIs of approximately 2,100 in Houston and approximately 4,700 in Cincinnati, well above the 1,800 threshold at which the Department normally considers a market to be highly concentrated.

2. *Spanish-Language Radio Advertising Overlap Markets*

33. Clear Channel and Univision are currently vigorous competitors and closely monitor each other's competitive position for Spanish-language listeners in the Houston, Las Vegas, and San Francisco MSAs, each of which has a large Hispanic population. Their stations in these markets are similarly formatted and programmed with an eye toward attracting Spanish-language listeners from each other.

34. Clear Channel and Univision stations also currently compete vigorously for radio advertisers who seek to reach Spanish-language listeners. For many local and national advertisers buying Spanish-language radio advertising time in the Houston, Las Vegas, and San Francisco Spanish-language Overlap Markets, Clear Channel and Univision stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers who desire to reach these listeners can benefit from this competition by ''playing off'' Clear Channel and Univision stations against each other to reach better terms.

35. Spanish-language radio station ownership in Houston, Las Vegas, and San Francisco is highly concentrated. Clear Channel and Univision's combined Spanish-language listener share exceeds 75 percent in Houston, 73 percent in Las Vegas, and 70 percent in San Francisco. Additionally, Clear Channel and Univision's combined Spanish-language advertising revenue share exceeds 79 percent in Houston, 78 percent in Las Vegas, and 63 percent in San Francisco.

36. Using the Herfindahl-Hirschman Index, concentration in these markets would increase significantly as a result of the acquisition, with post-acquisition HHIs exceeding 6,500 in all three markets, well above the 1,800 threshold at which the Department normally considers a market to be highly concentrated.

B. This Acquisition Would Substantially Lessen Competition

1. *Radio Advertising in Houston and Cincinnati*

37. Clear Channel is one of only a few radio companies competing with CMP in the sale of radio advertising in Houston and Cincinnati, and within those markets, the two companies are each other's next best substitutes for advertisers seeking to reach several key demographic groups. Bain and THL together possess the ability to control CMP; they hold 50 percent of the voting and equity interests and have the right to choose half of the members of its Board of Directors. CMP's Board of Directors cannot make decisions without the agreement of either Bain or THL, which also have access to CMP's non-public, competitively sensitive information and its officers and employees. These ownership interests and associated rights give each of Bain and THL, as well as Bain and THL acting together, influence over, if not outright control of, CMP's management decisions.

38. Upon consummation of their proposed acquisition of interests in Clear Channel, defendants Bain and THL together would also control Clear Channel. Together, they would own at least 70 percent of the equity and voting interests of Clear Channel and have the right to select eight of Clear Channel's 12 directors. In addition, Bain and THL would have access to Clear Channel's non-public, competitively sensitive information and to the company's officers and employees. After the acquisition, each of Bain and THL, as well as Bain and THL acting together, would have influence over, if not outright control of, Clear Channel's management decisions.

39. Bain or THL, or Bain and THL acting together, would have the incentive and ability to use their ownership, control and influence, and access to information as to both Clear Channel and CMP to reduce competition between the companies in markets where they are significant competitors, resulting in an increase in prices for a significant number of advertisers. The Houston and Cincinnati radio markets are highly concentrated, and these advertisers will find it difficult or impossible to ''buy around'' Clear Channel and CMP, i.e., to effectively reach their targeted audience without using Clear Channel or CMP radio stations. Thus, Bain and THL's proposed acquisitions of ownership interests in Clear Channel, if consummated, would substantially reduce competition for radio advertising in the Houston and Cincinnati markets.

2. *Spanish-language Radio Advertising*

40. Clear Channel is one of only a few radio companies competing with Univision for Spanish-language radio advertising time in Houston, Las Vegas, and San Francisco, and within those markets, the two companies are each other's next best substitutes for advertisers targeting Spanish-language listeners. THL currently has a 20 percent equity interest and a 14 percent voting interest in Univision, as well as the right to designate three Univision board members. THL also has access to Univision's non-public, competitively sensitive information and its officers and employees. Significant corporate decisions at Univision require the assent of three of its five owners. THL's ownership interest and associated rights give it influence over Univision's management decisions.

41. Upon consummation of the proposed acquisition of Clear Channel, defendant THL would own at least 35 percent of the equity and voting interest of Clear Channel, as well as a right to choose four of its 12 directors. In addition, after the acquisition, THL would have access to Clear Channel's non-public, competitively sensitive information and its officers and employees. THL's ownership interest and associated rights would give it influence over Clear Channel's management decisions.

42. THL would have the incentive and ability to use its ownership, control and influence, and access to information as to both Clear Channel and Univision to reduce competition between the companies in markets where they are significant competitors, resulting in an increase in prices for a significant number of advertisers. The Houston, Las Vegas, and San Francisco radio markets are highly concentrated, and these advertisers will find it difficult or impossible to ''buy around'' Clear Channel and Univision, i.e., to effectively reach their targeted audience without using Clear Channel or Univision radio stations. Thus, THL's proposed acquisition of an ownership interest in Clear Channel, if consummated, would substantially reduce competition in the Spanish-language Overlap Markets.

C. Entry Conditions

43. Entry of new radio stations into the relevant geographic markets would not be timely, likely, or sufficient to mitigate the competitive harm likely to result from this acquisition. Entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station.

44. Acquisition of new radio spectrum is highly unlikely because spectrum is a scarce and expensive commodity.

45. Reformatting by existing stations in any of the relevant geographic markets would not be sufficient to mitigate the competitive harm likely to result from this acquisition. For those stations in these markets that have large shares in other coveted demographics, a format shift solely in response to small but significant increases in price by Clear Channel, CMP, or Univision is not likely because it would not be profitable. For those radio stations that may have incentives to change formats in response to small but significant increases in price by Clear Channel, CMP, and Univision, their shift would not be sufficient to mitigate the anticompetitive effects resulting from this acquisition.

VIII. Violation Alleged

46. Each and every allegation in paragraphs 1 through 45 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

47. The effect of the proposed acquisition of interests in Clear Channel by Bain and THL would be to substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

48. Unless restrained, the transaction would likely have the following effects, among others, in the provision of radio advertising and Spanish-language radio advertising in the relevant geographic markets:

a. competition in the sale and provision of advertising on radio stations in the relevant markets would be substantially lessened or eliminated; and

b. the prices for advertising on radio stations in the relevant markets would likely increase, and the quality of services would likely decline.

IX. Requested Relief

49. The plaintiff requests:

a. That Bain's and THL's proposed acquisitions of interests in Clear Channel be adjudged to violate Section 7 of the Clayton Act;

b. That the defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisitions or from entering into or carrying out any agreement, understanding, or plan, the effect of which is to bring radio stations in the relevant markets under common ownership or control;

c. That the United States be awarded the costs of this action; and

d. That the United States be granted such other and further relief as the Court may deem just and proper.

Dated: February 13, 2008.

Respectfully submitted,

For Plaintiff United States:

Thomas O. Barnett (D.C. Bar No. 426840),

Assistant Attorney General

David L. Meyer,

Deputy Assistant Attorney General

Patricia A. Brink,

Deputy Director of Operations

John R. Read,

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Nina B. Hale,

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Certificate of Service

I hereby certify that on February 13, 2008, I caused a copy of the foregoing Complaint, proposed Final Judgment, Competitive Impact Statement, Hold Separate Stipulation and Order, and Explanation of Consent Decree Procedures to be served on the defendants in this matter in the manner set forth below:

By electronic mail and hand delivery:

Counsel for Defendants Bain Capital, LLC and Thomas H. Lee Partners, L.P.,
James M. ''Mit'' Spears,
Ropes & Gray LLP,
700 12th Street, NW., Suite 900, Washington, DC 20005–3948, Telephone: (202) 508–4681, Facsimile: (202) 383–8320, E-mail: mit.spears@ropesgray.com.

Counsel for Defendant Clear Channel Communications, Inc.,
Phillip A. Proger,
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51 Louisiana Avenue, NW., Washington, DC 20001–2113, Telephone: (202) 879–4668, Facsimile: (202) 626–1700, E-mail: paproger@jonesday.com.

Daniel McCuaig (D.C. Bar No. 478199),
United States Department of Justice, Antitrust Division, Litigation III Section, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, Telephone: (202) 307–0520, Facsimile: (202) 514–7308, E-mail: daniel.mccuaig@usdoj.gov.

Appendix A Definition of HHI

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

United States District Court for the District of Columbia

United States Of America, Department of Justice, Antitrust Division 325 7th Street, NW., Suite 300 Washington, DC 20530, Plaintiff, v. *Bain Capital, LLC 111 Huntington Ave., Boston, MA 02199,* and *Thomas H. Lee Partners L.P., 100 Federal St. 35th Fl. Boston, Massachusetts 02110,* and *Clear Channel Communications, Inc. 200 E. Basse Rd., San Antonio, TX 78209,* Defendants.

Civil Action No.: 1 :08-cv-00245
Filed: Feb. 13, 2008
Assigned to: Robertson, James
Assign. Date: 2/13/2008
Description: Antitrust

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on February 13, 1998, the United States and Defendants Bain Capital, LLC (''Bain''), Thomas H. Lee Partners, L.P. (''THL''), and Clear Channel, by their respective attorneys, have consulted to entry of this Final judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15. U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Bain'' means Bain Capital, LLC, a Delaware limited liability company headquartered in Boston, Massachusetts, its directors, officers, partners, managers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and certain other private equity investment vehicles controlled or managed by Bain Capital Partners, LLC, and the respective directors, officers, general partners, managers, employees, agents, representatives, successors, and assigns of each.

B. ''THL'' means Thomas H. Lee Partners, L.P., a Delaware limited partnership headquartered in Boston, Massachusetts, its directors, officers, partners, managers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, affiliates, investment funds, hedge funds, and certain other private equity investment vehicles controlled or managed by Thomas H. Lee Partners, L.P., and the respective directors, officers, general partners, managers, employees, agents, representatives, successors, and assigns of each.

C. ''Clear Channel'' means Clear Channel Communications, Inc., a Texas corporation headquartered in San Antonio, Texas, its directors, officers, managers, agents and employees, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

D. ''Univision'' means Univision Communications, Inc., a Delaware corporation headquartered in Los Angeles, California, its directors, officers, managers, agents and employees, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''BMP–Univision Holdings'' means Broadcasting Media Partners, Inc., a Delaware corporation headquartered in New York that holds all of Univision's outstanding shares, its directors, officers, managers, agents and employees, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''CMP Susquehanna'' means CMP Susquehanna Holdings, Corp., a Delaware corporation headquartered in Atlanta that is owned by Cumulus Media Partners, its directors, officers, managers, agents and employees, its

successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Cumulus Media Partners'' means Cumulus Media Partners, LLC, a Delaware limited liability company headquartered in Atlanta, its directors, officers, managers, agents and employees, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''MSA'' means Metro Survey Area. A Metro Survey Area is a geographical area in which Arbitron, a radio industry survey company, collects listener data to aid radio stations, advertisers, and advertising agencies in evaluating radio audience size and composition.

I. ''Cincinnati'' means the Cincinnati, Ohio MSA.

J. ''Houston'' means the Houston/Galveston, Texas MSA.

K. ''Las Vegas'' means the Las Vegas, Nevada MSA.

L. ''San Francisco'' means the San Francisco, California MSA.

M. ''WLW'' means the radio station WLW-AM located in Cincinnati owned by defendant Clear Channel.

N. ''WKFS'' means the radio station WKFS-FM located in Cincinnati owned by defendant Clear Channel.

O. ''WOFX'' means the radio station WOFX–FM located in Cincinnati owned by defendant Clear Channel.

P. ''WNNF'' means the radio station WNNF located in Cincinnati owned by defendant Clear Channel.

Q. ''KLOL'' means the radio station KLOL–FM located in Houston owned by defendant Clear Channel.

R. ''KHMX'' means the radio station KHMX–FM located in Houston owned by defendant Clear Channel.

S. ''KTBZ'' means the radio station KTBZ–FM located in Houston owned by defendant Clear Channel.

T. ''KWID'' means the radio station KWID–FM located in Las Vegas owned by defendant Clear Channel.

U. ''KSJO'' means the radio station KSJO–FM located in San Francisco owned by defendant Clear Channel.

V. ''Cincinnati Assets'' means either (1) WLW and WKFS or, at the discretion of the defendants, (2) WOFX and WNNF.

W. ''Houston Assets'' means either (1) KHMX or, at the discretion of the defendants, (2) KTBZ.

X. ''Houston Spanish-language Assets'' means KLOL.

Y. ''Las Vegas Spanish-language Assets'' means KWID.

Z. ''San Francisco Spanish-language Assets'' means KSJO.

AA. ''Clear Channel Assets'' means collectively, the Cincinnati Assets and the Houston Assets.

AB. ''Clear Channel Spanish-language Assets'' means, collectively, the Houston Spanish-language Assets, Las Vegas Spanish-language Assets, and San Francisco Spanish-language Assets.

AC. ''Divestiture Assets'' means all of the assets, tangible or intangible, used in the operations of the Clear Channel Assets and the Clear Channel Spanish-language Assets, including, but not limited to: (i) All licenses, permits, authorizations, and applications therefor issued by the Federal Communications Commission (''FCC'') and other government agencies related to the Clear Channel Assets and the Clear Channel Spanish-language Assets; (ii) all contracts (including programming contracts and rights), agreements, leases, and commitments and understandings of defendants relating to the operations of the Clear Channel Assets and the Clear Channel Spanish-language Assets; (iii) all interest in real property (owned or leased) relating to the transmitter facilities of the Clear Channel Assets and the Clear Channel Spanish-language Assets and all items of tangible property used in the operation of the Clear Channel Assets and the Clear Channel Spanish-language Assets at such transmitter facilities; (iv) all interest in the real property lease relating to the studios of the Clear Channel Assets and the Clear Channel Spanish-language Assets; (v) all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property used in the operation of the Clear Channel Assets and the Clear Channel Spanish-language Assets; (vi) all interests in trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the Clear Channel Assets and the Clear Channel Spanish-language Assets; (vii) all customer lists, accounts, and credit records relating to the Clear Channel Assets and the Clear Channel Spanish-language Assets; and (viii) all other records maintained by defendants in connection with the Clear Channel Assets and the Clear Channel Spanish-language Assets; however, assets that: (a) Are principally devoted to the operation of stations other than the Clear Channel Assets and the Clear Channel Spanish-language Assets or to the operation of their parent companies, and are not necessary to the operation of the Clear Channel Assets and the Clear Channel Spanish-language Assets shall not be included within the Divestiture Assets; or (b) are part of a shared group of like assets (including, but not limited to, microphones and office supplies) shall be allocated to Clear Channel Assets and Clear Channel Spanish-language Assets, and thus to Divestiture Assets, only in proportion with their use by the Clear Channel Assets or the Clear Channel Spanish-language Assets.

AD. ''Clear Channel Divestiture Assets'' are the Divestiture Assets relating to the Clear Channel Assets.

AE. ''Clear Channel Spanish-language Divestiture Assets'' are the Divestiture Assets relating to the Clear Channel Spanish-language Assets.

AF. ''Acquirer'' means the entity or entities to whom defendants divest any Divestiture Assets.

III. Applicability

A. This Final Judgment applies to THL, Bain, and Clear Channel, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendant Clear Channel is ordered and directed to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion, within ninety (90) calendar days from the date of the closing of the transaction that is the subject of the Final Judgment or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. If, within the period permitted for divestitures, defendants have filed applications with the FCC seeking approval to assign or transfer licenses to the Acquirer(s) (previously approved by the United States, pursuant to the terms of this paragraph) of the Clear Channel Assets and the Clear Channel Spanish-language Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of

the period permitted for divestitures, the period shall be extended with respect to divestiture of those Clear Channel Assets and Clear Channel Spanish-language Assets for which FCC final approval has not been issued until ten (10) calendar days after such approval is received. Defendant Clear Channel agrees to use its best efforts to divest the Divestiture Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible.

B. The Divestiture Assets shall not include the Clear Channel Assets if, prior to the completion of the divestitures required by this Final Judgment, both THL and Bain no longer have any have limited liability company membership or any type of debt, equity governance, or other beneficial interest in either Cumulus Media Partners or CMP Susquehanna, and have provided written certification (and supporting documentation) satisfactory to the United States that they have divested all such assets.

C. The Divestiture Assets shall not include the Clear Channel Spanish-language Assets if, prior to the completion of the divestitures required by this Final Judgment, defendant THL no longer has any shares of capital stock or any type of debt, equity, governance, or other beneficial interest in either BMP-Univision Holdings or Univision, and has provided written certification (and supporting documentation) satisfactory to the United States that it has divested all such assets.

D. The obligation to divest the San Francisco Spanish-language Assets shall be suspended if, prior to the completion of the divestitures required by this Final Judgment, those assets have been transferred to an FCC-authorized trust, and shall cease if such assets are sold under the terms of the FCC-authorized trust.

E. In accomplishing the divestitures ordered by this Final Judgment, defendant Clear Channel promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendant Clear Channel shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendant Clear Channel shall make available such information to the United States at the same time that such information is made available to any other person.

F. Defendant Clear Channel shall provide to the Acquirer or Acquirers and the United States information relating to personnel involved in the operation of the Divestiture Assets to enable the Acquirer or Acquirers to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer or Acquirers to employ any Clear Channel employee whose primary responsibility is the operation of the Divestiture Assets.

G. Defendant Clear Channel shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

H. Defendant Clear Channel shall warrant to the Acquirer or Acquirers that each of the assets will be operational on the date of sale.

I. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

J. Defendant Clear Channel shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, any divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion that (i) the Clear Channel Assets can and will be used by the Acquirer or Acquirers as part of viable, ongoing businesses engaged in ongoing commercial radio broadcasting; (ii) the Clear Channel Spanish-language Assets can and will be used by the Acquirer or Acquirers as part of viable, ongoing businesses engaged in ongoing commercial Spanish language radio broadcasting; (iii) that the Divestiture Assets will remain viable; and (iv) that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The sale of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in either the commercial radio broadcasting business (for the Cincinnati Assets and the Houston Assets) or the commercial Spanish-language radio broadcasting business (for the Houston Spanish-language Assets, the Las Vegas Spanish-language Assets, and the San Francisco Spanish-language Assets); and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and defendant Clear Channel gives defendant the ability to unreasonably raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

v. Appointment of Trustee

A. If defendant Clear Channel has not divested the Divestiture Assets within the time period specified in Paragraph IV (A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, and are reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of the defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and the defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant Clear Channel or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestitures required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture(s) and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from the defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendant Clear Channel under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets/Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to any prospective

Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by any defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

A. As long as defendant Bain has any limited liability company membership or debt, equity, governance, or other beneficial interest in Clear Channel and either Cumulus Media Partners or CMP Susquehanna, defendants Bain and Clear Channel may not reacquire any part of the Clear Channel Divestiture Assets nor enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement with respect to the Clear Channel Divestiture Assets.

B. As long as defendant THL has any limited liability company membership or debt, equity, governance, or other beneficial interest in Clear Channel and either Cumulus Media Partners or CMP Susquehanna, defendants THL and Clear Channel may not reacquire any part of the Clear Channel Divestiture Assets nor enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement with respect to the Clear Channel Divestiture Assets.

C. As long as defendant THL has any limited liability company membership or debt, equity, governance, or other beneficial interest in Clear Channel and either Univision or BMP-Univision Holdings, defendants THL and Clear Channel may not reacquire any part of the Clear Channel Spanish-language Divestiture Assets nor enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement with respect to the Clear Channel Spanish-language Divestiture Assets.

D. If defendants Bain and THL satisfied the requirements of Paragraph IV (B) of this Final Judgment and thus did not divest the Clear Channel Assets, no defendant may, so long as Bain or THL has any limited liability company membership or debt, equity, governance, or other beneficial interest in Clear Channel, acquire any beneficial interest in either Cumulus Media Partners or CMP Susquehanna nor enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement between Clear Channel and Cumulus Media Partners or CMP Susquehanna with respect to radio stations in Cincinnati or Houston.

E. If defendant THL satisfied the requirements of Paragraph IV(C) of this Final Judgment and thus did not divest the Clear Channel Spanish-language Assets, neither THL nor Clear Channel may, so long as THL has any limited liability company membership or debt, equity, governance, or other beneficial interest in Clear Channel, acquire any beneficial interest in either BMP-Univision Holdings or Univision nor enter into any local marketing agreement, joint sales agreement, or any other cooperative selling arrangement between Clear Channel and BMP-Univision or Univision with respect to radio stations in Houston, Las Vegas, or San Francisco.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon

and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.
Date:

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16: United States District Judge.

In the United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, Plaintiff, v. *Bain Capital, LLC, 111 Huntington Ave., Boston, MA 02199, and Thomas H. Lee Partners, L.P., 100 Federal St. 35th Fl., Boston, MA 02110, and Clear Channel Communications, Inc., 200 E. Basse Rd., San Antonio, TX 78209, Defendants.*

Civil Action No. 1:08–cv–00245
Filed: Feb. 13, 2008
Assigned to: Robertson, James
Assign Date: 2/13/2008
Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated November 16, 2006, pursuant to which a private equity group of investors led by Bain Capital, LLC (''Bain'') and Thomas H. Lee Partners, L.P. (''THL'') will acquire a 70 percent interest in Clear Channel Communications Inc. (''Clear Channel''), the largest operator of radio stations in the United States.

Plaintiff filed a civil antitrust Complaint on February 13, 2008 seeking to enjoin the proposed acquisition of a controlling interest in Clear Channel by Bain and THL. The Complaint alleges that, because Bain and THL hold sizeable interests in two radio operators that compete with Clear Channel—Cumulus Media Partners LLC (''CMP'') and Univision Communications, Inc. (''Univision'')—the proposed acquisition would substantially lessen competition in the provision of radio advertising and Spanish-language radio advertising in several relevant geographic markets, in violation of section 7 of the Clayton Act, 15 U.S.C. section 18. This loss of competition likely would result in the lessening or elimination of competition in the sale and provision of advertising on radio stations in the relevant markets, and increased prices and reduced services associated with advertising on radio stations in those relevant markets.

At the same time the Complaint was filed, plaintiff also filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which, as explained more fully below, are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, defendants are required to divest radio stations in Cincinnati, Ohio; Houston/Galveston, Texas (''Houston''); Las Vegas, Nevada; and San Francisco, California (collectively, the ''Divestiture Assets''). Under the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that the Divestiture Assets will remain independent of and uninfluenced by defendants during the pendency of the ordered divestiture, and that competition is maintained during the pendency of the ordered divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. Defendants, Other Relevant Entities, and the Proposed Transaction

Defendant Bain is a Delaware limited liability company headquartered in Boston, Massachusetts. Bain is one of the world's leading private investment firms with over $40 billion in assets under management. Defendant THL is a Delaware limited partnership headquartered in Boston, Massachusetts and also is one of the world's leading private investment firms. THL currently manages approximately $12 billion of committed capital. Bain and THL raise pools of capital from private investors, controlling and managing that capital through private equity funds and co-investment vehicles that invest in discrete opportunities, such as venture capital, public equity, and leveraged debt assets. Bain and THL, either directly or indirectly through management teams they install, typically manage and operate the assets in which they invest.

Defendant Clear Channel is a diversified media company incorporated in Texas and headquartered in San Antonio, Texas. Clear Channel owns various media outlets including radio stations, domestic and international outdoor advertising assets, television stations, and a media representation firm. Radio broadcasting is Clear Channel's largest business segment, representing over 50 percent of Clear Channel's total revenue. As of February 5, 2008, Clear Channel owned 833 radio stations in the United States, 508 of which were located within the top 100 markets as ranked by Arbitron, an international media marketing and research firm, including stations in Cincinnati, Houston, Las Vegas, and San Francisco.

Bain and THL are owners, along with the Blackstone Group, Cumulus Broadcasting, Inc., and their affiliates, of CMP, a limited liability company formed in 2005. Bain and THL each control 25 percent of the voting interests of CMP and designate two members to its eight member Board of Directors. Together, Bain and THL control 50 percent of the voting interests of CMP and designate one-half of the members of its Board of Directors. As of February 5, 2008, CMP owned 34 radio stations in various markets, including stations that compete head-to-head with Clear Channel stations in Cincinnati and Houston.

THL is an owner, along with Haim Saban, TPG Capital, Providence Equity, Madison Dearborn, and their affiliates, of Univision, the largest broadcaster of Spanish-language television programming in the United States. Univision is headquartered in New York City. THL, through affiliated funds and co-investment vehicles, currently holds a 20 percent equity interest and a 14 percent voting interest in Univision and designates three members to Univision's 17 member Board of Directors. Univision owns 70 radio stations that broadcast in Spanish language in several markets, including Houston, Las Vegas, and San Francisco, where Univision radio stations compete head-to-head with Clear Channel's Spanish-language radio stations.

Bain and THL are planning to acquire, each through various affiliated funds, substantial ownership interests in Clear Channel (the ''transaction''). The anticipated value of the transaction is $28 billion. Under the purchase arrangement, Bain and THL each will acquire at least a 35 percent voting and economic interest in Clear Channel, with the remaining interest of up to 30

percent staying in the hands of those current Clear Channel investors and option-holders who elect to retain an equity interest in Clear Channel rather than to receive cash for their shares and/or stock options. Bain and THL each also will acquire the right to designate four directors of the 12 member Clear Channel Board of Directors. If the transaction is consummated, Bain and THL together will control at least 70 percent of the voting interests of Clear Channel and designate two-thirds of the members of the Board of Directors. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiff.

III. The Competitive Effects of the Acquisition

Given their existing ownership interests in CMP and Univision, the effect of Bain's and THL's acquisition of substantial partial ownership interests in Clear Channel may be to substantially lessen competition in markets in which stations owned by CMP or Univision—Houston, Cincinnati, Las Vegas, and San Francisco—compete head-to-head with Clear Channel stations.

A. Relevant Product Markets

1. *Radio Advertising is a Relevant Product Market*

Radio stations employ various formats for their programming, such as Adult Contemporary, Sports, or Rock. A station's format can be important in determining the size and characteristics of its listening audience. Companies that operate radio stations, such as Clear Channel, CMP, and Univision, sell advertising time to local and national advertisers in each geographic market where they operate those stations. Advertising rates charged by a radio station are based primarily on the station's ability to attract listening audiences having certain demographic characteristics in the market area that advertisers want to reach, as well as on the number of stations and the relative demand for radio in the market.

Many local and national advertisers purchase radio advertising time because they consider it preferable to advertising in other media to meet their specific needs. They may consider radio advertising time to be more cost-effective than other media to reach their target audiences. They may also consider radio advertising to be more efficient than other media to reach their target audiences. Additionally, radio stations render certain services or promotional opportunities to advertisers that the advertisers cannot exploit as effectively using other media. For these reasons, many local and national advertisers that purchase radio advertising time view radio as a necessary advertising medium, sometimes as a complement to other media. A substantial number of advertisers with strong radio preferences would not turn to other media if faced with a small but significant increase in the price of advertising time on radio stations.

Radio stations generally can identify advertisers with strong radio preferences. Radio stations also negotiate prices individually with advertisers. Consequently, radio stations can charge different advertisers different prices. Because of this ability to price discriminate among customers, radio stations may charge higher prices to the substantial number of advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

In the event of a price increase in radio advertising time, some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time. However, the existence of such advertisers would not prevent radio stations from profitably raising their prices by a small but significant amount for the substantial number of advertisers that would not switch.

Accordingly, the Complaint alleges that the provision of advertising time on radio stations is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

2. *Spanish-language Radio Advertising is a Relevant Product Market*

In markets with a large Hispanic population, many local and national advertisers also consider Spanish-language radio to be particularly effective or necessary to reach their desired customers, especially consumers who listen predominantly or exclusively to Spanish-language radio. A substantial number of these advertisers consider Spanish-language radio, either alone or as a complement to other media, to be the most effective way to reach their target audience, and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers would not turn to other media, including radio that is broadcast in a language other than Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio.

Accordingly, the Complaint alleges that the provision of advertising time on Spanish-language radio stations to these advertisers is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

B. Relevant Geographic Markets

Local and national advertisers buy radio advertising time on stations within areas defined by an Arbitron Metro Survey Area (''MSA''). An MSA is the geographic unit that is widely accepted by radio stations, advertisers, and advertising agencies as the standard geographic market to use in evaluating radio audience size and composition.

Local and national advertising that is placed on radio stations in an MSA is aimed at reaching listening audiences in that MSA. Radio stations in other MSAs do not provide effective access to these audiences. If there were a small but significant price increase within an MSA, an insufficient number of advertisers would switch their advertising time purchases to radio stations outside the MSA to make the price increase unprofitable.

In the Houston and Cincinnati MSAs, Clear Channel and CMP stations compete against each other and against other stations in the provision of radio advertising time to advertisers, regardless of the language broadcast over the station. If there were a small but significant increase in radio advertising prices within the Houston MSA or the Cincinnati MSA, an insufficient number of advertisers seeking to reach listeners in the Houston MSA or the Cincinnati MSA would switch their advertising time purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Complaint alleges that the Houston and Cincinnati MSAs (the ''Overlap Markets'') are each relevant geographic markets within the meaning of section 7 of the Clayton Act.

In the Houston MSA, Las Vegas MSA, and San Francisco MSA, Clear Channel and Univision compete against each other in the provision of Spanish-language radio advertising time to advertisers. If there were a small but significant increase in Spanish-language radio advertising prices in the Houston MSA, Las Vegas MSA, or San Francisco MSA, an insufficient number of advertisers seeking to reach listeners in any of those MSAs would switch their Spanish-language advertising purchases to radio stations outside that MSA to make the price increase unprofitable. Accordingly, the Complaint alleges that the Houston, Las Vegas, and San Francisco MSAs (the ''Spanish-language Overlap Markets'') are each relevant geographic markets within the meaning of Section 7 of the Clayton Act.

C. Competition in the Relevant Markets

1. *Competition in Radio Advertising in Houston and Cincinnati.*

Advertisers that use radio to reach their target audience select radio stations on which to advertise based upon a number of factors including, among others, the size and characteristics of the station's audience. Many advertisers seek to reach a large percentage of their target audience by selecting those stations with a listening audience that is highly correlated to the advertisers' target audience.

Clear Channel and CMP vigorously compete for listeners and closely monitor each other's competitive position in the Cincinnati MSA and the Houston MSA. Their stations are similarly formatted and programmed with an eye toward attracting listeners from each other.

Clear Channel and CMP stations in Houston and Cincinnati also currently compete vigorously for radio advertisers that seek to reach the specific demographic groups listening to their stations. For many local and national advertisers buying radio advertising time in the Houston MSA and the Cincinnati MSA, Clear Channel and CMP stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers that desire to reach these listeners can benefit from this competition by ''playing off'' Clear Channel and CMP stations against each other to reach better terms.

Radio station ownership in Houston and Cincinnati is highly concentrated, with Clear Channel and CMP's combined advertising revenue share exceeding 37 percent in Houston and 65 percent in Cincinnati. Additionally, Clear Channel and CMP's combined listener share exceeds 34 percent in Houston and 59 percent in Cincinnati.

2. *Competition in Spanish-language Radio Advertising in Houston, Las Vegas, and San Francisco*

Clear Channel and Univision currently are vigorous competitors and closely monitor each other's competitive position for Spanish-language listeners in the Houston, Las Vegas, and San Francisco MSAs, each of which has a large Hispanic population. Their stations in these markets are similarly formatted and programmed with an eye toward attracting Spanish-language listeners from each other.

Clear Channel and Univision stations also currently compete vigorously for radio advertisers that seek to reach Spanish-language listeners. For many local and national advertisers, buying Spanish-language radio advertising time in the Houston, Las Vegas, and San Francisco Spanish-language Overlap Markets, Clear Channel and Univision stations are each other's next best substitutes. During individualized rate negotiations, the substantial number of advertisers that desire to reach these listeners can benefit from this competition by ''playing off' Clear Channel and Univision stations against each other to reach better terms.

Spanish-language radio station ownership in Houston, Las Vegas, and San Francisco is highly concentrated. Clear Channel and Univision's combined Spanish-language listener share exceeds 75 percent in Houston, 73 percent in Las Vegas, and 70 percent in San Francisco. Additionally, Clear Channel and Univision's combined Spanish-language advertising revenue share exceeds 79 percent in Houston, 78 percent in Las Vegas, and 63 percent in San Francisco.

D. Anticompetitive Effects of the Transaction in Houston and Cincinnati Radio Advertising Markets

Clear Channel is one of only a few radio companies competing with CMP in the sale of radio advertising in Houston and Cincinnati, and within those markets, the two companies are each other's next best substitutes for advertisers seeking to reach several key demographic groups. Bain and THL currently control CMP; together they hold 50 percent of the voting and equity interests and have the right to choose half of the members of its Board of Directors. CMP's Board of Directors cannot make decisions without the agreement of either Bain or THL, which have access to CMP's non-public, competitively sensitive information and its officers and employees. These ownership interests and associated rights give each of Bain and THL, as well as Bain and THL acting together, influence over, if not outright control of, CMP's management decisions.

Upon consummation of their proposed acquisition of interests in Clear Channel, defendants Bain and THL together would also control Clear Channel. Together, they would own at least 70 percent of the equity and voting interests of Clear Channel and have the right to select eight of Clear Channel's 12 directors. In addition, Bain and THL would have access to Clear Channel's non-public, competitively sensitive information and its officers and employees. After the acquisition, each of Bain and THL, as well as Bain and THL acting together, would have influence over, if not outright control of, Clear Channel's management decisions.

Bain and THL, either directly or indirectly through management teams they install, typically manage and operate the assets in which they invest. As significant equity holders in both Clear Channel and CMP, Bain and THL each would seek to maximize the value of their investments by increasing the profitability of those companies. With respect to their interests in CMP and Clear Channel, Bain and THL's interests would be aligned and they would be expected to work together to achieve maximum profits at the two companies, including by using their control, influence, and access to information to reduce competition between Clear Channel and CMP in order to increase the companies' total profits.

Bain or THL, or Bain and THL acting together, would have the incentive and ability to use their ownership, control and influence, and access to information as to both Clear Channel and CMP to reduce competition between the companies in markets where they are significant competitors. They could accomplish such a reduction in competition in at least four ways:

(1) Through their control of or influence over both Clear Channel and CMP, Bain or THL, or Bain and THL working together, could cause Clear Channel and CMP to coordinate their competitive behavior in a manner that increased both companies' profits but harmed consumers;

(2) Through their governance rights relating to both Clear Channel and CMP, Bain or THL, or Bain and THL working together, could install a management team at one of the companies motivated to act in the interest of Bain and THL, and thereby reduce the vigor of its competition against the other company in which Bain and THL had a significant stake;

(3) Through their access to non-public, competitively sensitive information of both Clear Channel and CMP, and through their contacts with management at both Clear Channel and CMP, Bain or THL, or Bain and THL working together, could facilitate coordination between Clear Channel and CMP; and

(4) Through their control of or influence over both Clear Channel and CMP, Bain or THL, or Bain and THL working together, could cause either Clear Channel or CMP to forbear from competing against the other, knowing that a significant portion of lost sales would be recaptured by a company in which Bain and THL had a significant ownership interest.

For example, Clear Channel's management team, acting pursuant to either Bain's or THL's corporate

influence, or pursuant to their joint voting control, could be expected to increase the price of advertising at Clear Channel to those advertisers that view CMP as Clear Channel's closest alternative, knowing that Bain and THL would reap the benefits of the price increase at Clear Channel and recapture the lost profits from any advertisers that chose to switch to CMP. Alternatively, the transaction would result in higher prices for purchasers of radio advertising if management teams at Clear Channel and CMP, acting pursuant to either Bain's or THL's influence or their joint voting control, were to go along with price increases at the other's stations, which would be known to Bain and THL even if not publicly disclosed. Given that Houston and Cincinnati are highly concentrated markets, advertisers would find it difficult or impossible to ''buy around'' Clear Channel and CMP, i.e., to effectively reach their targeted audience without using Clear Channel or CMP radio stations.

Thus, the Complaint alleges that Bain's and THL's proposed acquisitions of ownership interests in Clear Channel, if consummated, would substantially reduce competition for radio advertising in the Houston and Cincinnati Overlap Markets.

E. Anticompetitive Effects of the Acquisition in Houston, Las Vegas, and San Francisco Spanish-Language Radio Markets

Clear Channel is one of only a few radio companies competing with Univision for Spanish-language radio advertising time in Houston, Las Vegas, and San Francisco, and within those markets, the two companies are each other's next best substitutes for advertisers targeting Spanish-language listeners. THL currently has a 20 percent equity interest and a 14 percent voting interest in Univision, as well as the right to designate three Univision board members. THL also has access to Univision's non-public, competitively sensitive information and its officers and employees. Significant corporate decisions at Univision require the assent of three of its five owners. THL's ownership interest and associated rights give it influence over Univision's management decisions.

Upon consummation of the proposed acquisition of Clear Channel, defendant THL would own at least 35 percent of the equity and voting interest of Clear Channel, as well as a right to choose four of its 12 directors. In addition, after the acquisition, THL would have access to Clear Channel's non-public, competitively sensitive information and its officers and employees. THL's ownership interest and associated rights would give it influence over Clear Channel's management decisions.

As a significant equity holder in both Clear Channel and Univision, THL would seek to maximize the value of its investments by increasing the profitability of those companies. THL likely would work to achieve maximum profits at the two companies, including by using its influence and access to information to reduce competition between Clear Channel and Univision, in order to increase THL's total profits.

THL would have the incentive and ability to use its ownership, control and influence, and access to information as to both Clear Channel and Univision to reduce competition between the companies in markets where they are significant competitors. THL could accomplish such a reduction in competition in at least four ways:

(1) Through its influence over both Clear Channel and Univision, THL could cause Clear Channel and Univision to coordinate their competitive behavior in a manner that increased both companies' profits but harmed consumers;

(2) Through its governance rights relating to both Clear Channel and Univision, THL could work to install a management team at one of the companies motivated to act in THL's interests, or influence a management team to account for THL's interests, and thereby reduce the vigor of its competition against the other company in which THL had a significant stake;

(3) Through its access to non-public, competitively sensitive information of both Clear Channel and Univision, and through its contacts with management at both Clear Channel and Univision, THL could facilitate coordination between Clear Channel and Univision; and

(4) Through its influence over both Clear Channel and Univision, THL could cause either Clear Channel or Univision to forbear from competing against the other, knowing that a significant portion of lost sales would be recaptured by a company in which THL had a significant ownership interest.

For example, as a result of the acquisition, with access to both companies' non-public competitively sensitive information, THL would have the ability and the incentive to facilitate the coordination of pricing and other competitive decisions between Clear Channel and Univision in the Spanish-language Overlap Markets. Given that those markets are highly concentrated, advertisers would find it difficult or impossible to ''buy around'' Clear Channel and Univision, i.e., to effectively reach their targeted audience without using Clear Channel or Univision radio stations, resulting in higher prices and lower service levels for purchasers of Spanish-language radio advertising. Thus, the Complaint alleges that THL's acquisition of a substantial partial ownership interest in Clear Channel would substantially lessen competition in the sale of Spanish-language radio advertising in Houston, Las Vegas, and San Francisco, in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

F. Federal Communication Commission Obligations

In order to meet FCC radio ownership rules, Bain and THL, prior to consummating their acquisition of ownerships interests in Clear Channel, plan to convert all of their governance rights and ownership interests in CMP into passive equity interests, which means they will no longer have voting rights and will withdraw all Bain and THL directors from the CMP Board. For the same reason, THL likewise plans to convert its interests in Univision to passive equity interests, and withdraw from the Univision Board.

Such changes would not eliminate the potential for the competitive harm in the markets where Clear Channel competes with CMP or Univision. Because the FCC-required conversions would not reduce the magnitude of any defendant's equity stake in the three companies, the defendants would still profit from any reduction in competition between either Clear Channel and CMP or between Clear Channel and Univision. In addition, the FCC-required conversions would not affect Bain or THL's control of Clear Channel, or eliminate their access to non-public, confidential information and officers and employees at Clear Channel, CMP, and Univision.

As a result, the conversions would not eliminate the ability of Bain and THL, whether acting individually or together, to cause a reduction in competition. For example, Bain and/or THL would still have the incentive and ability, given their combined 70 percent share in Clear Channel, to influence Clear Channel's management team to increase the price of advertising at Clear Channel to those advertisers that view CMP as Clear Channel's closest alternative, knowing that Bain and THL would reap the benefits of the price increase at Clear Channel and recapture the lost profits from any advertisers that chose to switch to CMP. Alternatively, because the FCC regulatory scheme does not require that THL relinquish its access to non-public, confidential information at

either Clear Channel or Univision, THL could still have the ability to be an information conduit between the two companies so as to facilitate the coordination of pricing and other competitive decisions between them in the Spanish-language Overlap Markets. Accordingly, a decree mandating divestitures is necessary to restore competition.

G. Entry Will Not Mitigate the Likely Anticompetitive Effects

Successful entry into the Houston or Cincinnati Overlap Markets or the Houston, Las Vegas, or San Francisco Spanish-language Overlap Markets would not be timely, likely, or sufficient to offset the anticompetitive effects resulting from this transaction.

Entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station. However, acquisition of new radio spectrum is highly unlikely because spectrum is a scarce and expensive commodity. Reformatting by existing stations in any of the relevant geographic markets would not be sufficient to mitigate the competitive harm likely to result from this acquisition. For those stations in these markets that have large shares in other coveted demographics, a format shift solely in response to small but significant increases in price by Clear Channel, CMP, or Univision is not likely because it would not be profitable. For those radio stations that may have incentives to change formats in response to small but significant increases in price by Clear Channel, CMP, and Univision, their shift would not be sufficient to mitigate the anticompetitive effects resulting from this acquisition.

IV. Explanation of the Proposed Final Judgment

A. Clear Channel Radio Stations Must Be Divested

The proposed Final Judgment will eliminate the anticompetitive effects that would result from Bain's and THL's acquisition of substantial ownership interests in Clear Channel. Paragraph IV(A) of the proposed Final Judgment requires defendant Clear Channel, within 90 days after the closing of their transaction, or five calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest certain of its radio stations in Houston, Cincinnati, Las Vegas, and San Francisco. In order to maximize the likelihood that appropriate radio stations are divested promptly to qualified buyers, the proposed Final Judgment provides Clear Channel with the flexibility to choose between two equivalently effective divestiture packages in Houston and Cincinnati.

The Divestiture Assets comprise the following stations and all tangible and intangible assets used in their operation:

1. the Clear Channel Assets are:

a. a Houston station—either KHMX or, at the discretion of the defendants, KTBZ;

b. two Cincinnati stations—either WLW and WKFS or, at the discretion of the defendants, WOFX and WNNF;

2. the Clear Channel Spanish-language Assets are:

a. KLOL, a Houston Spanish-language station;

b. KWID, a Las Vegas Spanish-language station; and

c. KSJO, a San Francisco Spanish-language station.

These stations must be divested to acquirer(s) that, in the United States' sole judgment, will use them as part of viable, ongoing businesses engaged in commercial radio broadcasting or Spanish-language radio broadcasting. The proposed Final Judgment requires defendants to take all reasonable steps necessary to accomplish the divestiture quickly and to cooperate with prospective acquirers.

The sale of the Divestiture Assets according to the terms of the proposed Final Judgment will eliminate the anti-competitive effects of the acquisition in the Houston and Cincinnati Overlap Markets for radio advertising and in the Houston, Las Vegas, and San Francisco Spanish-language Overlap Markets for Spanish-language radio advertising. In each market, the divestitures will establish a new, independent, and economically viable competitor.

The proposed Final Judgment relieves the defendants of some or all of their obligations to divest under three sets of circumstances. First, the proposed Final Judgment takes into account that the FCC has required that Clear Channel sell a San Francisco station in order to comply with FCC media ownership limitations. Paragraph IV(D) of the proposed Final Judgment thus provides that, if the San Francisco station has been transferred to an FCC-authorized trust prior to the completion of the required divestitures, defendants' obligation to divest that station is suspended and will be eliminated if the station is sold under the terms of the FCC-authorized trust, in which case the objectives of the proposed Final Judgment would have been achieved.

Second, if Bain and THL both divest 100 percent of their interests in CMP, thereby eliminating the overlap between CMP and Clear Channel achieved by the transaction, Paragraph IV(B) of the proposed Final Judgment would no longer require that the defendants divest those stations that comprise the Clear Channel Assets. If these assets are not divested, Paragraph XI(D) of the proposed Final Judgment would bar the reacquisition by Bain or THL of any interest in CMP so long as they continue to have some interest in Clear Channel.

Third, if THL divests 100 percent of its interests in Univision, thereby eliminating the overlap between Univision and Clear Channel achieved by the transaction, Paragraph IV(C) of the proposed Final Judgment would no longer require that the defendants divest those stations that comprise the Clear Channel Spanish-language Assets. If these assets are not divested, however, Paragraph XI(E) of the proposed Final Judgment would bar the reacquisition of by THL of any interest in Univision so long as it continues to have some interest in Clear Channel.

B. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. As noted above, the proposed Final Judgment requires defendant Clear Channel to complete the divestitures within 90 days after the transaction closes, or five calendar days after notice of the entry of the Final Judgment by the Court, whichever is later. The United States in its sole discretion may extend the time period for divestiture by up to 60 days.

In this matter, Paragraph IV(A) of the proposed Final Judgment also provides for an additional extension in certain circumstances. This extension takes into account the FCC's role in connection with transfers of radio stations from one operator to another. If the defendants have found a buyer or buyers for the assets (and the buyers have been approved by the United States) and have filed applications with the FCC seeking approval to assign or transfer the licenses within the initial period for divestiture, but the FCC has not yet issued a final order approving such transfers, the proposed Final Judgment allows for an extension of the divestiture period until ten days after the FCC's order approving the transfer is issued.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the

divestitures consistent with their FCC obligations. Even if the Clear Channel stations have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Hold Separate Stipulation and Order.

C. Use of a Trustee

In the event that the defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestiture.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the trustee, and the responsibilities of the trustee in connection with the divestiture. The trustee will have the sole responsibility, under Paragraph V(B), for the sale of the stations to be divested. The trustee has the authority to accomplish the divestiture at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the trustee.''

The proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured, under Paragraph V(D) of the proposed Final Judgment, so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or term of the trustee's appointment.

D. The Hold Separate Stipulation and Order

The Hold Separate Stipulation and Order, filed at the same time as the Complaint, ensures that, pending divestiture of the Clear Channel stations, (i) defendants will take no steps to limit those stations' ability to operate as competitively independent, economically viable, and ongoing business concerns, (ii) defendants will not influence those stations' business, and (iii) competition will be maintained. The Hold Separate Stipulation and Order requires Clear Channel to hold the stations to be divested separate as independent, ongoing, economically viable, and active competitors in their particular markets. This means that their management, including decision-making functions relating to marketing and pricing, will be kept separate and apart from, and not influenced by, defendants Bain or THL or Clear Channel's other operations.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

VI. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement; whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains tree to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against Bain and THL's acquisition of Clear Channel. Plaintiff is satisfied, however, that the divestiture of the stations described in the proposed Final Judgment will preserve competition in the provision of radio advertising in Houston and Cincinnati, and competition in the provision of Spanish-language radio advertising in Houston, Las Vegas and San Francisco, the relevant markets identified in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the

public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: February 13, 2008

Respectfully submitted,

Daniel McCuaig (DC Bar No. 478199),
Christopher Ries,

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf.* BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

Attorneys, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530, (202) 307–0520, Facsimile: (202) 514–7308.

[FR Doc. 08–867 Filed 2–27–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 22, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Katherine Astrich, OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Interstate Arrangement for Combining Employment and Wages.

OMB Control Number: 1205–0029.

Form Number: ETA–586.

Affected Public: State Governments.

Estimated Number of Respondents: 53.

Estimated Total Annual Burden Hours: 848.

Estimated Total Annual Costs Burden: $0.

Description: Section 3304(a)(9)(B), of the Internal Revenue Code of 1986, requires states to participate in an arrangement for combining employment and wages covered under the different state laws for the purpose of determining unemployed workers' entitlement to unemployment compensation. The Interstate Arrangement for Combining Employment and Wages for combined wage claims (CWC), promulgated at 20 CFR 616, requires the prompt transfer of all relevant and available employment and wage data between states upon request. The Benefit Payment Promptness Standard, 20 CFR part 640, requires the prompt payment of unemployment compensation including benefits paid under the CWC arrangement. The ETA–586 report provides the ETA/Office of Workforce Security with information necessary to measure the scope and effect of the CWC program and monitor the performance of each state in responding to wage transfer data requests and the payment of benefits. For additional information, see related notice published at 72 FR 68594 on December 5, 2007.

Agency: Employment and Training Administration.

Type of Review: New Collection (Request for a new OMB Control Number).

Title: High Growth and Community-Based Job Training Grants.

OMB Control Number: 1205–0NEW.

Form Number: ETA–9134.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 272.

Estimated Total Annual Burden Hours: 53,464.

Estimated Total Annual Costs Burden: $0.

Description: This information collection request is to implement new reporting requirements for ETA's High Growth Job Training Initiative (HGJTI) and the Community-Based Job Training Grants (CBJTG). ETA will require grantees to submit standardized quarterly reports summarizing the number and types of participants served by grantees, the number of exiters, the number of participants engaged in training activities, and some participant outcomes. To calculate the common measures for each grantee and for the program as a whole, ETA will also require grantees to submit quarterly participant records for exiters that contain the minimum number of elements needed to obtain the information to calculate the common measures. ETA plans to use these records to obtain wage record information from the Wage Record Interchange System (WRIS), which in turn ETA will use to compute common measures. These reports and records will help ETA gauge the effects of the HGJTI and CBJTG grants, identify grantees that could serve as useful models, and target technical assistance appropriately. ETA's statutory and regulatory authority to administer these programs includes provisions for the requirement of performance reporting from grantees. The legislative authority for these programs comes from the Workforce Investment Act (29 U.S.C. 2801 et seq.) and the American Competitiveness in the Twenty-first Century Act of 2000 as amended, both of which authorize and/or require that ETA collect information from grantees regarding program performance and participant outcomes.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E8–3740 Filed 2–27–08; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this

notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Green Meadows Dairy, LLC/Hull, Iowa.

Principal Product/Purpose: The loan, guarantee, or grant application for the purchase of equipment, land, and an existing structure to construct a new cheese manufacturing plant. The NAICS industry codes for this enterprise are: 311513 Cheese Manufacturing—Cheese (except cottage cheese) manufacturing; and 311514 Dry, Condensed, and Evaporated Dairy Product Manufacturing—Whey, condensed, dried, evaporated, and powdered manufacturing.

DATES: All interested parties may submit comments in writing no later than March 13, 2008. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) an increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: At Washington, DC this 15th of February, 2008.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E8–3737 Filed 2–27–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to obtain information from private foundations or other entities in order to design, construct and equip Presidential libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before April 28, 2008 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Presidential Library Facilities.

OMB number: 3095–0036.

Agency form number: None.

Type of review: Regular.

Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated number of respondents: 1.

Estimated time per response: 31 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

Dated: February 21, 2008.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E8–3780 Filed 2–27–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office, Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to Section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub. L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

Name of Committee: Public Interest Declassification Board (PIDB).

Date of Meeting: Monday, March 17, 2008.

Time of Meeting: 9 a.m. to 12 p.m.

Place of Meeting: National Archives and Records Administration, 700

Pennsylvania Avenue, NW., Jefferson Conference Room, Washington, DC 20408.

Purpose: To solicit public reaction to the issues and recommendations covered in the PIDB's recent report, ''Improving Declassification.'' (See: *http://www.archives.gov/declassification/pidb/improving-declassification.pdf.*)

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the PIDB staff at the Information Security Oversight Office (ISOO) no later than Wednesday, March 12, 2008. The PIDB staff will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: Lee H. Johnson, PIDB Staff, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5039.

Dated: February 21, 2008.

William J. Bosanko,

Acting Director, Information Security Oversight Office.

[FR Doc. E8–3865 Filed 2–27–08; 8:45 am]

BILLING CODE 7515–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of Twenty-six Counties as High Intensity Drug Trafficking Areas

ACTION: Notice.

SUMMARY: This notice lists twenty-six counties designated as additions to the High Intensity Drug Trafficking Areas (HIDTA) Program by the Director of the Office of National Drug Control Policy (ONDCP). These new counties are: Letcher County in Kentucky and Hamilton and Washington Counties in Tennessee as additions to the Appalachia HIDTA; Barrow, Bartow, Cherokee, Clayton, Douglas, Fayette, Forsyth and Henry Counties in Georgia and Durham, Johnston, Wake, Wayne and Wilson Counties in North Carolina as additions to the Atlanta HIDTA; Shasta County, California as an addition to the Central Valley California HIDTA; Benton, Jefferson, Pulaski and Washington Counties in Arkansas as additions to the Gulf Coast HIDTA; Rock Island County, Illinois as an addition to the Midwest HIDTA; Chester and Delaware Counties in Pennsylvania as additions to the Philadelphia/Camden HIDTA; and Midland and Ector Counties in Texas as additions to the Southwest Border HIDTA West Texas Region.

The new counties are designated pursuant to Office of National Drug Control Policy Reauthorization Act of 2006 codified at 21 USCS 1706 et seq, to promote more effective coordination of drug control efforts. In considering whether to designate an area under this section as a High Intensity Drug Trafficking Area, the Director considered, in addition to such other criteria the Director, ONDCP considers to be appropriate, the extent to which: (1) The area is a significant center of illegal drug production, manufacturing, importation, or distribution; (2) state and local law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem; (3) drug-related activities in the area are having a significant harmful impact in the area, and in other areas of the country; and (4) a significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area. This action will support local, state and Federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluating the effectiveness of their coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Ms. Cheryl C. Nolan, Acting Deputy Director for State, Local and Tribal Affairs, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–6912.

Signed at Washington, DC, this 20th day of February, 2008.

John P. Walters,

Director.

[FR Doc. E8–3779 Filed 2–27–08; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations (CNLs); Invitation for Public Comment on CNL Waivers Subject to Potential Revocation Based on New Statutory Thresholds, Possible De Minimis Waivers, and Product Redesignations

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: This notice is to inform the public of the availability of full 2007 calendar year import statistics relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. Public comments are invited and must be submitted by 5 p.m., Friday, March 21, 2008, to *FR0441@USTR.EOP.GOV* regarding the potential revocation of CNL waivers that meet the new statutory thresholds set forth by section 503(d)(4)(B)(ii) of the Trade Act of 1974 (19 U.S.C. 2463(d)(4)(B)(ii)), as amended by Public Law 109–432. Additionally, public comments are invited and must be submitted by 5 p.m., Friday, March 28, 2008, to *FR0618@USTR.EOP.GOV* regarding possible *de minimis* CNL waivers with respect to particular articles and possible redesignations under the GSP program of articles currently not eligible for GSP benefits because they previously exceeded the CNLs.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries (BDCs). The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. When the President determines that a BDC exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in

excess of the applicable amount for that year ($130 million for 2007), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent CNL''), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year.

De minimis waivers. Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($18.5 million for 2007).

Redesignations. Under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the 1974 Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

CNL waiver revocation. Under Section 503(d)(5) of the 1974 Act, a CNL waiver remains in effect until the President determines that it is no longer warranted due to changed circumstances. Section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432, also provides that, ''[n]ot later than July 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year [$195 million in 2007]; or (II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.''

II. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2008, unless granted a waiver by the President. Any CNL-based exclusions, CNL waiver revocations, and decisions with respect to *de minimis* waivers and redesignations will be based on full 2007 calendar year import data.

III. 2007 Import Statistics

In order to provide notice of articles that have exceeded the CNLs for 2007, and to afford an opportunity for comment regarding potential *de minimis* waivers, redesignations, and the potential revocation of waivers that are subject to the new CNL waiver thresholds provided by section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432, import data for 2007 are available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2007_Annual_Review/Section_Index.html*), titled ''2007 GSP Review, Full-Year 2007 Import Statistics Relating to Competitive Need Limitations (CNLs).'' Full 2007 calendar year data for individual tariff subheadings may be viewed on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov/*.

The lists available on the USTR Web site contain, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC country of origin, the value of imports of the article for the 2007 calendar year, and the percentage of total imports of that article from all countries. The annotations on the lists indicate, among other things, the status of GSP eligibility.

The computer-generated lists published on the USTR Web site are for informational purposes only. They may not include all articles to which the GSP CNLs may apply. All determinations and decisions regarding the CNLs of the GSP program will be based on full 2007 calendar year import data with respect to each GSP-eligible article. Each interested party is advised to conduct its own review of 2007 import data with respect to the possible application of the GSP CNL provisions.

List I on the USTR Web site shows: (a) Articles from BDCs that became ineligible for GSP treatment on or before July 1, 2007; and (b) GSP-eligible articles from BDCs that exceeded a CNL by having been exported in excess of $130 million, or by an amount greater than 50 percent of the total U.S. import value in 2007. Petitions to grant CNL waivers for those articles that received GSP benefits during 2007 but stand to lose GSP duty-free treatment on July 1, 2008, must have been previously submitted in the 2007 GSP Annual Review.

List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL, but that are eligible for a *de minimis* waiver of the 50 percent CNL. Articles eligible for *de minimis* waivers are automatically considered in the GSP annual review process, without petitions, and public comments are invited.

List III shows GSP-eligible articles from certain BDCs that are currently not receiving GSP duty-free treatment, but that may be considered for GSP redesignation based on 2007 trade data and consideration of certain statutory factors, as set forth above. Recommendations to the President on redesignations are normally made as part of the GSP annual review process, and public comments are invited.

List IV shows articles subject to the new CNL waiver thresholds of section 503(d)(4)(B)(ii) of the 1974 Act, as amended by Public Law 109–432. Recommendations to the President on revocation of these waivers will be made as part of the 2007 GSP annual review process, and public comments are invited.

IV. Public Comments

Requirements for Submissions

All submissions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant 8-digit HTSUS subheading(s), the BDC of interest, and the type of action (*e.g.*, new statutory criteria, *de minimis* waiver or redesignation) in which the party is interested.

Comments must be submitted, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) as soon as possible, but no later than 5 p.m., Friday, March 21, 2008, for comments on the potential revocation of CNL waivers that meet the new statutory thresholds and no later than 5 p.m., March 28, 2008, for comments regarding *de minimis* waivers or redesignations.

To facilitate prompt consideration of submissions, USTR will only accept electronic e-mail submissions in response to this notice. Hand-delivered submissions either by mail or other delivery options will not be accepted. Submissions should be single-copy transmissions in English with the total submission not to exceed 20 single-spaced standard letter-size pages, including attachments, and three megabytes as a digital file attached to an e-mail transmission. The e-mail transmission must use either one of the two following subject lines, based on the subject of the comment being submitted: ''Comments on 2007 GSP Redesignation and *De minimis* Waiver

Review,'' or ''Comments on 2007 CNL Waiver Threshold Review,'' followed by the BDC country of origin and HTSUS subheading number as set out in the appropriate list. Documents must be submitted as either MSWord (''.doc''), Word Perfect (''.wpd''), Adobe (''.pdf'') or text (''.txt'') files. Documents submitted as electronic image files or containing imbedded images (for example, ''.jpg'', ''.tif'', ''.bmp'', or ''.gif'' files) will not be accepted. Spreadsheets submitted as supporting documentation are acceptable as Excel, pre-formatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, pursuant to 15 CFR 2003.6, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential version must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must be clearly marked ''PUBLIC'' or ''NON-CONFIDENTIAL'' at the top and bottom of each page. Documents that are submitted without any marking may not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''BC-'' or ''P-'' should be followed by the name of the party (government, company, union, association, etc.) which is submitting the comments.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's name, organization name, address, telephone number and e-mail address. The e-mail address for the 2007 CNL Waiver Threshold Review is *FR0441@USTR.EOP.GOV*. The e-mail address for submissions to the 2007 GSP Redesignation and *De minimis* Waiver Review is *FR0618@USTR.EOP.GOV*. (Note: the digit before the numbers 4 and 6 in the above e-mail addresses is the number zero, not a letter.) Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for public review approximately two weeks after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling 202–395–6186.

Marideth J. Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, and Chair, GSP Subcommittee, Office of the U.S. Trade Representative.

[FR Doc. E8–3805 Filed 2–27–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 3, 2008:

A Closed Meeting will be held on Monday, March 3, 2008, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Monday, March 3, 2008, will be:

Formal order of investigation;

Institution and settlement of injunctive actions;

Resolution of a litigation claim;

Institution of administrative proceedings of an enforcement nature; and a matter related to an enforcement proceeding.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: February 25, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–3852 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28166; 812–13444]

NETS Trust, et al.; Notice of Application

February 25, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain open-end management investment companies and their series, to issue shares (''NETS'') that can be redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in NETS to occur at negotiated prices; (c) dealers to sell NETS to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); (d) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of NETS for redemption; (e) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (f) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire NETS.

APPLICANTS: NETS Trust (''Trust''), Northern Trust Investments, N.A.

(''Adviser'') and Foreside Fund Services, LLC (''Distributor'').

FILING DATES: The application was filed on November 1, 2007 and amended on February 13, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 14, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Peter K. Ewing, Northern Trust Global Investments, 65 East 55th Street, 24th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel at (202) 551–6812, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102, telephone (202) 551–5850.

Applicants' Representations

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust that will offer multiple series. The Trust will initially offer NETS of twenty-three series (''Initial Funds''), each of which will track an equity securities index (''Underlying Index'').[1] Applicants may offer additional investment companies in the future as well as additional series of the Trust and series of any existing or future open-end investment companies registered under the Act (''Future Funds'' and together with the Initial Funds, the ''Funds'').[2]

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and will serve as the investment adviser to each of the Initial Funds. In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers to particular Funds (''Sub-Advisers''). Each Sub-Adviser will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Creation Units of NETS. The Distributor is not affiliated with the Adviser or any Sub-Adviser.

3. Each Fund will hold certain equity securities (''Portfolio Securities'') selected to correspond, before fees and expenses, generally to the price and yield performance of an Underlying Index. Certain of the Underlying Indices are composed of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indices''). Other Underlying Indices are composed of foreign equity securities (''Foreign Indices''). Funds which track Domestic Indices are referred to as ''Domestic Funds'' and Funds which track Foreign Indices are referred to as ''Foreign Funds.'' No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, the Adviser, any Sub-Adviser to or promoter of a Fund, or the Distributor.

4. The investment objective of each Fund will be to provide investment results that correspond, before fees and expenses, generally to the price and yield performance of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus.[3] A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in approximately the same proportions as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is less liquid, illiquid or unavailable, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all of the Component Securities of its Underlying Index.[4] Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Creation Units are expected to range between 25,000 to 100,000 NETS as will be clearly stated in the relevant Fund's prospectus (''Prospectus''). Applicants expect that the initial price of a Creation Unit will fall in the range of $1,000,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor, by or

[1] The Initial Funds are: NETS BEL 20 Index Fund (Belgium), NETS Hang Seng China Enterprises Index Fund, NETS CAC40 Index Fund (France), NETS DAX Index Fund (Germany), NETS Dow Jones Wilshire Global ex-US Index Fund, NETS Dow Jones Wilshire Global Total Market Index Fund, NETS Hang Seng Index Fund (Hong Kong), NETS ISEQ 20 Index Fund (Ireland), NETS TA–25 Index Fund (Israel), NETS TOPIX Index Fund (Japan), NETS Tokyo Stock Exchange REIT Index Fund (Japan), NETS FTSE Bursa Malaysia 100 Index Fund, NETS AEX-index Fund (The Netherlands), NETS PSI 20 Index Fund (Portugal), NETS FTSE Singapore Straits Times Index Fund, NETS FTSE/JSE Top 40 Index Fund (South Africa), NETS TSEC Taiwan 50 Index Fund, NETS FTSE 100 Index Fund (United Kingdom), NETS Dow Jones Wilshire 4500 Index Fund, NETS S&P/ASX 200 Index Fund (Australia), NETS S&P/MIB Index Fund (Italy), NETS RTS Index Fund (Russia) and NETS FTSE SET 30 Index Fund (Thailand).

[2] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. Any Future Fund will be advised by the Adviser or an entity controlled by or under common control with the Adviser.

[3] Applicants represent that each Fund will invest at least 90% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, in the case of Foreign Funds, Component Securities and depositary receipts representing such securities. ''Depositary Receipts'' will typically be American Depositary Receipts, but may include Global Depositary Receipts and Euro Depositary Receipts. Each Fund also may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser or Sub-Adviser believes will help the Fund track its Underlying Index.

[4] Under the representative sampling strategy, the Adviser will seek to construct a Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). NETS of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser or Sub-Adviser to correspond generally to the price and yield performance of the relevant Underlying Index (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Balancing Amount''). The Balancing Amount is an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.[5] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities if the Adviser or Sub-Adviser believes such method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.[6]

6. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[7] The maximum Transaction Fees relevant to each Fund and the method of calculating such Transaction Fees will be fully disclosed in the Prospectus of such Fund or statement of additional information (''SAI''). The Distributor also will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its NETS.

7. Purchasers of NETS in Creation Units may hold such NETS or may sell such NETS into the secondary market. NETS will be listed and traded on an Exchange. It is expected that one or more member firms of a Listing Exchange will be designated to act as a specialist (''Specialist'') or a market maker (''Market Maker'') and maintain a market for NETS trading on the Listing Exchange. Prices of NETS trading on an Exchange will be based on the current bid/ask market. NETS sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist or Market Maker, in providing a fair and orderly secondary market for the NETS, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of NETS will include both institutional investors and retail investors.[8] Applicants expect that the price at which NETS trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that NETS will not trade at a material discount or premium in relation to their NAV.

9. NETS will not be individually redeemable, and owners of NETS may acquire those NETS from the Fund, or tender such NETS for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough NETS to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit redemptions (''Fund Securities'') on the date that the request for redemption is submitted[9] and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.

10. No Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or NETS traded on an Exchange, or refer to redeemability, will prominently disclose that NETS are not individually redeemable and that the owners of NETS may purchase or redeem NETS from the Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the NETS. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d),

[5] Each Fund will sell and redeem Creation Units only on a ''Business Day'' which is defined as any day that the New York Stock Exchange, the Listing Exchange (defined below), and the custodian of a Fund are open for business, and includes any day that a Fund is required to be open under section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Listing Exchange (defined below), the list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which NETS are listed (''Listing Exchange'') will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual NETS representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[6] Applicants state that in some circumstances or in certain countries, it may not be practicable or convenient, or permissible under the laws of certain countries or the regulations of certain foreign stock exchanges, for a Foreign Fund to operate exclusively on an ''in-kind'' basis. Applicants also note that when a substantial rebalancing of a Fund's portfolio is required, the Adviser or Sub-Adviser might prefer to receive cash rather than stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

[7] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[8] NETS will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding NETS. DTC or DTC Participants will maintain records reflecting beneficial owners of NETS.

[9] As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the Portfolio Securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

22(e), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because NETS will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue NETS that are redeemable in Creation Units only. Applicants state that investors may purchase NETS in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the NETS should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in NETS will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of NETS in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing NETS. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting NETS to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in NETS does not involve a Fund as a party and will not result in dilution of an investment in NETS, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in NETS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of NETS and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling NETS in the secondary markets to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[10]

8. Applicants state that NETS are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that NETS likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because NETS will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and volume information for NETS will be published daily in the financial section of newspapers. In addition, a Web site will

[10] Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases NETS from the Funds or an underwriter. Applicants further state that each Fund's Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent individual NETS, and sells those NETS directly to customers, or if it chooses to couple the creation of a supply of new NETS with an active selling effort involving solicitation of secondary market demand for NETS. Each Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Fund's Prospectus will caution dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with NETS that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

be maintained that will include each Fund's Prospectus and SAI, the Portfolio Securities and relevant Underlying Index for each Fund, and additional quantitative information that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''),[11] the NAV for each Fund, and information about the premiums and discounts at which the NETS have traded.

9. Applicants will arrange for broker-dealers selling NETS in the secondary market to provide purchasers with a product description (''Product Description'') that describes, in plain English, the relevant Fund and the NETS it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing NETS in the secondary market.

Section 22(e)

10. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will, under certain circumstances, require a delivery process longer than seven calendar days for Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Funds to pay redemption proceeds up to 14 calendar days after the tender of any Creation Units for redemption. Except as disclosed in the relevant Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[12] With respect to future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

11. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

12. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

13. Applicants request an exemption to permit management investment companies (''Purchasing Management Companies'') and unit investment trusts (''Purchasing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust (collectively, ''Purchasing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). Purchasing Funds do not include the Funds. In addition, applicants seek relief to permit a Fund or broker-dealer (''Broker'') that is registered under the Exchange Act to sell NETS to a Purchasing Fund in excess of the limits of section 12(d)(1)(B).

14. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Purchasing Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Purchasing Fund Sub-Adviser''). Any investment adviser to a Purchasing Fund will be registered under the Advisers Act or exempt from registration. Each Purchasing Trust will be sponsored by a sponsor (''Sponsor'').

15. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

16. Applicants believe that neither the Purchasing Funds nor a Purchasing Fund Affiliate would be able to exert undue influence over the Funds.[13] To limit the control that a Purchasing Fund may have over a Fund, applicants propose a condition prohibiting a Purchasing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Purchasing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor (''Purchasing Fund Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Purchasing Fund Sub-Adviser, any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser, and any

[11] The Bid-Ask Price per individual NETS of a Fund is determined using the highest bid and the lowest offer on the Listing Exchange.

[12] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[13] A ''Purchasing Fund Affiliate'' is a Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, Sponsor, promoter, and principal underwriter of a Purchasing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Purchasing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser (''Purchasing Fund Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee or Sponsor of a Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

17. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Purchasing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged to the Purchasing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. In addition, except as provided in condition 12, a Purchasing Fund Adviser or a trustee (''Trustee'') or Sponsor of a Purchasing Trust will, as applicable, waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Purchasing Fund Adviser or Trustee or Sponsor or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Purchasing Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the National Association of Securities Dealers (''NASD'').

18. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Purchasing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Purchasing Fund that intends to invest in a Fund in reliance on the requested order will enter into a Purchasing Fund Agreement between the Fund and the Purchasing Fund requiring the Purchasing Fund to adhere to the terms and conditions of the requested order. The Purchasing Fund Agreement also will include an acknowledgement from the Purchasing Fund that it may rely on the requested order only to invest in the Funds and not in any other investment company. The Purchasing Fund Agreement will further require any Purchasing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in the Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Purchasing Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds.

19. Applicants also note that a Fund may choose to reject a direct purchase of NETS in Creation Units by a Purchasing Fund. To the extent that a Purchasing Fund purchases NETS in the secondary market, a Fund would still retain its ability to reject initial purchases of NETS made in reliance on the requested order by declining to enter into the Purchasing Fund Agreement prior to any investment by a Purchasing Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

20. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

21. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding NETS of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

22. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of NETS. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

23. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of a Purchasing Fund because the Purchasing Fund holds 5% or more of the NETS of the Fund to sell its NETS to and redeem its NETS from a Purchasing Fund, and to engage in the accompanying in-kind transactions with

the Purchasing Fund.[14] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Purchasing Fund for the purchase of redemption of NETS directly from a Fund will be based on the NAV of the Fund.[15] Applicants believe that any proposed transactions directly between the Funds and Purchasing Funds will be consistent with the policies of each Purchasing Fund. The purchase of Creation Units by a Purchasing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement. The Purchasing Fund Agreement will require any Purchasing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Purchasing Fund will be accomplished in compliance with the investment restrictions of the Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of granting the requested relief will be subject to the following conditions:

1. As long as the Funds operate in reliance on the requested order, the NETS will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that NETS are not individually redeemable shares and will disclose that the owners of NETS may acquire those NETS from the Fund and tender those NETS for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that NETS are not individually redeemable, and that owners of NETS may acquire those NETS from the Fund and tender those NETS for redemption to the Fund in Creation Units only.

3. The Web site maintained for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per individual NETS basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which the NETS have traded.

4. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 3(b), (i) in the case of the Fund's Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per individual NETS basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

5. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in NETS to deliver a Product Description to purchasers of NETS.

6. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, NETS are issued by the Fund, which is a registered investment company, and that the acquisition of NETS by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Fund regarding the terms of the investment.

7. The members of a Purchasing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Purchasing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding NETS of a Fund, a Purchasing Fund's Advisory Group or a Purchasing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding NETS of a Fund, it will vote its NETS in the same proportion as the vote of all other holders of the NETS. This condition does not apply to the Purchasing Fund's Sub-Advisory Group with respect to a Fund for which the Purchasing Fund's Sub-Adviser or a person controlling, controlled by, or under common control with the Purchasing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Purchasing Fund or Purchasing Fund Affiliate will cause any existing or potential investment by the Purchasing Fund in a Fund to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of directors or trustees of a Purchasing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Purchasing Fund Adviser and Purchasing Fund Sub-Adviser are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a Purchasing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. No Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

11. Before investing in the NETS of a Fund in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and the Fund will execute a Purchasing Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers or Sponsors or Trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in NETS of a Fund in excess of the limit in section

[14] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Purchasing Fund, or an affiliated person of such person, for the purchase by the Purchasing Fund of NETS of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its NETS to a Purchasing Fund may be prohibited by section 17(e)(1) of the Act. The Purchasing Fund Agreement also will include this acknowledgment.

[15] Applicants believe that a Purchasing Fund will purchase NETS in the secondary market and will not purchase or redeem Creation Units directly from a Fund. Nonetheless, a Purchasing Fund that owns 5% or more of a Fund could seek to transact in Creation Units directly with a Fund pursuant to the section 17(a) relief requested.

12(d)(1)(A)(i), a Purchasing Fund will notify such Fund of the investment. At such time, the Purchasing Fund will also transmit to the Fund a list of names of each Purchasing Fund Affiliate and Underwriting Affiliate. The Purchasing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The relevant Fund and the Purchasing Fund will maintain and preserve a copy of the order, the Purchasing Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

12. The Purchasing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received under any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Purchasing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Purchasing Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Purchasing Fund in the Fund. Any Purchasing Fund Sub-Adviser will waive fees otherwise payable to the Purchasing Fund Sub-Adviser, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received from a Fund by the Purchasing Fund Sub-Adviser, or an affiliated person of the Purchasing Fund Sub-Adviser, other than any advisory fees paid to the Purchasing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Purchasing Management Company in a Fund made at the direction of the Purchasing Fund Sub-Adviser. In the event that the Purchasing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

13. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

14. Once an investment by a Purchasing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested Board members''), will determine that any consideration paid by the Fund to a Purchasing Fund or Purchasing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

15. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once an investment by the Purchasing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Purchasing Fund in a Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performances of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by a Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders of the Fund.

16. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by a Purchasing Fund in the NETS of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

17. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Purchasing Management Company.

18. No Fund will acquire securities of any investment company or companies relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3781 Filed 2–27–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57373; File No. SR–Amex–2008–09]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Options Linkage Fees

February 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 8, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II, and III below, which Items have been substantially prepared by Amex. On February 19, 2008, Amex submitted Amendment No. 1 to the proposed rule change. 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

Amex proposes to clarify the application of options transaction fees for trades executed through the intermarket options linkage (the ''Options Linkage'') on the Exchange. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex 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 Amex proposes to clarify the application of options transaction fees for trades executed through the Options Linkage on the Exchange. Currently, the Amex Options Fee Schedule (the ''Options Fee Schedule'') provides that, under the Linkage Fee Pilot Program that is effective through July 31, 2008, the fees applicable to specialists, registered options traders, and market maker apply to members of other options exchanges (''Non-Member Market Makers'') executing Linkage transactions except for Satisfaction Orders. As a result, the fees for Principal Orders (''P Orders'') and Principal Acting As Agent Orders (''P/A Orders'') (collectively, ''Linkage Orders'') submitted through the Options Linkage are: (i) $0.10 per contract side options transaction fee for equity options, exchange traded fund share (''ETF'') options, QQQQ options and trust issued receipt options; (ii) $0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) $0.05 per contract side options comparison fee; (iv) $0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from $0.15 per contract side to $0.05 per contract side depending on the particular ETF or index option.[3]

However, the Options Fee Schedule also provides that broker-dealer orders that are automatically executed on the Exchange are subject to Broker-Dealer Auto-Ex Fees (''BD Auto-Ex Fee'') that include: (i) $0.50 per contract side options transaction fee for equity options, ETF options, QQQQ options and trust issued receipt options; (ii) $0.05 per contract side options comparison fee; and (iii) $0.05 per contract side options floor brokerage fee.[4] Broker-dealer orders that are subject to the BD Auto-Ex Fee include specialist orders, registered options trader orders, Non-Member Market Maker orders, and orders for the account of registered broker-dealers. The Exchange charges this fee to member firms through customary monthly billing. The BD Auto-Ex Fee was implemented prior to the introduction and roll-out of the Options Linkage which commenced on January 31, 2003 in two phases. The entire roll-out of the Options Linkage was completed by July 2003.

The Exchange in this proposal seeks to clarify the Options Fee Schedule to make clear that automatically executed Linkage Orders will be charged the BD Auto-Ex Fee that includes: (i) $0.50 per contract side options transaction fee; (ii) $0.05 per contract side options comparison fee; and (iii) $0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee would be $0.60 per contract side. In contrast to the initial period of time when the Options Linkage was introduced, most Linkage Orders on the Exchange are automatically executed via the ANTE platform. The Exchange acknowledges that the current Options Fee Schedule does not clearly reflect the fact that for automatically executed Linkage Orders, the BD Auto-Ex Fee would apply. However, a specialist or registered options trader on the Exchange would be subject to the BD Auto-Ex Fee in those circumstances that such specialist or registered options trader submitted an order electronically through order-entry lines, such as CMS and/or FIX, for automatic execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[5] in general and Section 6(b)(4)[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange submits that the proposal clarifies that automatically executed orders in ANTE, whether Linkage Orders or non-Linkage Orders on the behalf of broker-dealers, are subject to the BD Auto-Ex Fee set forth in the Options Fee Schedule. Accordingly, the Exchange asserts that the proposed clarification relating to Options Linkage Order transaction charges is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[3] *See* Options Fee Schedule section of the Amex Price List available at *http://www.amex.com. See also* Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR–Amex–2007–64).

[4] *See* Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR–Amex–2002–114).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

change, as amended, 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–2008–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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–2008–09 and should be submitted on or before March 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3735 Filed 2–27–08; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57357; File No. SR–CBOE–2008–14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Establish a Solicitation Auction Mechanism and To Amend Its Automated Improvement Mechanism

February 20, 2008.

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 February 7, 2008, 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to establish a new automated mechanism for auctioning larger-sized orders and to modify its existing automated improvement mechanism (''AIM'') to permit its use for the execution of complex orders. The text of the proposed rule change is available on the Exchange's Web site at (*http://www.cboe.org/Legal*), at the Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under CBOE Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System,* and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System,* order entry firms that electronically enter orders are required to expose an unsolicited agency order (''Agency Order'') for at least 3 seconds before crossing it against an order that it has solicited from other broker-dealers.[3] Currently, an order entry firm can comply with this requirement by entering the Agency Order on the Exchange, waiting 3 seconds, and then entering the solicited order. The Exchange states that, due to the 3-second exposure requirement, order entry firms have no level of assurance that they will be able to electronically pair solicited orders against Agency Orders for executions. As an alternative, CBOE has developed AIM, which permits an Agency Order to be electronically executed against principal or solicited interest.[4]

To better compete with various other electronic alternatives available at other options exchanges, CBOE has also developed an enhanced auction mechanism for larger-sized simple and complex Agency Orders that are to be executed against solicited orders (the ''Auction''). The proposed rule change would implement this functionality in options classes designated by the Exchange. Such orders would be required to be for at least 500 contracts, must be entered as all-or-none limit (''AON'') orders,[5] and would be executed only if the price is at or better than the CBOE best bid or offer (''BBO'').

When a proposed solicited cross is entered into the Auction, the Exchange would send a Request for Responses (''RFR'') message to all members that have elected to receive such messages. Members would then have 3 seconds to

[3] *See* CBOE Rule 6.45A.02 and 6.45B.02.

[4] *See* CBOE Rule 6.74A, *Automated Improvement Mechanism (''AIM'').*

[5] The Exchange's existing rules provide that an AON order may be crossed with another AON order if all bids or offers at the same price at which the cross is to be effected have been filled. *See, e.g.,* Interpretation and Policy .01 to CBOE Rule 6.44, *Bids and Offers in Relation to Units of Trading.* The proposed Auction system is modeled after this principle, except that it would allow the crossing of large-sized AON orders to take place so long as there are no public customer orders at the proposed price and there is insufficient size at an improved price to accommodate the Agency Order.

respond with a price that would improve the proposed execution price for the Agency Order, except that responses would not be entered for the account of an options market maker from another options exchange. Responses may be entered and executed at prices that are in a multiple of the applicable minimum price increment that has been designated by the Exchange for the series, which increment may not be less than $0.01. The Exchange believes this would allow for greater flexibility in pricing large-sized orders and provide for a greater opportunity for price improvement.

The Auction will conclude at the sooner of various conditions.[6] At the conclusion of the Auction, the Agency Order would be executed against the solicited order unless there is sufficient size to execute the entire Agency Order at a price (or prices) that improves the proposed crossing price. In the case where there is one or more public customer orders resting in the book at the proposed execution price on the opposite side of the Agency Order, the solicited order would be cancelled and the Agency Order would be executed against other bids (offers) if there is sufficient size at the bid (offer) to execute the entire size of the Agency Order (size would be measured considering resting orders and quotes and responses).[7] If there is not sufficient size to execute the entire Agency Order, the proposed cross would not be executed and both the Agency Order and solicited order would be cancelled. Additionally, the proposed cross would not be executed and both the Agency Order and solicited order would be cancelled if the execution price would be inferior to the BBO.

The proposed rule would also require members to deliver to customers a written document describing the terms and conditions of the Auction mechanism prior to executing Agency Orders using the Auction mechanism. Such written document would be required to be in a form approved by the Exchange.

The proposed rule would also specify that members may not use the Auction mechanism to circumvent the Exchange's rules limiting principal order transactions.[8] Additionally, the Exchange notes that for purposes of paragraph (e) to CBOE Rule 6.9, *Solicited Transactions*, which paragraph prohibits anticipatory hedging activities prior to the entry of an order on the Exchange, the terms of an order would be considered ''disclosed'' to the trading crowd on the Exchange when the order is entered into the Auction mechanism.

Finally, the Exchange is proposing to expand its existing AIM auction, which currently only applies to simple orders, to cover complex orders. Thus, complex orders would be eligible for execution through AIM at a net debit or net credit price provided the Auction eligibility requirements of the AIM rule are satisfied and the Agency Order is eligible for AIM considering its complex order type, order origin code (*i.e.*, non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Allocation of complex orders that are subject to AIM will be the same as the existing allocation procedures, provided that the complex order priority rules applicable to bids and offers in the individual series legs of a complex order contained in CBOE Rule 6.53C(d) or 6.53C.06, as applicable, will continue to apply. In addition, the Exchange is proposing to provide in its rules that it may determine on a class-by-class basis that orders of 500 or more contracts may be executed through AIM without considering prices that might be available on other options exchanges. All other aspects of the AIM auction will continue to apply unchanged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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–2008–14 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.

[6] The Auction shall conclude at the sooner of: (i) *The* end of the response period, (ii) upon receipt by the Hybrid Trading System (''Hybrid'') of an unrelated order (in the same series as the Agency Order) that is marketable against either the Exchange's disseminated quote (when such quote is the NBBO) or the responses, (iii) upon receipt by Hybrid of an unrelated limit order (in the same series as the Agency Order and on the opposite side of the market as the Agency Order) that improves any response, (iv) any time a response matches the Exchange's disseminated quote on the opposite side of the market from the responses, or (v) any time there is a quote lock on the Exchange pursuant to CBOE Rule 6.45A(d) or 6.45B(d). *See* paragraph (b)(2) of proposed CBOE Rule 6.74B, *Solicitation Auction Mechanism.*

[7] When the Agency Order is executed at an improved price(s) or at the proposed execution price against electronic orders, quotes and responses, priority would be pursuant to the allocation algorithm in effect pursuant to CBOE Rule 6.45A or 6.45B, as applicable. The allocation for simple and complex orders would be the same, except that complex orders would also be subject to the complex order priority rules applicable to bids and offers in the individual series legs of a complex order contained in paragraphs (d) or .06 of CBOE Rule 6.53C, *Complex Orders on the Hybrid System,* as applicable.

[8] *See* CBOE Rules 6.45A.01, 6.45B.01, 6.74, *Crossing Orders,* and 6.74A.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–CBOE–2008–14. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–14 and should be submitted on or before March 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57365; File No. SR–CBOE–2007–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Portfolios, or Indexes or Portfolios Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities

February 21, 2008.

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 September 10, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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. On February 19, 2008, CBOE filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its listing standards, adopted pursuant to Rule 19b–4(e) under the Act, in CBOE Rules 31.5(L) and 31.5(M) to include generic listing standards for Index Portfolio Receipts (''IPRs'') and Index Portfolio Shares (''IPSs,'' together with IPRs, referred to herein with as ''exchange-traded funds'' or ''ETFs'') that are based on international or global indexes or portfolios, or on indexes or portfolios described in exchange rules that have been previously approved by the Commission for the trading of ETFs or other specified index-based securities.

The text of the proposed rule change is available from the Exchange's Web site (*http://www.cboe.org/Legal*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFs pursuant to Rule 19b–4(e) under the Act[3] if each of the conditions set forth in CBOE Rules 31.5(L) or (M) is satisfied. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[4] This proposed rule change is based on SR–Phlx–2007–20, which was approved by the Commission on July 11, 2007.[5]

a. Background

CBOE Rules 31.5(L) and (M) provide standards for listing Index Portfolio Receipts and Index Portfolio Shares, respectively, on CBOE. An Index Portfolio Receipt is a security that represent an interest in a unit investment trust that holds securities that comprise a stock index on which a series of IPR is based.[6] An Index Portfolio Share is a security that is issued by an open-end management investment company and based on a portfolio of stocks or fixed income

[3] 17 CFR 240.19b–4(e).

[4] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* 17 CFR 240.19b–4(e)(2)(ii).

[5] *See* Securities Exchange Act Release No. 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR–Phlx–2007–20).

[6] The complete definition of IPRs is set forth in CBOE Rule 1.1.02.

securities designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index.[7] Pursuant to CBOE Rule 1.1.02, IPRs must be issued in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock plus a cash amount. Pursuant to CBOE Rule 1.1.03, IPSs must be issued in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, or a specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value (''NAV''). When aggregated in the same specified minimum number, the ETFs must be redeemable by the issuer for stock and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a ''replication'' strategy or a ''representative sampling'' strategy with respect to the ETF portfolio.[8] An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (''IRC'').

b. Generic Listing Standards For Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.[9] In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved generic listing standards of exchanges governing the listing and trading of ETFs based on indexes or portfolios composed of Non-U.S. Component Stocks, as well as indexes or portfolios based on both non-U.S. Component Stocks and U.S. Component Stocks.[10]

The Commission has also approved generic listing standards for index-based derivative securities products based on indexes or portfolios described in exchange rules that have been previously approved by the Commission under Section 19(b)(2) of the Act for the trading of other index-based securities on the condition that all of the standards set forth in those orders, including surveillance sharing agreements, continue to be satisfied.[11]

The Exchange believes that adopting generic listing standards and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b–4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

c. Proposed Requirements for Listing and Trading ETFs Based on International and Global Indexes or Portfolios

ETFs listed pursuant to the proposed generic listing standards or that are traded pursuant to UTP would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.[12]

To list an ETF pursuant to the proposed generic listing standards for an international or global index or portfolio, the index or portfolio would have to satisfy all the conditions contained in proposed CBOE Rules 31.5(L).01(a)(2) or 31.5(M).01(a)(2). As with the existing generic standards for ETFs based on domestic indexes or portfolios, these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of the index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes or portfolios, they have been adapted as appropriate to apply to international and global indexes or portfolios.

As proposed, CBOE 31.5(L)(e) and 31.5(M)(c) would provide definitions of the terms U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes or portfolios with either domestic or international stocks, or a combination of both. A ''Non-U.S. Component Stock'' would mean an equity security that is not registered under Section 12(b) or 12(g) of the Act,[13] and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States; and (2) is an operating company (including a real estate investment trust or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A ''U.S. Component Stock'' would mean an equity security that is registered under Section 12(b) or 12(g) of the Act or an ADR the underlying equity security of which is registered under Section 12(b)

[7] The complete definition of IPSs is set forth in CBOE Rule 1.1.03.

[8] In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), or European Depositary Receipts (''EDRs'') that trade on exchanges with last-sale reporting representing securities in the underlying index.

[9] *See, e.g.*, Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152 (March 15, 2001) (SR–CBOE–00–51); Securities Exchange Act Release No. 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR–Phlx–00–68); Securities Exchange Act Release No. 43912 (January 31, 2001), 66 FR 9401 (February 7, 2001) (SR–Phlx–00–91).

[10] *See* Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–NASDAQ–2006–50); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (SR–NYSE–2006–101).

[11] *See, e.g.*, Securities Exchange Act Release No. 51563 (April 15, 2005) 70 FR 21257 (April 25, 2005) (SR–Amex–2005–001); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63).

[12] *See* proposed CBOE Rules 31.5(L).01(g) and (M).01(g).

[13] 15 U.S.C. 78*l*(b) or (g).

or 12(g) of the Act. An ADR with an underlying equity security that is registered pursuant to the Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list an IPR or IPS based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million (proposed CBOE Rules 31.5(L).01(a)(2)(A) and 31.5(M).01(a)(2)(A));
- Component stocks representing at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (proposed CBOE Rules 31.5(L).01(a)(2)(B) and 31.5(M).01(a)(2)(B));
- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (proposed CBOE Rules 31.5(L).01(a)(2)(C) and 31.5(M).01(a)(2)(C));
- The index or portfolio shall include a minimum of 20 component stocks (proposed CBOE Rules 31.5(L).01(a)(2)(D) and 31.5(M).01(a)(2)(D)); and
- Each U.S. Component Stock must be listed on a national securities exchange and an NMS stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (proposed CBOE Rules 31.5(L).01(a)(2)(E) and 31.5(M).01(a)(2)(E)).

The Exchange believes that these proposed standards are reasonable for international and global indexes or portfolios, and, when applied in conjunction with the other listing requirements, would result in the listing and trading of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for the trading in of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes or portfolios that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million, compared to a minimum market value of at least $75 million for indexes or portfolios with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.) Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a proposed 30% standard for an index or portfolio comprised of only U.S. Component Stocks.[14] Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes or portfolios comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) to require that the index value for an ETF listed pursuant to this proposal be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, CBOE Rules 31.5(L).01(c) and 31.5(M).01(c) would be modified to define the term ''Intraday Indicative Value'' (''IIV'') as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during Normal Market Hours.[15] CBOE also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during trading in the ETF on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on the CBOE Stock Exchange (''CBSX''), CBOE's equity trading platform, then the last official calculated IIV must remain available throughout CBSX's trading hours.

CBOE is proposing that it may designate an ETF for trading during the trading hours specified in CBOE Rule 51.2(d)[16] for IPRs and IPSs as long as the index value and IIV dissemination requirements of CBOE Rules 31.5(L).01(b)(ii), 31.5(L).01(c), 31.5(M).01(b)(ii), and 31.5(M).01(c) are met.

The Exchange proposes to adopt CBOE Rules 31.5(L).01(g) and 31.5(M).01(g) to specify that CBOE will implement written surveillance procedures for ETFs. The Exchange also proposes to add new CBOE Rules 31.5(L).01(h) and 31.5(M).01(h) regarding the creation and redemption process for ETFs and compliance with federal securities laws for ETFs listed pursuant to the new generic listing standards. These new subsections would apply to ETFs listed pursuant to CBOE Rules 31.5(L) and (M), respectively. They would require that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940[17] for the ETF state that the ETF must comply with the federal

[14] *See* proposed CBOE Rules 31.5(L).01(a)(1)(C), 31.5(L).01(a)(2)(C), 31.5(M).01(a)(1)(C), and 31.5(M).01(a)(2)(C).

[15] Normal Market Hours are defined in proposed CBOE Rule 52.3(c)(2) as the time period from 8:30 a.m. until 3:15 p.m. Central Time (''CT'').

[16] CBOE Rule 51.2(d) provides that the hours during which IPR transactions may be made on CBSX are 8:15 a.m. until 3:15 p.m. CT, and that the hours during which IPS transactions may be made on CBSX are 8:15 a.m. until 3:00 p.m. or 3:15 p.m. CT for each series of IPSs, as specified by CBSX.

[17] 15 U.S.C. 80a *et seq.*

securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.[18]

The Commission has approved generic listing standards providing for the listing, pursuant to Rule 19b–4(e), of other derivative securities products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act.[19] The Exchange proposes to include in the generic listing standards for the listing of ETFs based on indexes or portfolios that have been approved by the Commission in connection with the listing of options, Index Portfolio Receipts, Index Portfolio Shares, index-linked securities, or Index-Linked Exchangeable Notes. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives.

This new generic standard would be limited to stock indexes or portfolios, and would require that each component stock be either: (1) A U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs. The Exchange would commence delisting proceedings if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

The Exchange proposes to adopt CBOE Rules 31.5(L)(f) and 31.5(M)(d) to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time.

Proposed CBOE Rule 52.3(b) provides that the Exchange would halt trading in a Derivative Securities Product[20] if the circuit breaker parameter of CBOE Rule 6.3B has been reached. In exercising its discretion to halt or suspend trading in a Derivative Securities Product, the Exchange could consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other relevant factors.

Proposed CBOE Rule 52.3(c) sets forth the trading halt rules that apply to a Derivative Securities Product that is traded on the Exchange on a UTP basis. The rule provides that, during the hours for trading of Derivative Securities Products on the Exchange, if a temporary interruption occurs in the calculation or wide dissemination of the Required Value[21] by a major market data vendor and the listing market halts trading in the Derivative Securities Product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the series of Derivative Securities Product. If the Required Value continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the series of Derivative Securities Product that day. If an interruption in the calculation or wide dissemination of the Required Value continues, the Exchange may resume trading in the series of Derivative Securities Product only if calculation and wide dissemination of the Required Value resumes or trading in such series resumes in the listing market.

The Exchange proposes to amend CBOE Rule 31.5 to stipulate that, as provided by the Commission Rule 12f–5,[22] the Exchange may extend UTP to any security, such as an ETF, for which the Exchange has in effect rules providing for transactions in such class or type of security.[23] The provision of CBOE Rule 31.5(L) and (M) that governs surveillance procedures, the provisions of CBOE Rule 54.1 and 54.2 that relate to information circulars and prospectus delivery, and CBOE Rule 51.2(d) that governs trading hours for transactions in IPRs and IPSs, would apply to securities traded on a UTP basis (as does the applicable proposed trading halt provision of CBOE Rule 52.3(b)). The Exchange would not, however, apply quantitative listing standards to securities traded on a UTP basis.

The Exchange is proposing other minor and clarifying changes to CBOE Rules 31.5(L) and (M). Current CBOE Rules 31.5L.01(b)(i) and 31.5M.01(b)(i) would be deleted, so that an index underlying a series of IPRs or IPSs need not be calculated according to the methodologies specified in those rules.[24] CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) would be amended to ensure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. CBOE Rules 31.5(L).01(e) and 31.5(M).01(e) would be adopted to clarify that the minimum increment for bids and offers is set in Rule 51.2(d). CBOE Rules 31.5(L).01(f) and 31.5(M).01(f) are being adopted to clarify that the trading hours for IPRs and IPSs, respectively, are set in CBOE Rule 51.2. CBOE Rules 31.5(L).01(a)(1)(C) and 31.5(M).01(a)(1)(C) would be amended to change the maximum weighting requirement for the most heavily weighted component stock from 25% to 30% of the weight of the index or portfolio for IPRs and IPSs.[25]

The Exchange will closely monitor activity in ETFs to identify and deter any potential improper trading activity in ETFs. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs that would be listed or traded pursuant to UTP. Specifically, CBOE will rely on its existing surveillance procedures governing equities, options, and ETFs. Additionally, the Exchange states that it will develop procedures to closely monitor activity in ETFs and related securities to identify and deter any potential improper trading activity. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees. Finally, the Exchange deems IPRs and IPSs to be equity securities. Therefore, IPRs and IPSs are subject to

[18] 15 U.S.C. 77a *et seq.*

[19] *See supra* note 11.

[20] Proposed Rule 52.3(c)(5)(i) defines ''Derivative Securities Product'' as a series of Equity-Linked Term Notes, Index-Linked Exchangeable Notes, Index Portfolio Receipts, Index Portfolio Shares, or Trust Issued Receipts that is based on an underlying security or index.

[21] Proposed Rule 52.3(c)(5)(ii) defines ''Required Value'' as the value of any security or index underlying a Derivative Securities Product, as well as the IIV, indicative optimized portfolio value, or other comparable estimate of the value of a share of a Derivative Securities Product, updated regularly during the trading day.

[22] 17 CFR 240.12f–5.

[23] *See* proposed CBOE Rule 31.5.

[24] This is consistent with the rules of other national securities exchanges. *See, e.g.*, NYSE Arca Equities Rules 5.2(j)(3) and 8.200.

[25] This is consistent with the rules of other SROs. *See, e.g.*, Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25).

the Exchange's trading rules that apply to equity securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [26] in general, and furthers the objectives of Section 6(b)(5) of the Act [27] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would permit the Exchange to more efficiently introduce products for trading on CBSX. In addition, the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

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–CBOE–2007–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–109. 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 20549–1520 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–109 and should be submitted on or before March 20, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.[28] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [29] 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, 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.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act [30] and Rule 19b–4 thereunder [31] to list and trade any ETF based on an index comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade any ETF based on an index or portfolio described in a rule change that has previously been approved by the Commission as an underlying benchmark for derivative securities. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. CBOE's proposed rules, which allow the listing and trading of ETFs pursuant to Rule 19b–4(e) based on certain indexes or portfolios with components that include foreign securities or indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b–4(e) by the Exchange to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.[32]

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by the Exchange.[33] This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that CBOE's proposal is consistent with the Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on international or global indexes or portfolios, or on indexes or portfolios described in exchange rules that have been previously approved by the

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] 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).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(1).

[31] 17 CFR 240.19b–4.

[32] The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude the Exchange from submitting a separate proposed rule change to list and trade the ETF.

[33] *See, e.g.*, Securities Exchange Act Release No. 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR–Phlx–2007–20); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 19571 (February 15, 2007) (SR–NASDAQ–2006–50); Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2007) (SR–Amex–2006–78).

Commission as underlying benchmarks for derivative securities.

Proposed CBOE Rules 31.5(L).01(a)(2) and 31.5(M).01(a)(2) establish standards for the composition of indexes and portfolios underlying international ETFs. These requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements will permit the listing and trading of only ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude CBOE from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS Stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards also will permit the Exchange to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. CBOE would be able to rely on that earlier approval order, provided that: (1) The securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks; and (2) CBOE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that CBOE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[34] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. CBOE's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during the time when the ETF shares trade on the Exchange.[35] CBOE has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF. In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during CBOE Normal Market Hours trading session. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on CBOE, then the last official calculated IIV must remain available throughout CBOE's trading hours.[36]

The Commission believes the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Proposed CBOE Rule 52.3(b) provides that, when the Exchange is the listing market, CBOE may halt trading during the day in which the interruption occurs if the IIV or its equivalent or index value applicable to a Derivative Securities Product is not disseminated as required. If the interruption continues, CBOE will halt trading no later than the beginning of the next trading day. In addition, proposed CBOE Rule 52.3(c) sets forth trading halt procedures when the Exchange trades the Derivative Securities Product pursuant to UTP. This proposed rule is substantially similar to that recently adopted by other exchanges.[37]

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. These generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.[38] CBOE proposed to amend current CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

CBOE has represented that its surveillance procedures are adequate to properly monitor the trading of the IPRs and IPSs listed pursuant to the proposed new listing standards or traded on a UTP basis. This approval is based on that representation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that CBOE's proposal is substantially similar to other proposals that have been approved by the Commission.[39] The Commission does not believe that CBOE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by CBOE, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[40] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–CBOE–2007–109), 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.[42]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3732 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[35] *See* proposed CBOE Rule 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii).

[36] *See* proposed CBOE Rules 31.5(L).01(c) and 31.5(M).01(c).

[37] *See supra* note 33; *see also* Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77).

[38] *See* proposed CBOE Rules 31.5(L)(f) and 31.5(M)(d).

[39] *See supra* note 33.

[40] 15 U.S.C. 78s(b)(2).

[41] *Id.*

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57374; File No. SR–CBOE–2008–13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

February 22, 2008.

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 February 1, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend its Hybrid 3.0 book execution fee to orders that are executed by the Hybrid Agency Liaison (''HAL'') system. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the principal office of 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 CBOE 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 CBOE 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 this proposed rule change is to add another class of orders to which the Hybrid 3.0 book execution fee of $.18 per contract applies. On November 1, 2007, the Exchange implemented a fee of $.18 per contract applicable to orders in Hybrid 3.0 classes resting in the electronic book that are executed. The classes that trade on the Hybrid 3.0 platform are options on the S&P 100 Index (''OEX''), options on the S&P 500 Index (''SPX''), and options on the Morgan Stanley Retail Index (''MVR''). The fee does not apply to orders in SPX options resting in the SPX electronic book that are executed during opening rotation on the final settlement date of CBOE Volatility Index (''VIX'') options and futures.

In January 2008, CBOE introduced the HAL system in Hybrid 3.0 classes. HAL is a system for automated handling of electronically received orders that are not automatically executed upon receipt by the Hybrid Trading System. CBOE Rule 6.14 governs the operation of the HAL system.

Orders received by the HAL system are electronically exposed (flashed) to all CBOE market-makers appointed to the relevant option class as well as to all members acting as agent for orders at the top of the Exchange's book in the relevant option series. In Hybrid 3.0 classes, this exposure and a subsequent allocation period afford crowd members an opportunity to trade against limit orders that improve the Exchange's disseminated quotation. If any portion of an exposed order remains unexecuted at the end of a HAL process, the remaining order is displayed.

The Exchange is proposing to extend the Hybrid 3.0 book execution fee to orders in Hybrid 3.0 classes that are executed by the HAL system. Specifically, an order that is exposed (flashed) by HAL and subsequently executed by the HAL system would be charged $.18 per contract. This is the same as if the order had been booked and then traded.

The Hybrid 3.0 HAL system and book execution system have helped to improve execution time as well as service and efficiency. The fee is designed to help the Exchange recover its costs of developing these systems and offset the cost of maintaining and enhancing these systems in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among CBOE members and other persons using CBOE facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(ii).
[4] 17 CFR 240.19b–4(f)(2).
[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(4).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 19b–4(f)(2).

No. SR–CBOE–2008–13 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–2008–13. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–13 and should be submitted on or before March 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3734 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57363; File No.–CHX–2007–21]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules Relating to Registration Requirements

February 20, 2008.

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 9, 2007, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. On February 14, 2008, CHX filed Amendment No. 1 to the proposed rule change.[3] 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 the Substance of the Proposed Rule Change

CHX proposes to amend its registration requirements to require CHX participants to use the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Web Central Registration Depository (''Web CRD'') to register associated persons who are required to register with the Exchange under CHX rules. The Exchange would also amend its Fees Schedule (the ''Fee Schedule'') to include fees that would be charged in connection with the use of Web CRD. The text of this proposed rule change is available at CHX, on the Exchange's Web site at *http://www.chx.com,* and in 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, CHX 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. CHX 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

FINRA's Web CRD system is a centralized, web-based system used by securities exchanges and broker-dealers across the country to track registration and qualification information about firms and the individuals who work for those firms. The Exchange has entered into an agreement with FINRA to allow the Exchange's participants to use Web CRD to register certain of their associated persons. Through this proposal, the Exchange seeks to amend its registration rules and Fee Schedule: (a) To require Exchange participants to use Web CRD to register associated persons who are required to register with the Exchange under CHX rules; (b) to allow CHX to determine whether participants should submit fingerprints to CHX or to FINRA for processing during the registration process; and (c) to adopt new fees to cover charges assessed by FINRA for its work in processing fingerprints or the materials submitted through the Web CRD system. CHX would also delete a provision that requires firms to notify CHX of the termination of any non-registered, associated person's employment.[4]

The first part of this proposal would require CHX participants to use the Web CRD system to register certain of their associated persons.[5] Today, CHX participants that are not members of FINRA do not have access to the Web CRD system for registering their associated persons. Instead of using this on-line tool, those participants must handle their registration and continuing education processes manually, by filing paperwork with CHX. CHX staff must process and store this paperwork in hard copy form. To alleviate the need for manual processing and to ensure that other regulatory benefits are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Article 6, Rule 2, Interpretations and Policies .03. CHX believes that this requirement has become somewhat obsolete with CHX's move to its new trading model (and the elimination of its physical trading floor), because the requirement had, in effect, been largely focused on the employment status of clerks working on the Exchange's trading floor. Because the Exchange no longer has a physical trading floor, it is no longer as important to learn of the termination of a clerk's employment with a participant firm. Moreover, CHX regularly receives an updated list of a firm's associated persons when it conducts its annual examinations.

[5] *See* Proposed Article 6, Rule 2, Interpretations and Policies .01.

achieved, the Exchange believes that it is appropriate to require CHX participants to use Web CRD to register associated persons who are required to register with the Exchange under CHX rules.[6] Among other things, use of the Web CRD system would allow all information relating to the registration of associated persons to be compiled in one central repository for access by regulators and broker-dealers and would permit the automated tracking of a registered person's continuing education requirements, if any.

In addition, under this proposal, CHX participants would be required to submit any required fingerprints to either the Exchange or to FINRA for processing.[7] Under the Exchange's current rules, CHX participants submit fingerprints to the Exchange for processing.[8] Under the proposal, the Exchange would have the discretion to continue this process or to require its participants to submit fingerprint cards to FINRA for processing. The Exchange seeks this flexibility so that it can determine, from time to time, which fingerprint processing method is most efficient for the Exchange and for its participants.

Finally, because FINRA would assess charges to CHX participants for using the Web CRD system and for processing any fingerprints that are submitted, the Exchange also seeks to amend its Fee Schedule to include applicable registration, processing and termination fees, as well as various fingerprint charges.[9]

The Exchange anticipates that its participants would be able to begin using Web CRD for registering associated persons in mid-March 2008 and plans to allow its participants to transition to the use of the Web CRD system over the course of a six to nine-month period.[10] At the end of this period, CHX participants would be required to use Web CRD for submitting any registration materials required by CHX rules.

2. Statutory Basis

CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] The proposed rule change is consistent with Section 6(b)(5) of the Act[12] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to require CHX participant firms to register certain associated persons using FINRA's Web CRD system, a centralized database used by the securities exchanges and broker-dealers across the country to track registration and qualification information about firms and individuals who work for those firms. By requiring use of the Web CRD system, the Exchange's regulatory group, as well as the firms themselves, would be better able to determine whether a registrant has met applicable continuing education requirements. The Exchange also notes that it would be ensuring that other regulators can readily find information about disciplinary actions taken against CHX-only participants.

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.

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.

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 Exchange 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–CHX–2007–21 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–CHX–2007–21. 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

[6] Under CHX rules, a variety of persons, including, but not limited to, officers, partners, principal stockholders, and directors of a participant firm, must register with the Exchange, as well as any person acting as an institutional broker representative or as a market maker trader or any person listed on Schedules A, B or C of a participant firm's Form BD. *See* Article 6, Rule 2(b). These registration rules only apply to participant firms for which the Exchange is the designated examining authority and to registered persons of other participant firms where the registered persons act as institutional broker representatives or market maker traders on the Exchange. *See* Article 6, Rule 2, Interpretations and Policies .04.

[7] *See* Proposed Article 6, Rule 10, Interpretations and Policies .01.

[8] When the Exchange receives fingerprints, the Exchange processes them through the Federal Bureau of Investigation (''FBI''). The FBI retrieves criminal history information associated with those fingerprints and returns reports to the Exchange for review.

[9] These charges include an $85 registration fee; a $95 disclosure processing fee; a $30 annual processing fee; and termination fees of $40 and $80. Fingerprint processing fees would be $30.25 per card for an initial submission; $13 per card for a second submission; and $30.25 per card for a third submission. These fees reflect the charges assessed by FINRA for these services; CHX is not charging any additional fees of its own.

[10] The Exchange believes that this transition period is appropriate because each CHX participant firm that is not already a FINRA member will be required to enter a new Form U–4 into the Web CRD for each person associated with the firm that is required, by CHX rules, to register with the Exchange. The entry of this information could be time-consuming for some firms, and the Exchange believes it is appropriate to give firms an adequate period of time to complete this task before mandating the use of the Web CRD system.

[11] 15 U.S.C. 78(f)(b).

[12] 15 U.S.C. 78(f)(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CHX. 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–CHX–2007–21 and should be submitted on or before March 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3731 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57366; File No. SR–DTC–2008–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Deliver Order Input Cutoff Window

February 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on January 10, 2008, The Depository Trust Company (''DTC'') 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was 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

DTC will modify its system to provide its participants with the option of submitting deliver orders (''DOs'') from 8 p.m. to 11 p.m. during the night cycle.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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.

Currently, DTC's system does not allow participants to submit DOs after the night cycle input cutoff at 8 p.m. After the 8 p.m. cutoff, the next input time for participants to submit DOs is the day cycle, which begins at 3 a.m., the next business day.

DTC is extending the DO input time frame to 11 p.m. to provide its participants with additional flexibility to respond on a more timely basis to delivery receive orders that they may have received earlier in the night cycle and to do so at a reduced cost. DOs processed during the extended night cycle will be billed at DTC's current night DO fee of $0.12. To take advantage of the expanded input window, participants will be required to use a new format.[5]

DTC states that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to DTC as it allows for more efficient processing of certain transactions. Therefore, it will not adversely affect the safeguarding of funds or securities in DTC's custody and control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the DO service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogated 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-comment@sec.gov.* Please include File No. SR–DTC–2008–01 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 No. SR–DTC–2008–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)((3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] All times referenced in this notice are eastern standard time.

[5] The new format options are outlined in Exhibit 5 of DTC's rule filing.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

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. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at (*http://www.dtcc.com/legal/rule_filings/dtc/2008.php*). 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 No. DTC–2008–01 and should be submitted on or before March 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florance E. Harmon,

Deputy Secretary.

[FR Doc. E8–3708 Filed 2–27–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57362; File No. SR–DTC–2006–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amended Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents

February 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 12, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on March 29, 2007, and May 3, 2007, amended proposed rule change No. SR–DTC–2006–16. On May 25, 2007, the Commission published notice of the proposed rule change as amended by Amendment 1 and Amendment 2.[2] The Commission received 29 comment letters to the proposed rule change as amended by Amendments 1 and 2.[3] On December 31, 2007, DTC filed Amendment 3. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as amended by Amendments 1, 2, and 3 and as described in Items I, II, and III below, which items have been prepared primarily by the DTC.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to amend its rules to update, standardize, and restate the requirements for the Fast Automated Securities Transfer Program (''FAST''), to delineate the responsibilities of DTC and the transfer agents with respect to the securities held by transfer agents as part of the FAST program, and to restate the requirements for transfer agents participating in the Direct Registration System (''DRS'').

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 DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to the establishment of the FAST program, transfers of securities to or from DTC occurred by sending securities back and forth between DTC and transfer agents. In the case of securities being deposited with DTC, DTC sent the certificates to the transfer agent for registration into the name of DTC's nominee, Cede & Co., and the transfer agent returned the reregistered certificates to DTC. In the case of securities being withdrawn from DTC, DTC sent the certificates registered in the name of Cede & Co. to the transfer agent for reregistration into the name designated by the withdrawing DTC participant, and the transfer agent returned the reregistered security to DTC for delivery to the withdrawing participant. This process exposed securities to risk of loss during transit between DTC and transfer agents and resulted in the expense of making physical deliveries of securities.

Under the FAST program, transfer agents hold FAST-eligible securities registered in the name of Cede & Co. in the form of balance certificates. As additional securities are deposited or withdrawn from DTC, transfer agents adjust the denomination of the balance certificates as appropriate and electronically confirm theses changes with DTC. Such ''FAST agents'' are holding in custody those securities that would otherwise be held at DTC for the benefit of DTC's participants. As such, the FAST program reduces the movement of certificates between DTC and the transfer agents and therefore reduces the costs and risks associated with the creation, movement, and storing of certificates to DTC, DTC participants, issuers, and transfer agents.[6]

The FAST program has grown substantially since first being introduced in 1975.[7] Recent changes in the rules of the major securities exchanges are expected to further accelerate this growth.[8] Those exchange rules require as a listing prerequisite that issues be eligible for processing through DRS. Since becoming a FAST agent is a criterion for a transfer agent's eligibility for participation in DRS, DTC

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–55816 (May 25, 2007), 71 FR 30648 (June 1, 2007)[File No. SR–DTC–16].

[3] The comment letters can be found at *http://www.sec.gov/comments/sr-dtc-2006-16/dtc200616.shtml.*

[4] The exact text of the DTC's proposed rule change can be found at *http://www.dtc.org/impNtc/mor/index.html#2006.*

[5] The Commission has modified portions of the text of the summaries prepared by the DTC.

[6] For a description of DTC's current rules relating to FAST, see Securities Exchange Act Release Nos. 34–13342 (March 8, 1977) [File No. SR–DTC–76–3]; 34–14997 (July 26, 1978) [File No. SR–DTC–78–11]; 34–21401 (October 16, 1984) [File No. SR–DTC–84–8]; 34–31941 (March 3, 1993) [SR–DTC–92–15]; and 34–46956 (December 6, 2002) [File No. SR–DTC–2002–15].

[7] DTC introduced the FAST program in 1975 with 400 issues and 10 agents. Currently, there are over 930,000 issues and approximately 90 agents in FAST.

[8] Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR–NYSE–2006–29]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR–Amex–2006–40]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR–NASDAQ–2006–08]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR–NYSE Arca–2006–31]; 55482 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR–Phlx–2006–69]; 55481 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR–CHX–2006–33]; and 55480 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR–BSE–2006–46].

anticipates significant growth in the FAST program.

DRS allows an investors to hold a security as the registered owner in electronic form on the books of the transfer agent rather than holding through the use of a certificate or holding indirectly through a financial intermediary (*e.g.,* a broker-dealer) that holds the security in ''street name''. DRS also allows for the transfer of a DRS position from the books of the transfer agent to a DTC broker-dealer participant through the facilities of DTC using FAST.[9]

(1) Proposed Amendments to DTC's FAST Requirements

Despite the FAST program's robust past growth and expected future growth, the transfer agent eligibility requirements for FAST have not substantially changed since the implementation of FAST and do not: (i) Take into account the increased volume and value of securities processed by the transfer agents, (ii) reflect improved technology and currently available safeguards which would enhance the safekeeping of securities held by the transfer agents on behalf of DTC , and (iii) require the use of standardized audit reports to certify transfer agents' processes and controls.

In light of the FAST program's growth, DTC reexamined the requirements of the FAST program with a view toward ensuring that DTC's assets in the custody of transfer agents, which ultimately belong to DTC's participants and their customers, are adequately protected. As more fully described below, DTC has identified aspects of the FAST program that need revising or additional requirements. The proposed revisions and additional requirements include: (i) Insurance requirements that take into account transaction volumes of securities processed by transfer agents, (ii) safekeeping requirements to clarify and to enhance security and fire protection standards and to take into consideration technological advances that allow for economical security improvements, and (iii) bookkeeping requirements to ensure compliance with applicable laws and regulations and use standardized audit reports addressing transfer agents' processes and controls.

DTC is therefore proposing to amend and to restate the minimum requirements for transfer agents participating in the FAST program in order to improve the safekeeping of securities transfer agents hold for DTC and to provide better defined requirements as more transfer agents participate in the immobilization and dematerialization of securities. DTC's proposed minimum requirements are as follows:

1. Transfer agent must be registered with the Commission or their appropriate regulatory authority, except where the transfer agent's participation in the FAST program is limited to acting solely for municipal issues (transfer agents must provide DTC with evidence of such) and follow all applicable rules under the Exchange Act, as well as all other applicable federal and state laws, rules, and regulations, applicable to transfer agents, including OFAC regulations.

2. The transfer agent must execute and fulfill the requirements of the appropriate form of ''Balance Certificate Agreement''[10] with DTC.[11]

3. The transfer agent must sign and fulfill requirements of the ''Operational Criteria for the FAST Transfer Agent Processing''[12] and must comply with all applicable provisions of DTC's ''Operational Arrangements'' (''OA''),[13] as amended from time to time.[14]

4. In order to provide for the operational proficiency and efficiency of the program, the transfer agent must complete DTC's training on FAST functionality on being accepted as a FAST transfer agent.

5. In order to protect against a risk of loss, the transfer agent must carry and provide evidence of a minimum of the following standard form Financial Institution Bond or a commercial crime policy providing similar coverage in proportion to transaction volume the agent processes, as follows:

a. $10 million for a transfer agent with 25,000 or fewer transfer transactions per year as reported to the Commission;

b. $25 million for a transfer agent with over 25,000 transfer transactions per year as reported to the Commission; and

c. In addition, the transfer agent must carry and provide evidence of a minimum of $1 million in Errors and Omissions insurance.

In the event that a transfer agent can demonstrate that its existing coverage and/or capitalization would provide similar protections to DTC as the requirements set forth herein, it may apply to DTC for a waiver. DTC shall have sole discretion as to whether or not to grant any such waiver.

6. In order to facilitate consistent protection against losses relating to securities in a transfer agent's control, the transfer agent must notify DTC as soon as practicable of notice of any actual lapse in insurance coverage or change in business practices, such as increasing volumes or other business changes that would result in the transfer agent requiring additional insurance coverage as outlined above. Such notice shall be delivered to: DTC Inventory Management—1SL 55 Water Street New York, New York 10041

And with a copy to: DTC General Counsel's Office 55 Water Street—22nd Floor New York, New York 10041.

7. The transfer agent must provide proof to DTC of any new or substitute policy with respect to any required insurance within five (5) days after the entry into force of such new or substitute policy.

8. The transfer agent must establish and maintain electronic communications with DTC to balance FAST positions on a daily schedule.

9. The transfer agent must provide on an annual basis to DTC within ten (10) business days of filing with the Commission, a copy of the Annual Study of Evaluation of Internal Accounting Control filed with the Commission pursuant to Exchange Act Rule 17Ad–13, attesting to the soundness of controls to safeguard securities assets and to the reliability and integrity of computer systems, including confidentiality of customer accounts or other non-public information. If a transfer agent obtains a SAS–70 audit report, the transfer agent shall provide DTC with a copy of the

[9] For a description of DTC's rules relating to DRS, see Securities Exchange Act Release Nos. 34–37931 (November 7, 1996) [File No. SR–DTC–96–15]; 34–41862 (September 10, 1999) [File No. SR–DTC–99–16]; 34–42366 (January 28, 2000) [File No. SR–DTC–00–01]; 34–42704 (April 19, 2000) [File No. SR–DTC–00–04]; 34–43586 (November 17, 2000) [File No. SR–DTC–00–09]; 34–44969 (August 14, 2001) [File No. SR–DTC–2001–07]; 34–45232 (January 3, 2002) [SR–DTC–2001–18]; 34–45430 (February 11, 2002) [File No. SR–DTC–2002–01]; and 34–48885 (December 5, 2003) [File No. SR–DTC–2002–17]; 34–52422 (September 14, 2005) [File No. SR–DTC–2005–11].

[10] DTC currently maintains three forms of the Balance Certificate Agreement: one for transfer agents, one for issuers acting as their own agent, and one for parties using a processing agent. DTC is consolidating these forms into a single form, as attached as Exhibit 2 to its initial filing.

[11] DTC notes that these minimum requirements incorporate by reference the Balance Certificate Agreement between the transfer agent and DTC.

[12] The Operational Criteria for the FAST Transfer Agent Processing is attached as Exhibit 2(b) to DTC's initial filing.

[13] For more information relating to DTC's OA, see Securities Exchange Act Release Nos. 34–45994 (May 29, 2002), 67 FR 39452 [File No. SR–DTC–2002–02]; 34–24818 (August 19, 1987), 52 FR 31833 [File No. DTC–87–10]; 34–25948 (July 27, 1988), 53 FR 29294 [File No. DTC–88–13]; 34–30625 (April 23, 1992), 57 FR 18534 [File No. DTC–92–06]; 34–35649 (April 26, 1995), 60 FR 21576 [File No. DTC–94–19]; and 34–39894 (April 21, 1998), 63 FR 23310 [File No. DTC–97–23].

[14] DTC notes that these minimum requirements incorporate by reference the Operational Criteria for FAST Transfer Agent Processing and all applicable terms in DTC's Operational Arrangements.

report within ten (10) business days of the transfer agent's receipt of the report. If a SAS–70 audit report is not available, then the transfer agent must provide to DTC, on an annual basis within ten (10) business days of filing with the Commission an accountant's report (pursuant to Exchange Act Rule 17Ad–13, Annual Study of Evaluation of Internal Accounting Controls), a SSAE–10 report from an external certified public accountant (or an equivalent report) attesting to the soundness of the transfer agent's controls relating to FAST.

10. FAST agents must safeguard all the securities assets as stated under Exchange Act Rule 17Ad–12, with at a minimum the following additional DTC requirements:

a. maintain a theft and fire central monitoring alarm system protecting the entire premises and

b. maintain all certificates in a vault, safe, or other secure location, accessible only by authorized personnel.

11. Personnel with access to the safe and the codes for the centralized monitoring system must comply with Exchange Act Rule 17f–2, which includes but is not limited to rules for fingerprinting staff that physically handle certificates.

12. Unless prohibited by applicable law, the transfer agent when applying to be a FAST agent must provide DTC with a copy of the two most recent deficiency or compliance correspondences from the Commission as well as any follow-up correspondences. In addition, unless prohibited by applicable law, the transfer agent on an ongoing basis must provide DTC with notice of any alleged material deficiencies documented by the Commission that may affect the activities of the transfer agent as a FAST Agent within five (5) business days of the transfer agent being notified of such material deficiencies.

13. Unless prohibited by applicable law, during regular business hours and upon advance notice, DTC reserves the right to visit and inspect, to the extent such visits and inspections pertain to DTC's position, the transfer agent's facilities, books, and records. DTC, however, is not obligated to conduct such visits or inspections.

14. Existing FAST agents shall have a period of six (6) months from the date of the Commission's approval of this rule filing to comply with these requirements, including the submission to DTC of a signed Balance Certificate Agreement, signed Operational Criteria, and all supporting documentation referenced herein. If an agent is not compliant with these requirements upon the expiration of such period, DTC shall have the right, using its sole discretion, to terminate or to continue the agent's FAST status.

15. An agent acting on behalf of a transfer agent or an issuer acting on its own behalf shall have the same rights and responsibilities under these requirements as if it were the transfer agent.

(2) Proposed Amended and Restated Eligibility Requirements for DRS Limited Participants

DTC is proposing the following restatement of the eligibility requirements for DRS Limited Participants[15] and the DRS eligibility requirements for DRS issues to promote consistency with the FAST program requirements as well as to further ensure the soundness of the DRS system.

In order to be eligible to be a DRS Limited Participant, a transfer agent must:

1. Participate in the FAST program and abide by DTC's requirements governing participation in the FAST program, which requirements are proposed to be amended by this filing;

2. Execute a DTC Limited Participant Account agreement;

3. Deliver transaction advices directly to investors relating to DRS Withdrawal-by-Transfer requests and provide DTC with a file containing the information required by DTC (which must include, among other things, the transaction advice delivery date) in a format and using functionality as specified by DTC from time to time;

4. Complete DTC's training program on DRS and Profile Modification System (''Profile'') functionality;

5. Participate in the Profile surety or insurance program to initiate Profile transactions;[16]

6. Implement program changes related to DTC internal systems modifications within a reasonable time upon receiving notification from DTC of such modifications;

7. Implement program changes to support and expand DRS processing capabilities as agreed to by the DRS Ad Hoc Committee; and

8. Existing DRS Limited Participants shall have a period of six (6) months from the date of the Commission's approval of this rule filing within which they must comply with these requirements. If an agent is not compliant with these requirements upon the expiration of such period, DTC shall have the right using its sole discretion to terminate or to continue the agent's status as a DRS Limited Participant.

(3) Eligibility Requirements for DRS Issues

In order for an issue to be eligible as a DRS issue, the issue must:

1. Have a transfer agent accepted as a DTC DRS Limited Participant;

2. Be included in the FAST program (An issue may not be added to DRS if an ''out of balance'' position exists.)

(4) DTC's Proposed Standard of Care Obligations With Respect to FAST

DTC is proposing to establish a clearer demarcation of responsibility and liability with respect to the FAST program. Historically, DTC believes the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.[17] In conjunction with its approval of these standards, the Commission noted that while it had ''called on registered clearing agencies to undertake, by rule, to deliver all fully-paid securities in their control to, or as directed by, the participant for whom the securities are held,'' given that registered clearing agencies had demonstrated a high level of responsibility in safeguarding securities and funds, a standard of care based on a strict standard of liability was not required either with respect to failures of the clearing agency or a sub-custodian. DTC notes that securities in the FAST program are held by a transfer agent and are not within the immediate custody and control of DTC. As such, after a transfer agent is accepted to the FAST program, DTC is proposing the addition of a clarifying provision to Rule 6 to state that DTC will not be liable for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action.

[15] DRS Limited Participants are transfer agents that participate in DRS through DTC. They are bound to certain provisions of the DTC rules. Securities Exchange Act Release No. 34–37931 (November 7, 1996) [File No. SR–DTC–96–15].

[16] In DRS, instructions to transfer shares are sent by a broker-dealer that is a DTC Participant or a by a transfer agent that is a DRS Limited Participant through Profile. Profile provides screen based indemnification against false instructions from the party submitting the instructions through DRS. The indemnity is supported by either a surety bond or an insurance policy.

[17] Securities Exchange Act Release Nos. 34–20221 (September 23, 1983) and 34–22940 (February 24, 1986). In this regard, DTC adopted a uniform standard with respect to certain of its procedures, or Service Guides, such that DTC is not liable for any loss incurred by a participant other than one caused directly by gross negligence or willful misconduct on the part of DTC. See Securities Exchange Act Release No. 34–44719 (August 17, 2001) [File No. SR–DTC–2001–01].

In addition, DTC proposes that under no circumstance shall DTC be liable for selecting or accepting any third party as an agent of DTC, including a transfer agent participating in the FAST Program.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[18] and the rules and regulations thereunder because it improves standards relating to the eligibility of transfer agents and issues for its FAST and DRS programs. As such, it assures the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

DTC has neither solicited nor received written comments on the proposed rule change.[19]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2006–16 in 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–DTC–2006–16. 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 Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the DTC and on the DTC's Web site, *http://www.dtcc.com.* 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–DTC–2006–16 and should be submitted on or before March 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3730 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78q–1.

[19] The Commission received 29 comment letters to DTC's proposed rule change as amended by Amendments 1 and 2. The comment letters can be found at *http://www.sec.gov/comments/sr-dtc-2006-16/dtc200616.shtml.*

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57368; File No. SR–NASDAQ–2008–011]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Securities Using Alternative Settlement Processes in Nasdaq's PORTAL System

February 21, 2008.

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 February 7, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') 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 primarily by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder[4] so that the proposal was 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

Nasdaq proposes to allow issuers of PORTAL equity securities to select settlement procedures that do not involve submission to The Depository Trust Company (''DTC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, in order to qualify for inclusion in Nasdaq's PORTAL Market (''PORTAL''), an equity security must be depository eligible.[5] Recently, however, issuers and market participants have implemented alternative regular way non-DTC settlement arrangements for a small subset of Commission Rule 144A equity offerings in order to ensure compliance with various regulatory obligations or trading conditions for the security imposed by its issuer including monitoring the number of record holders for purposes of determining the issuer's reporting obligations under Section 12(g) of the Act. These alternative settlement arrangements are generally implemented through the execution of written agreements among the market participants that obligate them to settle transactions in accordance with the alternative settlement process. Having agreed to follow and be subject to the alternative settlement process, approved participants are then given authorizing credentials that allow them to engage in transactions in the alternative settlement security with other preapproved counter-parties. This process enhances the likelihood that trades in such securities settle appropriately.

In order to provide the enhanced functionality and transparency of the PORTAL system to such issuers, Nasdaq proposes to allow restricted securities using such alternative settlement processes access to PORTAL. Under the proposal, issuers of Rule 144A equity securities, as defined in Rule 6501(c) of the PORTAL Market rules (''PORTAL Equity Securities''), that intend to use an alternative settlement process would have their issues designated as PORTAL Equity Securities, which would permit such PORTAL Equity Securities to be quoted, traded, and reported for dissemination and regulatory purposes through the PORTAL System like other PORTAL Equity Securities. In order to qualify for PORTAL designation, the alternative settlement security must use an alternative settlement process that: (1) Is mandated by the issuer; (2) provides adequate disclosure to investors of the existence of the alternative settlement process, and (3) includes information, technology, and procedures sufficient for Nasdaq to send and receive transaction and other information necessary to the effectuate the process. For qualified alternative settlement securities, the PORTAL system will establish communication linkages and processes with the operators of alternative settlement processes that will be used to seek to ensure that only PORTAL market participants that have met the prerequisites for participation in the process enter indicative quotes, orders, or execute a trade through the PORTAL System in the alternative settlement security. For example, the PORTAL system will regularly communicate with operators of alternative settlement processes and will prevent entities that have not been approved by those operators from entering quotes or orders in the particular alternative settlement security into PORTAL. Once a trade in a PORTAL Equity Security that relies upon an alternative settlement process is consummated, details of the trade will be provided to the alternative settlement process by the PORTAL system.

Nasdaq believes that the above proposal enhances the flexibility for issuers of Commission Rule 144 equity securities to choose a non-DTC settlement process that meets their needs and also increases the efficiency and transparency of the trading in such issues through access to the PORTAL system.

Nasdaq states that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(5) of the Act,[7] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that offering access to its PORTAL system to equity securities that rely on an alternative settlement processes will enhance the efficiency and transparency of the trading of such securities and will facilitate the reporting of trades in such securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because it does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. 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–NASDAQ–2008–011 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 No. SR–NASDAQ–2008–011. This file

[5] Rule 6502(b)(1)(C). Nasdaq defines ''depository eligible'' in Rule 11310. Although not specifically required, the primary securities depository for Nasdaq transactions is DTC.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

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 Nasdaq's principal office. 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 No. SR–NASDAQ–2008–011 and should be submitted on or before March 20, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3733 Filed 2–27–08; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6099]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to prepare for meetings of International Telecommunication Union Telecommunication Standardization Sector (ITU–T) technical Study Groups Sixteen (Multimedia terminals, systems and applications), and Seventeen (Security, languages and telecommunication software); an ITAC meeting to begin preparation of advice on the World Telecommunication Standardization Assembly 2008 (WTSA 08) and other related meetings of the ITU; and meetings in preparation for a meeting of the Organization of American States Inter-American Telecommunication Commission (CITEL) Permanent Consultative Committee II (PCC.II) (Radiocommunication including Broadcasting).

The ITAC will meet to begin preparation of advice for the government on the ITU World Telecommunication Standardization Assembly 2008 (WTSA 08) and related meetings such as the Telecommunication Sector Advisory Group (TSAG), various groups meeting on the International Telecommunication Regulations, cybersecurity, and other subjects relevant to the ITU–T for the coming 12 months. The meeting will be held on Monday afternoon March 17, 2008 2–4 p.m. EST hosted by AT&T, 1120 20th Street, 10th floor, Washington, DC. The ITAC will hold further meetings with similar agendas on April 24, May 12, and June 17. **Federal Register** notices will be published for each of these meetings with the specific agenda and meeting details, at the appropriate time.

The ITAC will meet to prepare advice on submission of contributions to CITEL PCC.II on March 25, April 1 and April 8, 2008, 2–4 p.m. at the Federal Communications Commission, 445 12th Street, SW., Washington, DC.

The ITAC will meet to prepare advice on submission of contributions to ITU–T SG17 on March 20, 2008, 10 a.m. to noon EST, by conference call. Call in information is either +1 210 839–8500 or 1 888 455–9640, passcode 52902.

The ITAC will meet to prepare advice on submission of contributions to ITU–T SG16 on April 24, 2008 beginning at 10 a.m. EST, by conference call. People desiring to participate in this meeting should call either +1 210 839–8500 or 1 888 455–9640, passcode 52902.

All these meetings are open to the public as seating capacity allows. The public will have an opportunity to provide comments at these meetings. People desiring further information on these meetings may apply to the secretariat at *minardje@state.gov.*

Dated: February 19, 2008.

Richard C. Beaird,

International Communications & Information Policy, Department of State.

[FR Doc. E8–3815 Filed 2–27–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Change in Use of Aeronautical Property at Louisville International Airport, Louisville, KY

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

ACTION: Request for public comment.

SUMMARY: The FAA is requesting public comment on the request by the Louisville Regional Airport Authority to change a portion of airport property from aeronautical to non-aeronautical use at the Louisville International Airport, Louisville, Kentucky. The request consists approximately of 8.65 acres of formal release. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 31, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles T. Miller, Executive Director, Louisville Regional Airport Authority, P.O. Box 9129, Louisville, KY 40209–0129.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team Lead/Civil Engineer, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118, (901) 322–8185. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release approximately 8.65 acres at the Louisville International Airport, Louisville, KY. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On February 20, 2008, the FAA determined that the request to release property at the Louisville International Airport submitted by the airport owner meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 31, 2008.

The following is a brief overview of the request:

The Louisville Regional Airport Authority, owner of the Louisville International Airport, is proposing to formally release approximately 8.65 acres of airport property so the property can be converted to use for industrial development.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Louisville Regional Airport Authority, P.O. Box 9129, Louisville, KY 40209–0129.

Issued in Memphis, TN, on February 20, 2008.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 08–877 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Release of Federal Property at Cartersville Airport, Cartersville, GA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

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 Cartersville—Bartow County Airport Authority to waive the requirement that 1.095 acres in fee simple of federal property, located at the Cartersville Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before March 31, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, *Attn:* Aimee A. McCormick, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Keith Lovell, Attorney for Cartersville—Bartow County Airport Authority at the following address: 336 S. Tennessee Street, P.O. Box 1024, Cartersville, GA 30120.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Cartersville—Bartow County Airport Authority to release 1.095 acres of federal property at the Cartersville Airport. The property will be released for purchase by Georgia Department of Transportation (GDOT) to improve and widen Highway 61/113. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

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 Cartersville—Bartow County Airport Authority.

Issued in Atlanta, Georgia on February 12, 1008.

Larry F. Clark,

Assistant Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 08–874 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a Draft Environmental Impact Statement will be prepared for a proposed highway widening project on Interstate 5 in the cities of Santa Fe Springs, Commerce, Montebello, Downey, and East Los Angeles, in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, Caltrans District 7, 100 S. Main Street, Los Angeles, CA 90012 (213) 897–0703.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans will prepare an Environmental Impact Statement on a proposal for constructing freeway improvements to Interstate 5 (I–5) from Interstate 605 (I–605) though the I–5/Interstate 710 (I–710) interchange in Los Angeles County, California. The project consists of widening I–5 to accommodate High Occupancy Vehicle (HOV) lanes and/or general purpose lanes. Depending on the alternative selected, the project may also include modifications to the I–605 and I–710 interchanges. A Major Investment Study (MIS) for the project was completed in July 1998. It identified a fully standard ten-lane, at-grade facility as the Locally Preferred Alternative (LPA).

The purpose of the proposed project is to (1) improve level of service during AM and PM peak periods, to reduce congestion related delays, and enhance safety and mobility in this segment of the I–5 freeway as compared to the no-build condition; (2) provide continuity of facilities and capacity on the I–5 freeway between the I–605 and I–710 in Los Angeles County; (3) maintain structural flexibility in the freeway corridor for additional future capacity improvements; (4) improve interchange access/egress points and levels of service; (5) improve access to regional transit and HOV facilities; (6) improve mobility on local surface streets operationally interdependent with the freeway corridor by reducing existing and future congestion on both the state and local facilities; and (7) explore Transportation System Management (TSM) improvements for the I–5 and parallel arterials.

Alternatives under consideration include (1) a no-build option; (2) implementing a Transportation System Management/Transportation Demand Management plan; (3) constructing a 10-lane facility with two HOV lanes; and (5) constructing a 12-lane facility (may be constructed in stages depending on availability of funding) with two or four HOV lanes. Alternatives that promote transit use, improve access to the Metro Gold Line Eastside Extension, and engineering designs that are compatible with the alternatives proposed for the I–710 Freeway (including the I–710 Mini-Study) are also important considerations.

These basic alternatives will have additional design variations, which provide optional lane use (general, HOV, or auxiliary use), optional on and off ramp modifications, and other engineering details. These alternatives may be refined, combined with various different alternative elements, or be removed from further consideration, as

more analysis is conducted on the project alternatives.

The following permits would be required to construct the proposed project:

- Section 404 nationwide permit from the U.S. Army Corps of Engineers
- Section 401 Water Quality Certification from the California Regional Water Quality Control Board
- Section 1601 Streambed Alteration Agreement from the California Department of Fish and Game
- Encroachment permits from the various cities in which project construction would occur.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing. A Public Scoping meeting is currently scheduled for February 27, 2008 in the City of Commerce.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(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.)

Nancy Bobb,

Division Administrator, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–3767 Filed 2–27–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34394 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company

Pursuant to a written trackage rights agreement dated January 24, 2008, BNSF Railway Company (BNSF) has agreed to modify an existing overhead trackage rights agreement[1] with Union Pacific Railroad Company (UP) regarding UP's use of a BNSF line of railroad between BNSF milepost 210.2 and BNSF milepost 211.7, a distance of approximately 1.5 miles, in Wichita, KS (joint trackage).

The earliest this transaction can be consummated is March 16, 2008, the effective date of the exemption (30 days after the exemption is filed).[2]

The purpose of the original trackage rights was to facilitate the City of Wichita's Central Rail Corridor Project (CRC Project), which was designed to minimize rail/vehicle conflicts at existing grade crossings in central Wichita by constructing grade crossings and other improvements on the BNSF route. The agreement inadvertently omitted inclusion of a provision permitting UP to allow the Kansas and Oklahoma Railroad Company to use the joint trackage solely for interchanging traffic with UP on UP trackage at Wichita. According to UP, this provision, which is the modification at issue here, is necessary to achieve the full benefits of the CRC Project.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 7, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34394 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce and FRA Counsel, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 21, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–3766 Filed 2–27–08; 8:45 am]

BILLING CODE 4915–01–P

[1] The original trackage rights were exempted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34394 (STB served Aug. 29, 2003).

[2] Under 49 CFR 1180.4(g), a railroad must file a verified notice of the transaction with the Board at least 30 days in advance of consummation, in order to qualify for an exemption under 49 CFR 1180.2(d). In this case, the verified notice was filed on February 15, 2008. Therefore, although UP identifies March 15, 2008, as the anticipated consummation date, the earliest the transaction could be consummated is March 16, 2008.

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Rockwood Casualty Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Rockwood Casualty Insurance Company (NAIC #35505). *Business Address:* 654 Main Street, Rockwood, Pennsylvania 15557. *Phone:* (814) 926–4661. UNDERWRITING LIMITATION b/: $9,005,000. Surety Licenses: c/: AR, CO, DE, FL, IL, IN, KY, MD, MT, NV, NC, OH, PA, SC, UT, VA, WV. Incorporated in: Pennsylvania.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked

prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 21, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. 08–879 Filed 2–27–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individual Pursuant to Executive Order 13460

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 13460 of February 13, 2008, ''Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria.''

DATES: The designation by the Secretary of the Treasury of one individual identified in this notice pursuant to Executive Order 13460 is effective on February 21, 2008.

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 IMFORMATION:

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 May 11, 2004, the President issued Executive Order 13338 pursuant to, inter alia, 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 Executive Order 13338, 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.

On February 13, 2008, the President issued Executive Order 13460 (the ''Order'') pursuant to, inter alia, 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 found that the Government of Syria continues to engage in certain conduct that formed the basis for the national emergency declared in Executive Order 13338 of May 11, 2004, including but not limited to undermining efforts with respect to the stabilization of Iraq. The President further found that the conduct of certain members of the Government of Syria and other persons contributing to public corruption related to Syria, including by misusing Syrian public assets or by misusing public authority, entrenches and enriches the Government of Syria and its supporters and thereby enables the Government of Syria to continue to engage in certain conduct that formed the basis for the national emergency declared in Executive Order 13338.

Section 1 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, to be responsible for, to have engaged in, to have facilitated, or to have secured improper advantage as a result of, public corruption by senior officials within the Government of Syria.

On February 21, 2008, 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 13460.

The designee is as follows:

MAKHLUF, Rami (a.k.a. MAKHLOUF, Rami; a.k.a. MAKHLOUF, Rami Bin Mohammed; a.k.a. MAKHLOUF, Rami Mohammad); DOB 10 Jul 1969; POB Syria; citizen Syria; Passport 98044 (Syria).

Dated: February 21, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–3777 Filed 2–27–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals and Entities Pursuant to Executive Order 12978

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 15 newly-designated individuals and entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

DATES: The designation by the Director of the Office of Foreign Assets Control of the 15 individuals and entities identified in this notice pursuant to Executive Order 12978 is effective on February 12, 2008.

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 October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 Fed.

Reg. 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On February 12, 2008, the Director of the Office of Foreign Assets Control, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated 15 individuals and entities whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. ADMINISTRADORA GANADERA EL 45 LTDA., Carrera 49 No. 61Sur-540 Bod. 137, Medellin, Colombia; Carrera 49A No. 48S–60 Bod. 102, Medellin, Colombia; NIT # 811038291–3 (Colombia) [SDNT]

2. CARRILLO LUNA, Andres Felipe, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Calle 10C No. 25–41, Medellin, Colombia; Carrera 78A No. 33A–76, Medellin, Colombia; 801 Brickell Key Blvd., unit 1907, Miami, FL 33131; DOB 25 May 1986; alt. DOB 24 May 1986; POB Puerto Asis, Putumayo, Colombia; Cedula No. 1037572288 (Colombia); Passport AJ723916 (Colombia); alt. Passport RC10058210 (Colombia) (individual) [SDNT]

3. CARRILLO LUNA, Paula Andrea, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Carrera 78A No. 33A–76, Medellin, Colombia; 13315 SW 128 Passage, Miami, FL 33186; DOB 25 Dec 1983; POB Puerto Asis, Putumayo, Colombia; Cedula No. 32244809 (Colombia); Passport AJ775569 (Colombia) (individual) [SDNT]

4. CASA DEL GANADERO S.A., Almacen Troncal Principal la Costa Jardin, Caceres, Antioquia, Colombia; Carrera 49A No. 61Sur-540 Bod. 137, Medellin, Colombia; Carrera 49A No. 48Sur-60 Bod. 102, Medellin, Colombia; NIT # 811034345–4 (Colombia) [SDNT]

5. GALEANO RESTREPO, Diego Mauro, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o INVERSIONES LICOM LTDA., Medellin, Colombia; DOB 17 Mar 1976; POB Medellin, Colombia; Cedula No. 98626113 (Colombia) (individual) [SDNT]

6. GANADERIA LUNA HERMANOS LTDA., Carrera 49 No. 61Sur-540, Medellin, Colombia; Carrera 49A No. 48S–60 Bod. 102, Medellin, Colombia; NIT # 811045931–8 (Colombia) [SDNT]

7. INVERSIONES EL MOMENTO S.A., Carrera 49 No. 61Sur-540, Medellin, Colombia; Carrera 49A No. 48S–60 Bod. 102, Medellin, Colombia; NIT # 811030776–7 (Colombia) [SDNT]

8. INVERSIONES LICOM LTDA. (a.k.a. RESTAURANTE ANGUS BRANGUS), Carrera 42 No. 34–15, Medellin, Colombia; Carrera 45 No. 54–56, Via las Palmas, Medellin, Colombia; NIT # 811038211–4 (Colombia) [SDNT]

9. JIMENEZ NARANJO, Carlos Mario (a.k.a. ''Macaco''), Calle 10C No. 25–45, Medellin, Colombia; DOB 26 Feb 1966; POB Envigado, Antioquia, Colombia; Cedula No. 71671990 (Colombia); Passport AH521672 (Colombia); alt. Passport AE915378 (Colombia) (individual) [SDNT]

10. JIMENEZ NARANJO, Roberto, c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o TEJAR LA MOJOSA S.A., Caucasia, Antioquia, Colombia; DOB 18 Apr 1963; Cedula No. 18502967 (Colombia) (individual) [SDNT]

11. LONDONO VASQUEZ, Marco Julio, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Carrera 63B No. 42–50, Medellin, Colombia; DOB 04 Dec 1955; POB Fredonia, Antioquia, Colombia; Cedula No. 15345634 (Colombia); Passport AG062408 (Colombia) (individual) [SDNT]

12. LUNA CORDOBA, Rosa Edelmira, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o ELECTROMUEBLES DEL BAJO CAUCA, Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o INVERSIONES LICOM LTDA., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Calle 10E No. 25–41, Medellin, Colombia; Carrera 42 No. 34–15, Medellin, Colombia; 801 Brickell Key Blvd., unit 1907, Miami, FL 33131; 13315 SW 128 Passage, Miami, FL 33186; DOB 18 Sep 1960; POB Puerto Asis, Putumayo, Colombia; Cedula No. 41101742 (Colombia); Passport AK031225 (Colombia) (individual) [SDNT]

13. OSSA AYALA, Alvaro Javier, c/o ADMINISTRADORA GANADERA EL 45 LTDA., Medellin, Colombia; c/o CASA DEL GANADERO S.A., Medellin, Colombia; c/o GANADERIA LUNA HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES EL MOMENTO S.A., Medellin, Colombia; c/o INVERSIONES LICOM LTDA., Medellin, Colombia; c/o SOCIEDAD MINERA GRIFOS S.A., El Bagre, Antioquia, Colombia; Cedula No. 98528421 (Colombia) (individual) [SDNT]

14. SOCIEDAD MINERA GRIFOS S.A., Avenida Rodrigo Mira Calle 53 Cras. 49 y 45, El Bagre, Antioquia, Colombia; Carrera 43 No. 1A Sur-29, Medellin, Colombia; NIT # 811033869–7 (Colombia) [SDNT]

15. TEJAR LA MOJOSA S.A., Corregimiento Piemonte, Vereda la Mojosa, Caceres, Antioquia, Colombia; Transversal 13 No. 20C–35, Caucasia, Antioquia, Colombia; NIT # 900110438–9 (Colombia) [SDNT]

Dated: February 12, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–3778 Filed 2–27–08; 8:45 am]

BILLING CODE 4811–45–P

Federal Register

Thursday,
February 28, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx (Lynx canadensis); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0026]
92210–1117–0000-B4]

RIN 1018–AV78

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx (Lynx canadensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) under the Endangered Species Act of 1973, as amended (Act). In the contiguous United States, the lynx generally inhabits cold, moist boreal forests. Approximately 42,753 square miles (mi^2) (110,727 square kilometers (km^2)) fall within the boundaries of the proposed revised critical habitat designation. The proposed revised designation would add an additional 40,913 mi^2 (105,959 km^2) to the existing critical habitat designation of 1,841 mi^2 (4,768 km^2). The proposed revised critical habitat is located in Boundary County, Idaho; Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties in Maine; Cook, Koochiching, Lake, and St. Louis Counties in Minnesota; Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, Teton, Gallatin, Park, Sweetgrass, Stillwater, and Carbon Counties in Montana; Chelan and Okanogan Counties in Washington; and Park, Teton, Fremont, Sublette, and Lincoln Counties in Wyoming.

DATES: We will accept comments received or postmarked on or before April 28, 2008. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by April 14, 2008.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS–R6–ES–2008–0026]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Ecological Services Office, 585 Shepard Way, Helena, MT, 59601; telephone 406–449–5225. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate specific habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*).

(2) Specific information on:

- The amount and distribution of lynx habitat,
- What areas occupied at the time of listing and that contain features essential for the conservation of the species we should include in the designation and why that might be so, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why that might be so.

(3) Comments or information that may assist us with identifying or clarifying the primary constituent element.

(4) Land use designations and current or planned activities in the areas proposed as critical habitat and their possible impacts on proposed revised critical habitat.

(5) Whether Tribal lands in the Northern Rockies, Maine, and Minnesota units need to be included as critical habitat pursuant to Secretarial Order Number 3206.

(6) Whether lands the Southern Rocky Mountains contain the physical and biological features that are essential for the conservation of the species and the basis for why that might be so

(7) Whether lands in any unoccupied areas, such as the ''Kettle Range'' in Ferry County, Washington, are essential to the conservation of lynx and the basis for why that might be so.

(8) How the proposed boundaries of the revised critical habitat could be refined to more closely circumscribe the boreal forest landscapes occupied by lynx. Refined maps that accurately depict the specific vegetation types on all land ownerships are not readily available. We are especially interested in this information for the Greater Yellowstone Area unit.

(9) Whether our proposed revised critical habitat for the lynx should be altered in any way to account for climate change.

(10) Whether the proposed revised critical habitat designation for the lynx should include private lands, or whether the proposed Federal lands are sufficient to conserve lynx.

(11) Whether U.S. Forest Service (USFS) lands that occur in the wildland-urban-interface (WUI) should be excluded from critical habitat under section 4(b)(2) of the Act so that fuels-reduction projects designed to protect human life and property from wildfire would not be impeded in any way in these areas.

(12) Whether the Greater Yellowstone Area is essential to the conservation of lynx. Lynx in this proposed unit occur at lower densities than in other proposed units, and the population is not connected to Canada, which is an important source of lynx in the United States.

(13) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(14) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

The size of the individual Indian reservation lands in the Northern Rockies, Maine, and Minnesota units is relatively small. As a result, we believe conservation of the lynx can be achieved by limiting the designation to the other lands in the proposal without including Tribal lands (see ''Relationship of Critical Habitat to Tribal Lands'' below).

The southern Rocky Mountains in Colorado, Utah, and southern Wyoming are disjunct from other lynx habitats in the United States and Canada. The nearest lynx population occurs in the Greater Yellowstone Area (GYA), which is a small, low density population also disjunct from other lynx populations and is unlikely to regularly supply dispersing lynx to the Southern Rockies. Native lynx were functionally extirpated

from their historic range in Colorado and southern Wyoming by the time the lynx was listed as a threatened species under the Act in 2000. In 1999, the State of Colorado began an intensive effort to reintroduce lynx. Although it is too early to determine whether the introduction will result in a self-sustaining population, the reintroduced lynx have produced kittens and now are distributed throughout the lynx habitat in Colorado and southern Wyoming. These animals are not designated as an experimental population under section 10(j) of the Act. Although Colorado's reintroduction effort is an important step toward the recovery of lynx, we are not proposing revised critical habitat in the Southern Rockies because of the current uncertainty that a self-sustaining lynx population will become established.

The Kettle Range in Washington historically supported lynx populations (Stinson 2001). However, although boreal forest habitat within the Kettle Range appears of high quality for lynx, there is no evidence that the Kettle Range is currently occupied by a lynx population nor has there been evidence of reproducing lynx in the Kettle Range in the past two decades (Koehler 2008).

Fuels-reduction projects in the WUI may degrade lynx habitat by reducing its ability to support snowshoe hares. For this reason, if WUI areas were designated as revised critical habitat, fuels-reduction projects may be impaired or delayed as a result of requirements under section 7(a)(2) of the Act, which could lead to reduced effectiveness of the fuels-reduction, and increased risk to human life and property. Mapped WUI areas can be viewed on the Internet at: *ftp://ftp2.fs.fed.us/incoming/r1/FWS/wui_1mile_buffer_oct06.pdf.*

In addition to public comments received on this proposed rule, between the proposed and final rules, the Service will analyze the following for its relevance in revising critical habitat for lynx: (1) Comments received in response to our initiation of a 5-year review for lynx; (2) a new study addressing effects of snowmobile trails on coyote movements within lynx home ranges (Kolbe *et al.* 2007, pp. 1409–1418); (3) a study on lynx prey selection (Squires and Ruggiero 2007, pp. 310–315); (4) new reports we have received on the numbers and distribution of lynx in some locations; (5) a newly released study on the effects of climate change on snowpack in western mountains and how that may affect lynx, snowshoe hares, and their habitats (Gonzalez *et al.* 2007); and (6) additional new studies (*e.g.*, Knowles *et al.* 2006 and Danby and Hick 2007) that may provide insight on changes to lynx habitat. If necessary and appropriate, revisions to this proposed rule will be made to address this information. We will also be revising the economic analysis and environmental assessment prepared for the previous designation and providing drafts of the new economic analysis and environmental assessment to the public before finalizing this proposal.

On the basis of public comment, during the development of the revised final rule we may find, among other things, that areas proposed are not essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. In all of these cases, this information will be incorporated into the revised final designation. Further, we may find as a result of public comments that areas not proposed should also be designated as critical habitat. Final management plans that address the conservation of the lynx must be submitted to us during the public comment period so that we can take them into consideration when making our final critical habitat determination.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this revised proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**). Maps of the proposed revised critical habitat are also available on the Internet at *http://mountain-prairie.fws.gov/species/mammals/lynx/*.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the lynx refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), and the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076).

Canada lynx are medium-sized cats, generally measuring 30 to 35 inches (in) (75 to 90 centimeters (cm)) long and weighing 18 to 23 pounds (8 to 10.5 kilograms) (Quinn and Parker 1987, Table 1). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails.

Lynx are highly specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684–685; Aubry *et al.* 2000, pp. 375–378). Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378–382; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–191; McKelvey *et al.* 2000b, pp. 211–232). The predominant vegetation of boreal forest is conifer trees, primarily species of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988, pp. 34–35, 37–42). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes and to subalpine forest in the west (Agee 2000, pp. 40–41). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a snowshoe hare prey base (Quinn and Parker 1987, p. 684–685; Agee 2000, pp. 39–47; Aubry *et al.* 2000, pp. 373–375; Buskirk *et al.* 2000b, pp. 397–405; Ruggiero *et al.* 2000, pp. 445–447). In mountainous areas, the boreal forests that lynx use are characterized by scattered moist forest types with high hare densities in a matrix of other habitats (*e.g.*, hardwoods, dry forest, non-forest) with low hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most foraging occurs.

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445–449). Lynx are morphologically and physiologically adapted for hunting snowshoe hares and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000a, pp. 86–95; Ruediger *et al.* 2000, p. 1–11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes.

Lynx Habitat Requirements

Because of the patchiness and temporal nature of high quality snowshoe hare habitat, lynx populations require large boreal forest landscapes to ensure that sufficient high quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000c, p. 25). Individual lynx maintain large home ranges (reported as generally ranging between 12 to 83 mi^2 (31 to 216 km^2)) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382–386; Squires and Laurion 2000, pp. 342–347; Squires *et al.* 2004b, pp. 13–16, Table 6; Vashon *et al.* 2005a, pp. 7–11). The size of lynx home ranges varies depending on abundance of prey, the animal's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382–386; Mowat *et al.* 2000, pp. 276–280; Vashon *et al.* 2005a, pp. 9–10). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the boreal forest range. This generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern boreal forest in Canada (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous United States compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393–394) or the densities of species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile and generally move long distances (greater than 60 mi (100 km)) (Aubry *et al.* 2000, pp. 386–387; Mowat *et al.* 2000, pp. 290–294). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985, pp. 2821–2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499–503). Subadult lynx disperse even when prey is abundant (Poole 1997, pp. 502–503), presumably to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18–26).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47–48; Agee 2000, pp. 47–69). As a result, lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, some of which are suitable as lynx foraging or denning habitat (or will become suitable in the future due to forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitat (McKelvey *et al.* 2000a, pp. 427–434; Hoving *et al.* 2004, pp. 290–292).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972, pp. 323–325; Brand *et al.* 1976, pp. 422–425; Koehler 1990, p. 848; Apps 2000, pp. 358–359, 363; Aubry *et al.* 2000, pp. 375–378; Mowat *et al.* 2000, pp. 267–268; von Kienast 2003, pp. 37–38; Squires *et al.* 2004b, p. 15, Table 8). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972, pp. 326–328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837–838, 847; Poole 1994, pp. 612–616; Slough and Mowat 1996, pp. 953–958; O'Donoghue *et al.* 1997, pp. 158–159; Aubry *et al.* 2000, pp. 388–389; Mowat *et al.* 2000, pp. 285–287). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced lynx populations (Brand *et al.* 1976, pp. 422–425; Brand and Keith 1979, pp. 833–834; Koehler 1990, pp. 848–849; Mowat *et al.* 2000, pp. 267–268).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a, pp. 118–123; Mowat *et al.* 2000, pp. 270–272). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of their range in the contiguous United States (Hodges 2000b, pp. 165–173). In the contiguous United States, the degree to which regional local lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, it is anticipated that because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, snowshoe hare habitat is a component of lynx habitat. Lynx generally concentrate their foraging and hunting activities in areas where snowshoe hare populations are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821–2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159–160 and 1998, pp. 178–181). Snowshoe hares are most abundant in forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982, pp. 665–669; Litvaitis *et al.* 1985, pp. 869–872; Hodges 2000a, pp. 136–140 and 2000b, pp. 183–195). Generally, hare densities are higher in regenerating, earlier successional forest stages because they have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 183–195; Homyack 2003, p. 63, 141; Griffin 2004, pp. 84–88). However, snowshoe hares can be abundant in mature forests with dense understories (Griffin 2004, pp. 53–54).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743–744; Koehler

1990, pp. 847–849; Slough 1999, p. 607; Squires and Laurion 2000, pp. 346–347; Organ 2001). The amount of structure (*e.g.,* downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 10–11).

Future of Lynx Habitat

In 2003, we determined that climate change was not a threat to lynx because the best available science we had at that time (Hoving 2001) was too uncertain in nature (68 FR 40083). Since that time, new information on regional climate changes and potential effects to lynx habitat has been developed (*e.g.,* Gonzalez *et al.* 2007, entire; Knowles *et al.* 2006, pp. 4545–4559; Danby and Hick 2007, pp. 358–359) that suggests that climate change may be an issue of concern for the future conservation of lynx. This information, combined with the information in Hoving 2001, still needs to be evaluated further to determine how climate change might affect lynx and lynx habitat. We are evaluating this information in the 5-year review we are conducting for lynx.

At this time, we find it appropriate to propose revised critical habitat in areas that are occupied and currently contain the physical and biological features essential to the conservation of the lynx. Revisions to the critical habitat designation may be necessary in the future to accommodate shifts in the occupied range of the lynx. To the extent lynx distribution and habitat is likely to shift upward in elevation within its currently occupied range as the temperatures increase (Gonzalez *et al.* 2007, pp. 7, 13–14,19), the proposed revised critical habitat units include the highest-elevation habitats that lynx would be able to use in that event.

Previous Federal Actions

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), and the final rule designating critical habitat for lynx published in the **Federal Register** on November 9, 2006 (71 FR 66007). On July 20, 2007, the Service announced that we would review the November 9, 2006 final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we have determined that it is necessary to revise critical habitat, and this rule proposes those revisions. On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) That may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that result in the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply. Nonetheless, even in the event a project with a Federal nexus may result in the destruction or adverse modification of critical habitat, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features that are essential to the conservation of the species. Consistent with this requirement, the Service identifies, to the extent known using the best scientific data available, habitat areas on which are found the physical and biological features essential, as defined at 50 CFR 424.12(b), and identifies the quantity and spatial arrangement of such areas to ensure that the areas designated as critical habitat are essential for the conservation of the species. Occupied habitat that contains the physical and biological features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. These documents require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, may continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultation, or other species conservation planning efforts if new information calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available to determine areas occupied at the time of listing that contain the features essential to the conservation of the lynx. We have reviewed the approach to the conservation of the lynx provided in its recovery outline (Service 2005, entire) and information from State, Federal, and Tribal agencies, and from academia and private organizations that have collected scientific data on lynx. The Service also obtained information about critical habitat for lynx in 2005 and 2006 during development of rules for lynx critical habitat. The Service also initiated a 5-year review for the lynx on April 18, 2007 (72 FR 19549). Information gathered for that purpose will be used in completing our final designation.

We have used information we reviewed for the prior designation of critical habitat, including data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act, research published in peer-reviewed articles and presented in academic theses, agency reports, unpublished data, and various Geographic Information System (GIS) data layers (*e.g.,* land cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio- or Global Positioning System (GPS) collars, and locations of lynx confirmed via deoxyribonucleic acid (DNA) analysis or other verified records).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12(b), in determining which areas occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for conservation of the species. In general, PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

When considering the designation of critical habitat, we must focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. As previously stated, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for conservation of the species. As such, we derive the PCEs required for lynx from its biological needs. The area proposed for designation as revised critical habitat provides boreal forest habitat for breeding, non-breeding, and dispersing lynx in metapopulations across their range in the contiguous United States. We are not proposing any areas solely because they provide habitat for dispersing animals because the areas we are proposing serve a variety of functions that include acting as a source of dispersing animals and providing habitat that serves as travel corridors to facilitate dispersal and exploratory movements. The primary constituent elements and therefore the resulting physical and biological features essential for the conservation of the species were determined from studies of lynx and snowshoe hare ecology.

Space for Individual and Population Growth and Normal Behavior—Boreal Forest Landscapes

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, snow conditions, boreal forest, and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000b, pp. 242–253; Hoving *et al.* 2005, p. 749). At the landscape scale within each region, natural and human-caused disturbance processes (*e.g.,* fire, wind, insect infestations, and forest management) influence the spatial and temporal distribution of lynx populations by affecting the distribution of good habitat for snowshoe hares (Agee 2000, pp. 47–73; Ruediger *et al.* 2000, pp. 1–3, 2–2, 2–6, 7–3). At the stand-level scale, quality, quantity, and juxtaposition of habitats influence home range size, productivity, and survival (Aubry *et al.* 2000, pp. 380–390; Vashon *et al.* 2005a, pp. 9–11). At the substand scale, spatial distribution, abundance of prey, and microclimate influence movements, hunting behavior, and den and resting site locations.

All of the components of the physical and biological features of proposed revised critical habitat for lynx are found within large landscapes in what is broadly described as the boreal forest or cold temperate forest (Frelich and Reich 1995, p. 325; Agee 2000, pp. 43–46). The primary constituent element is broadly described as the boreal forest landscape. In the contiguous United States, the boreal forest is more transitional than the true boreal forest of northern Canada and Alaska (Agee 2000, pp. 43–46). This difference is because the boreal forest is at its southern limits in the contiguous United States, where it transitions to deciduous temperate forest in the Northeast and Great Lakes and subalpine forest in the west (Agee 2000, pp. 43–46). We use the term ''boreal forest'' because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000, pp. 40–41).

At a regional scale, lynx habitat exists in areas that generally support deep snow throughout the winter and boreal forest vegetation types (see below for more detail). In eastern North America,

lynx distribution is strongly associated with areas of deep snowfall (greater than 105 in (268 cm) of mean annual snowfall) and 40 mi² (100 km²) landscapes with a high proportion of regenerating forest (Hoving 2001, pp. 75, 143). The broad geographic distribution of lynx in eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution (Hoving *et al.* 2004, p. 291).

Boreal forests used by lynx are cool, moist, and dominated by conifer tree species, primarily spruce and fir (Agee 2000, pp. 40–46; Aubry *et al.* 2000, pp. 378–383; Ruediger *et al.* 2000, pp. 4–3, 4–8, 4–11, 4–25, 4–26, 4–29, 4–30). Boreal forest landscapes used by lynx are a heterogeneous mosaic of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000a, pp. 426, 434). Periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000, pp. 1–3, 1–4, 7–4, 7–5). In Maine, lynx were positively associated with landscapes clearcut 15 to 25 years previously (Hoving *et al.* 2004, p. 291).

The overall quality of the boreal forest landscape matrix and the juxtaposition of stands in suitable condition within that landscape is important for both lynx and snowshoe hares in that it influences connectivity or movements between suitable stands, availability of food and cover, and spatial structuring of populations or subpopulations (Hodges 2000b, pp. 181–195; McKelvey *et al.* 2000a, pp. 431–432; Walker 2005, p. 79). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provide for dependent kittens, especially when the kittens are relatively immobile. In north-central Washington, hare densities were higher in landscapes with an abundance of dense boreal forest interspersed with small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few dense vegetation patches (Walker 2005, p. 79). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefited snowshoe hares (Ausband and Baty 2005, p. 209). In mountainous areas, lynx appear to prefer flatter slopes (Apps 2000, p. 361; McKelvey *et al.* 2000d, p. 333; von Kienast 2003, p. 21, Table 2; Maletzke 2004, pp. 17–18).

Individual lynx require large portions of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is believed to be strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000, pp. 382–385; Mowat *et al.* 2000, pp. 276–280). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.* 2004, p. 11). Reported home range size varies from 12 mi² (31 km²) for females and 26 mi² (68 km²) for males in Maine (Vashon *et al.* 2005a, p. 7), 8 mi² (21 km²) for females and 119 mi² (307 km²) for males in Minnesota (Moen *et al.* 2005, p. 12), and 34 mi² (88 km²) for females and 83 mi² (216 km²) for males in northwest Montana (Squires *et al.* 2004b, pp. 15–16).

The dynamic nature of boreal forest landscapes means that lynx home ranges will incorporate a variety of forest stands that are in different stages of succession and have differing potential to produce prey. In addition, due to the naturally marginal nature of lynx habitat within the DPS, the moist boreal forest types that snowshoe hares prefer often occur in patches dissected or surrounded by matrix habitat. Lynx use the matrix habitat primarily as travel routes between foraging areas and denning areas. Although they are not dependent on the specific vegetative condition of these habitats (*i.e.,* they are not sensitive to forest management practices), the importance of these areas as travel routes makes them necessary habitat components for lynx.

Forest Type Associations

Maine

Lynx are more likely to occur in 40 mi² (100 km²) landscapes with regenerating forest, and less likely to occur in landscapes with recent clearcut or partial harvest, (Hoving *et al.* 2004, pp. 291–292). Lynx in Maine select softwood (spruce and fir) dominated, regenerating stands (Vashon *et al.* 2005a, p. 8). Regenerating stands used by lynx generally develop 15–30 years after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003, p. 63; Fuller and Harrison 2005, pp. 716, 719; Vashon *et al.* 2005a, pp. 10–11). At the stand scale, lynx in northwestern Maine selected older (11 to 26 year-old), tall (4.6 to 7.3 m (15 to 24 ft)), regenerating clearcut stands and older (11 to 21 year-old), partially harvested stands (A. Fuller, University of Maine, unpubl. data).

Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*Pinus strobus*) mixed with aspen (*Populus* spp.), paper birch (*Betula papyrifera*), spruce, balsam fir (*Abies balsamifera*), and jack pine (*Pinus banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003, p. 2).

Preliminary research suggests lynx in Minnesota generally use younger stands (less than 50 years) with a conifer component in greater proportion than their availability (R. Moen, University of Minnesota, unpubl. data). Lynx prefer predominantly upland forests dominated by red pine, white pine, jack pine, black spruce (*Picea mariana*), paper birch, quaking aspen (*Populus tremuloides*), or balsam fir (R. Moen, unpubl. data).

Washington

In the North Cascades in Washington, the majority of lynx occurrences were found above 1,250 m (4,101 ft) elevation (McKelvey *et al.* 2000b, p. 243 and 2000d, p. 321; von Kienast 2003, p. 28, Table 2; Maletzke 2004, p. 17). In this area, lynx selected Engelman spruce (*Picea engelmanii*)-subalpine fir (*Abies lasiocarpa*) forest cover types in winter (von Kienast 2003, p. 28; Maletzke 2004, pp. 16–17). Lodgepole pine (*Pinus contorta*) is a dominant tree species in the earlier successional stages of these climax cover types. Seral lodgepole stands contained dense understories and therefore received high use by snowshoe hares and lynx (Koehler 1990, pp. 847–848; McKelvey *et al.* 2000d, pp. 332–335).

Northern Rockies

In the Northern Rocky Mountains, the majority of lynx occurrences are associated with the Rocky Mountain Conifer Forest vegetative class (Kuchler 1964, p. 5; McKelvey *et al.* 2000b, p. 246) and occur above 1,250 m (4,101 ft) elevation (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000b, pp. 243–245). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir, Engelman spruce, and lodgepole pine (Aubry *et al.* 2000, p. 379; Ruediger *et al.* 2000, pp. 4–8—4–10). As in the Cascades, lodgepole pine is an earlier successional stage of subalpine fir and Engelman spruce climax forest cover types.

Greater Yellowstone Area

Lynx habitat in the GYA is similar to the Northern Rockies in that lynx

occurrences are generally associated with the Rocky Mountain Conifer Forest vegetative class. The primary areas of lynx occurrence in this unit occur between 7,382 and 9,843 ft (2,250 and 3,000 m) elevation (Aubry *et al.* 2000, p. 379; McKelvey *et al.* 2000b, Figure 8.18). However, lynx are not limited to these elevation zones. The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir, Engelman spruce, and lodgepole pine (Aubry *et al.* 2000, pp. 378–382; Ruediger *et al.* 2000, pp. 1–2, 1–3; Murphy *et al.* 2004, pp. 9–11). Lodgepole pine is an earlier successional stage of subalpine fir and Engelman spruce cover types. The vegetation characteristics in the GYA that support snowshoe hare populations (and form the basis for lynx populations) are typically found in a widely scattered mosaic of matrix habitat types (Murphy *et al.* 2005, p. 8–11; Hodges and Mills 2005, p. 6; Agee 2000, p. 48). In the GYA, lynx exploit hare populations in disjunct patches of mesic boreal forest that support relatively dense understories (Hodges and Mills 2005, pp. 4–6). In most cases, lynx home ranges in the GYA will by necessity incorporate habitat that is not typically considered lynx foraging habitat, and is used primarily for travel.

Food, Water, Air, Light, Minerals, Or Other Nutritional Or Physiological Requirements

a. Snowshoe Hares (Food)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004, p. 136). A minimum snowshoe hare density necessary to maintain a persistent, reproducing lynx population within the contiguous United States has not been determined, although Ruggiero *et al.* (2000, pp. 446–447) suggested that at least 0.2 hares per acre (0.5 hares per hectare) may be necessary. Steury and Murray (2004, p. 137) modeled lynx and snowshoe hare populations and predicted that a minimum of 0.4 to 0.7 hares per acre (1.1 to 1.8 hares per hectare) was required for persistence of a reintroduced lynx population in the southern portion of the lynx range.

The boreal forest landscape must contain a mosaic of forest stand successional stages to sustain lynx populations over the long term as the condition of individual stands changes over time. If the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional phases that are unsuitable as lynx foraging or denning habitat (Agee 2000, pp. 62–72; Buskirk *et al.* 2000b, pp. 403–408). For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, that has resulted in little or no understory structure is unsuitable as snowhoe hare habitat for lynx foraging. That stand may regenerate into suitable snowshoe hare (lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000, pp. 1–3, 1–4, 2–2—2–5). However, forest management techniques that thin the understory may render the habitat unsuitable for hares and, thus, for lynx (Ruediger *et al.* 2000, pp. 2–4—3–2; Hoving *et al.* 2004, pp. 291–292). Stands may continue to provide suitable snowshoe hare habitat for many years until woody stems in the understory become too sparse as a result of undisturbed forest succession or management (*e.g.,* clearcutting or thinning). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that is suitable to support abundant snowshoe hares for lynx foraging or coarse woody debris for den sites has the capability to develop into suitable habitat for lynx and snowshoe hares with time.

As described previously, snowshoe hares prefer boreal forest stands that have a dense horizontal understory to provide food, cover, and security from predators. Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000b, pp. 181–183). Snowshoe hare density is correlated to understory cover between approximately 3 to 10 ft (1 to 3 m) above the ground or snow level (Hodges 2000b, p. 184, Table 7.5). Habitats most heavily used by snowshoe hares are stands with shrubs, stands that are densely stocked, and stands at ages where branches have more lateral cover (Hodges 2000b, p. 184). In Maine, the snowshoe hare densities were highest in the stands supporting high conifer stem densities (Homyack *et al.* 2004, p. 195; Robinson 2006, p. 69). In northcentral Washington, snowshoe hare density was highest in 20-year-old lodgepole pine stands where the average density of trees and shrubs was 6,415 stems per acre (ac) (15,840 stems/hectare (ha)) (Koehler 1990, p. 848). Generally, earlier successional forest stages support a greater density of horizontal understory and more abundant snowshoe hares (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 668–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 184–191; Griffin 2004, pp. 84–88); however, sometimes mature stands also can have adequate dense understory to support abundant snowshoe hares (Griffin 2004, p. 88). In Montana, lynx favor multi-story stands, often in older age classes, where tree boughs touch the snow surface but where stem density is low (Squires 2006, p. 4).

In Maine, the highest snowshoe hare densities were found in regenerating softwood (spruce and fir) and mixed wood stands (Fuller and Harrison 2005, pp. 716, 719; Robinson 2006, p. 69). In the North Cascades, the highest snowshoe hare densities were found in 20-year-old seral lodgepole pine stands with a dense understory (Koehler 1990, pp. 847–848). In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer were generally in younger stands with dense forest structure; in winter snowshoe hare densities were as high or higher in mature stands with dense understory forest structure (Griffin 2004, p. 53). Snowshoe hare studies are just underway in Minnesota (Moen *et al.* 2005, p. 18); therefore, results on habitat relationships are still preliminary. In the GYA, the highest snowshoe hare densities were found in a douglas fir site and a few regenerating lodgepole pine and lodgepole stands that had a lodgepole understory. Low hare densities were found in most regenerating lodgepole stands, most likely due to low stem densities (Hodges and Mills 2005, p. 6). Spruce-fir forests were the stand type most likely to support snowshoe hares; however, hare densities were never high at these sites.

Habitats supporting abundant snowshoe hares must be present in a large proportion of the landscape to support a viable lynx population. Broad-scale snowshoe hare density estimates are not available for the areas we are proposing as lynx revised critical habitat; available snowshoe hare density estimates are only applicable for the immediate area and time frame for which the study was conducted and cannot be extrapolated further.

b. Snow Conditions (Other Physiological Requirements)

As described in the ''Background'' section above, snow conditions also determine the distribution of lynx. Deep, fluffy snow conditions likely restrict potential competitors such as bobcat or coyote from effectively encroaching on or hunting in winter lynx habitat. Snowfall was the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005, p. 746, Table 5). In addition to snow depth, other snow properties, including surface hardness or sinking depth, are important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004, p. 75).

In the northeastern United States, lynx are most likely to occur in areas with a 10-year mean annual snowfall greater than 105 in (268 cm) (Hoving 2001, p. 75). The Northern Superior Uplands section of Minnesota, which roughly corresponds to the area proposed as revised critical habitat in that State, receives more of its precipitation as snow than any section in the State, has the longest period of snow cover, and has the shortest growing season (Minnesota DNR 2003, p. 2). Mean annual snowfall from 1971 to 2000 in this area was generally greater than 55 in (149 cm) (University of Minnesota 2005).

Information on average snowfall or snow depths in mountainous areas such as the Cascades or northwest Montana is limited because few weather stations in these regions have measured snow fall or snow depth over time. Topography strongly influences local snow conditions. In the Cascades, at the Mazama station, average annual snowfall from 1948 to 1976 was 115 in (292 cm) (Western Regional Climate Center 2005). In Montana, at the Seeley Lake Ranger Station, average annual snowfall from 1948 to 2005 is 124 in (315 cm), while at the Troy station the average total snowfall from 1961 to 1994 was 90 in (229 cm) (Western Regional Climate Center 2005).

We considered the effect climate change could have on average snowfall or snow depths when we developed this proposed rule. We have information to indicate that up to two-thirds of the lynx range in the lower 48 States may become unsuitable by 2100 (Gonzalez *et al.* 2007, pp. 4, 7–8, 10, 13–14, 19). However, we have used current climate information in developing this rule because, until regional climate projections are more certain, we find it is appropriate to designate critical habitat for lynx where they currently exist. Projections for habitat loss go out over the next 100 years. If designated habitat becomes unsuitable for lynx in the future due to climate change, the Service will revise critical habitat to remove unsuitable habitat and add new suitable habitat in order to seek to facilitate the shift in lynx range that climate change may cause. Lynx distribution and habitat is likely to shift upward in elevation and northward in latitude as temperatures increase (Gonzalez *et al.* 2007, pp. 7, 13–14, 19). All proposed revised critical habitat units include the highest-elevation habitats that lynx would be able to use in the event that they move to higher elevations in response to climate change. Additionally, any northward shifts in range would likely move the species and its suitable habitat into Canada. Four of the five proposed revised critical habitat units use the United States/Canada border as their northern boundary.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring—Denning Habitat

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (*e.g.,* insect damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

Site characteristics were evaluated for 26 lynx dens from 1999 to 2004 in northwest Maine. Dens were found in several stand types. Tip-up mounds (exposed roots from fallen trees) alone best explained den site selection (J. Organ, Service, unpubl. data). Tip-up mounds may purely be an index of downed trees, which were abundant on the landscape. Horizontal cover at 16 ft (5 m) alone was the next best predictor of denning (J. Organ, unpubl. data). Dead, downed trees were sampled, but did not explain den site selection as well as tip-up mounds and cover at 16 ft (5 m). Lynx essentially select dense cover in a cover-rich area.

In the North Cascades, Washington, lynx denned in mature (older than 250 years) stands with an overstory of Engelman spruce, subalpine fir, and lodgepole pine with an abundance of downed, woody debris (Koehler 1990, p. 847). In this study, all den sites were located on north-northeast aspects (Koehler 1990, p. 847). In northwest Montana, areas around dens were a variety of ages but all contained abundant woody debris including downed logs, blowdowns, and rootwads, and dense understory cover (Squires *et al.* 2004b, Table 3). Information on den site characteristics in Minnesota has not yet been reported (Moen *et al.* 2005, p. 8).

Primary Constituent Element for Lynx

Within the geographical area we know to be occupied by the lynx, we must identify the primary constituent elements (PCEs) laid out in the quantity and spatial arrangement essential to the conservation of the species (*i.e.,* essential physical and biological features) that may require special management considerations or protections.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent element essential to the conservation of the lynx is:

(1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(a) Presence of snowshoe hares and their preferred habitat conditions, including dense understories of young trees or shrubs tall enough to protrude above the snow;

(b) Winter snow conditions that are generally deep and fluffy for extended periods of time;

(c) Sites for denning having abundant, coarse, woody debris, such as downed trees and root wads; and

(d) Matrix habitat (*e.g.,* hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range. The important aspect of matrix habitat for lynx is that these habitats retain the ability to allow unimpeded movement of lynx through them as lynx travel between patches of boreal forest.

We designed the proposed revised critical habitat units to capture these elements of the PCE laid out in the quantity and spatial arrangement essential to the conservation of the species (*i.e.,* essential physical and biological features). To do this, we mapped units across the geographic range of the species in the United States to protect populations in the event of catastrophic events that could impact a portion of the range. We designed each unit to be large enough to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protections.

The area proposed for designation as revised critical habitat will require some level of management to address the current and future threats to the lynx and to maintain the physical and

biological features essential to the conservation of the species. In all units, special management will be required to ensure that boreal forest landscapes provide a mosaic of forest stands of various ages to provide abundant prey habitat, denning habitat, and connectivity within the landscape. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the lynx. Federal activities that may affect areas outside of critical habitat, such as forest management, development, and road construction, are still subject to review under section 7 of the Act if they may affect lynx because Federal agencies must consider both effects to lynx and effects to critical habitat independently. The prohibitions of section 9 of the Act (*e.g.,* harm, harass, capture, kill) also continue to apply both inside and outside of designated critical habitat.

Special management direction for lynx has been applied to public lands in much of the lynx DPS. The USFS, Bureau of Land Management (BLM), NPS, and the Service developed a Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000, entire) using the best available science at the time specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands (Ruediger *et al.* 2000). The overall goals of the LCAS were to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identifies an inclusive list of 17 potential risk factors for lynx or lynx habitat that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. The risks identified in the LCAS are based on effects to either individual lynx, lynx populations, or both, or to lynx habitat. Potential risk factors the LCAS addresses that may affect lynx productivity include: timber management, wildland fire management, recreation, forest/backcountry roads and trails, livestock grazing, and other human developments. Potential risk factors the LCAS addresses that may affect lynx mortality include: trapping, predator control, incidental or illegal shooting, and competition and predation as influenced by human activities and highways. Potential risk factors the LCAS addresses that may affect lynx movement include: highways, railroads and utility corridors, land ownership pattern, and ski areas and large resorts. Other potential large-scale risk factors for lynx addressed by the LCAS include: fragmentation and degradation of lynx refugia, lynx movement and dispersal across shrub-steppe habitats, and habitat degradation by nonnative and invasive plant species.

The LCAS used the best available information at the time to ensure the appropriate mosaic of habitat is provided for lynx on Federal lands. Although the LCAS was written specifically for Federal lands, many of the conservation measures are pertinent for non-Federal lands. To facilitate project planning and allow for the assessment of the potential effects of a project on an individual lynx, the LCAS directs Federal land management agencies to delineate Lynx Analysis Units (LAUs). The scale of an LAU approximates the size of area used by an individual lynx (25 to 50 mi^2 (65 to 130 km^2)). The LCAS recognizes that LAUs will likely encompass both lynx habitat and other areas (*e.g.,* lakes, low elevation ponderosa pine (*Pinus ponderosa*) forest, and alpine tundra). Habitat-related standards the LCAS provides to address potential risks include: (1) If more than 30 percent of lynx habitat in an LAU is currently in unsuitable condition, no further reduction of suitable condition shall occur as a result of vegetation management activities by Federal agencies; (2) within an LAU, maintain denning habitat in patches generally larger than 5 ac (2 ha), comprising at least 10 percent of lynx habitat; (3) maintain habitat connectivity within and between LAUs; (4) management actions (*e.g.,* timber sales, salvage sales) shall not change more than 15 percent of lynx habitat within an LAU to an unsuitable condition within a 10-year period; (5) pre-commercial thinning will only be allowed when stands no longer provide snowshoe hare habitat; (6) on Federal lands in lynx habitat, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas by LAU.

With the listing of the lynx in 2000, Federal agencies across the contiguous United States range of the lynx were required to consult with the Service on actions that may affect lynx. The LCAS assists Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat (Ruediger *et al.* 2000). If projects are designed that fail to meet the standards in the LCAS, the biologists using the LCAS would arrive at an adverse effect determination for lynx.

A Conservation Agreement between the USFS and the Service (U.S. Forest Service and U.S. Fish and Wildlife Service 2000) and a similar Agreement between the BLM and the Service (Bureau of Land Management and U.S. Fish and Wildlife Service 2000) committed the USFS and BLM to use the LCAS in determining the effects of actions on lynx until Forest Plans were amended or revised to adequately conserve lynx. A programmatic biological opinion pursuant to section 7 of the Act analyzed and confirmed the adequacy of the LCAS and its conservation measures to conserve lynx and concluded that Forest Service and BLM land management plans as implemented in accordance with the Conservation Agreements would not jeopardize the continued existence of lynx (U.S. Fish and Wildlife Service 2000).

In 2005, the USFS and the Service renewed the conservation agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005) because the original agreement had expired. In the 2005 agreement, the parties agree to take measures to reduce or eliminate adverse effects or risks to lynx and its occupied habitat pending amendments to Forest Plans. The LCAS is a basis for implementing this agreement (U.S. Forest Service and U.S. Fish and Wildlife Service 2005). The 2005 agreement was renewed on October 20, 2006, and expires December 31, 2010, unless renewed. The BLM continues to adhere to their original agreement although it expired in December 2004.

Lynx conservation depends on management that supports boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. At the time it was written, the LCAS provided the highest level of management or protection for lynx. The LCAS conservation measures address risk factors affecting lynx habitat and lynx productivity and were designed to be implemented at the scale necessary to conserve lynx. This level of management is appropriate for Federal lands, because they account for the majority of high-quality habitat in the United States and also because the inadequacy of regulatory mechanisms to conserve lynx on these lands at the time was the primary reason for listing the lynx as a threatened species under the Act. Furthermore, new information has come to light since the LCAS was written concerning that should be taken

into account by land managers. For instance, Kolbe *et al.* (2007) and Bunnell *et al.* (2006) published information on the effects of snowmobiling on lynx, and Squires *et al.* (2006) documented the importance of multilayered stands as snowshoe hare habitat. Further, ongoing research in Minnesota and Maine has also resulted in information helpful to forming our understanding of lynx and snowshoe hare (*e.g.,* Moen *et al.* 2004; Hoving *et al.* 2005; Homyack *et al.* 2007; Fuller *et al.* 2007). In some regions of Wyoming, Washington and Maine, research continues. Thus, as new information becomes available, this information should be used in addition to that used in the LCAS.

The Forest Service considered some of the new information discussed above when it proposed to revise 18 Forest Plans under a programmatic plan amendment called the Northern Rocky Mountain Lynx Amendment (NRLA) (Forest Service 2007). Because of the new information, some of the LCAS standards were changed to guidelines because the Service had determined that some risk factors were not negatively affecting the U.S. lynx DPS as a whole. Since publication of the LCAS, lynx studied in the United States have been shown to use a variety of sites and conditions for denning. Lynx denning sites are not believed to be a limiting factor in Montana and Maine study areas (Service 2007, pp. 48–49). Further, earlier assessments also concluded that in most geographic areas, denning habitat was not likely limiting to lynx, and existing forest plan direction would not result in adverse effects (Hickenbottom *et al.* 1999). Likewise, after evaluating Bunnell *et al.* (2006, entire) and Kolbe *et al.* (2007, entire), we determined that the best information available did not indicate that compacted snow routes increase competition from other species to levels that adversely impact lynx populations in the NRLA area (Service 2007, pp. 55). Finally, since the LCAS was written, new information revealed the importance of multi-storied stands for lynx (Squires *et al.* 2006). On the basis of this information, the Forest Service included a standard for conserving these multi-storied stands in the NRLA. This LCAS does not contain this standard.

In addition to diverging from the standards in the LCAS because of new information, the NRLA also deviated from the LCAS by allowing additional fuels reduction projects in areas within the wildlands-urban-interface (WUI). In our analysis of this action, we determined that even with these exceptions, the management in the NRLA would provide for the recovery of lynx in these areas by addressing the major reason we listed the lynx in 2000: The lack of guidance for conservation of lynx in Federal land management plans. Consultation under section 7 of the Act was completed for the NRLA in 2007, and it is now official land management direction for the National Forests that adopted it.

Criteria Used To Identify Critical Habitat

To identify areas containing the physical and biological features that are essential to the conservation of the lynx, we considered the concepts introduced in the recovery outline for the species (Service 2005, entire) and the analysis provided above concerning occupancy, evidence of reproduction, and the primary constituent elements laid out in the quantity and spatial arrangement necessary for the conservation of the species. We have also reviewed information from State, Federal, and tribal agencies, and information from academia and private organizations that have collected scientific data on lynx.

The focus of our strategy in considering lands for designation as revised critical habitat was on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. Individual lynx maintain large home ranges; the areas identified to have physical and biological features essential to the conservation of the lynx are large enough to encompass multiple home ranges. A secondary consideration is that, in addition to supporting breeding populations, these areas provide connectivity among patches of suitable habitat (*e.g.,* patches containing abundant snowshoe hares), whose locations in the landscape shift through time.

In proposing revised critical habitat for the lynx, we used the best scientific data available to evaluate areas that contained the PCEs in a spatial arrangement and quantity to provide the physical and biological features essential to the conservation of the species and that may require special management considerations or protection. In evaluating areas for proposal as revised critical habitat, we first determined the geographic area occupied by the species. We used data providing verified evidence of the occurrence of lynx and evidence of the presence of breeding lynx populations as represented by records of lynx reproduction. We focused on records since 1995 to ensure that this critical habitat designation is based on the data that most closely represents the current status of lynx in the contiguous United States and the geographic area occupied by the species at the time of listing. Data that define the historic and current range of the lynx (*e.g.,* McKelvey *et al.* 2000b, pp. 207–232; Hoving *et al.* 2003, entire) constitute the geographic area that may be occupied by the species; therefore, we determined that areas outside the historic distribution are not essential to the conservation of the species. Although the average life span of a wild lynx is not known, we have assumed that a lynx born in 1995 could have been alive in 2000 or 2003, the dates of publication of the final listing rule (64 FR 4483) and our clarification of findings (68 FR 40075). We base this conclusion on the fact that we do not have any information to suggest that lynx habitat has substantially contracted or expanded such that species' range at the time of listing would have been different than the current observations. Clearly, lynx-related research in the contiguous United States substantially increased after we published the 1998 proposal to list lynx, and this research provides additional information on which to base this proposed revised critical habitat designation. However, this is not a reflection of substantial changes to lynx habitat or the range of the lynx since 1995. These recent verified records were provided by Federal research entities, State wildlife agencies, academic researchers, and private individuals or organizations working on lynx (K. Aubry, Pacific Northwest Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data; S. Gniadek, Glacier National Park, unpubl. data; S. Loch, Independent Scientist, and E. Lindquist, Superior National Forest, unpubl. data; K. McKelvey, Rocky Mountain Research Station, unpubl. data; Minnesota DNR 2005 website; R. Moen, University of Minnesota, Natural Resources Research Institute, unpubl. data; J. Squires, Rocky Mountain Research Station, unpubl. data; J. Vashon, Maine Department of Inland Fisheries and Wildlife, unpubl. data).

By accepting only verified recent lynx records, we restricted the available lynx occurrence dataset because we wanted reliable data for the purposes of evaluating areas and features for revised critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species, can be confused with the lynx, which is similar in appearance. Additionally, many surveys are conducted by snow tracking in

which correct identification of tracks can be difficult because of variable conditions affecting the quality of the track and variable expertise of the tracker. Our definition of a verified lynx record is modified from McKelvey *et al.* (2000b, p. 209)—(1) An animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (*e.g.,* McKelvey *et al.* 2006, entire) or (4) location data from radio-or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks. However, we made an exception and accepted snow track data from Maine because of the stringent protocols used in confirming tracks as lynx and the minimal number of species in the area with which lynx tracks could be misidentified (McCollough 2006, entire).

The area occupied by the species was then overlaid with areas that contain boreal forest types. From this overlay we determined which areas contain the essential physical and biological features (*i.e.,* the primary constituent element (PCE) laid out in the quantity and spatial arrangement essential to the conservation of the species) by examining recent lynx records, evidence of breeding lynx populations, and presence of the boreal forest type that is currently occupied by lynx in each particular area and that provides direct connectivity with lynx populations in Canada. Lynx populations in the contiguous United States seem to be influenced by lynx population dynamics in Canada (Thiel 1987; McKelvey *et al.* 2000a, p. 427, 2000c, p. 33). Many of these populations in Canada are directly interconnected with United States' populations, and are likely a source of emigration into the contiguous United States; lynx from the contiguous United States are known to move into Canada. Therefore, we assume that retaining connectivity with larger lynx populations in Canada is important to ensuring long-term persistence of lynx populations in the United States. We assume that, regionally, lynx within the contiguous United States and adjacent Canadian provinces interact as metapopulations. Where available, data on historic average snow depths and bobcat harvest provided additional insight for refining and delineating appropriate boundaries for consideration as revised critical habitat.

In the North Cascades and Northern Rockies, the physical and biological features essential to the conservation of lynx, the majority of lynx records, evidence of reproduction, and the boreal forest types are found above 4,000 feet (ft) (1,219 meters (m)) in elevation (McKelvey *et al.* 2000b, pp. 243–245; McAllister *et al.* 2000, entire). Thus, we limited the delineation of revised critical habitat to lands above this elevation. Additionally, in the North Cascades, physical and biological features essential to the conservation of the lynx, the majority of the lynx records, and evidence of reproduction occur east of the crest of the Cascade Mountains. Therefore, in the Cascades we used the border with Canada, the Cascade crest, and the 4,000-ft (1,219-m) elevation contour east of the crest as the boundary. In the Northern Rockies, the 4,000-ft (1,219-m) contour was used as the primary boundary west of the Continental Divide. However, the climatic effects of the Continental Divide cause the 4,000-ft (1,219-m) elevation contour to be too broad east of the Continental Divide, such that it includes substantial areas of grassland habitats that do not contain the physical and biological features essential to the lynx or are not important for snowshoe hares. Therefore, east of the Continental Divide in the Northern Rockies we used National Forest and National Park Service (NPS) park boundaries to circumscribe proposed revised critical habitat boundaries to more closely encompass essential features; recent records of lynx, including records of reproduction; and boreal forest currently occupied by lynx. The northern boundary for the Northern Rockies unit is the border with Canada.

Delineating proposed revised lynx critical habitat boundaries in the Greater Yellowstone Area (GYA) was more challenging because it is a complex, high elevation ecosystem in which simply following elevation contours would be too broad in that they would encompass extensive areas of non-lynx habitat. Furthermore, the GYA has the least amount of available lynx-related research to assist us in delineating boundaries. Therefore, we drew the boundaries in the GYA around the majority of recent lynx records using a combination of National Forest boundaries and township lines to encompass the lynx habitat in this area.

As discussed above, we are seeking information on whether lands within the GYA contain physical and biological features essential to the conservation of the lynx because the habitat appears to be of lesser quality, and lynx occur at lower densities than the populations found in other units. Although lynx currently occupy the GYA (Murphy *et al.* 2004, entire; J. Squires, Rocky Mountain Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data), their presence has been at a naturally lower level compared to the other areas we are proposing as revised critical habitat. In the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), we concluded that habitat in this area is less capable than other areas of supporting snowshoe hares because it is naturally patchy and contains drier forest types, and because the GYA is disjunct from likely source populations. Within Yellowstone National Park, few lynx were detected during recent surveys (Murphy *et al.* 2004, pp. 8–9) and hare densities were very low (Hodges and Mills 2005, pp. 5–6). Murphy *et al.* (2004, pp. 9–10) concluded that elevations and slope aspects cause lynx habitat in this area to be naturally highly fragmented resulting in low lynx densities. Few lynx were documented in the Wyoming Mountain Range in the southern portion of the ecosystem (Squires and Laurion 2000, pp. 343–345; Squires *et al.* 2001, pp. 9–10). On study sites on the western edge of the Yellowstone ecosystem in Idaho, the subalpine fir vegetation series that comprises lynx and snowshoe hare habitat was found only in naturally small, discontinuous patches (McDaniel and McKelvey 2004, pp. 15–18). In this study area, few stands supported snowshoe hare densities similar to areas known to support lynx (McKelvey and McDaniel 2001, pp. 11–18).

If we determine, based on the best available scientific information and information obtained through public comments, that the GYA does not contain the physical and biological features essential to the conservation of lynx, we will not include it in the final rule. If we determine the area (or portions of it) does contain the features essential to the conservation of lynx, we intend to further refine the critical habitat boundary in the final rule based on improved mapping data and lynx occurrence data. Due to the fragmented mosaic nature of the GYA unit, it will by necessity contain patches of habitat that do not fit into the moist boreal forest types (*e.g.,* dry douglas fir, non-forest, or other habitats that do not support snowshoe hares, hereafter ''matrix habitat'') usually considered lynx habitat. The inclusion of matrix habitat in this and other units is

necessary due to the inclusion of these areas in lynx home ranges and their use as travel habitat as lynx move between foraging and denning areas within their home ranges. Matrix habitat is included because it is interwoven with moist boreal forest types and, therefore, is used by lynx to travel unimpeded between foraging and denning areas within their home ranges. The important aspect of matrix habitat for lynx is that movement through it is not impeded.

We are also seeking information on whether the Kettle Range in north-central Washington is an area essential to the conservation of the lynx in the contiguous United States. Trapping records from the 1960s and 1970s show that the lynx population that once inhabited this area underwent dramatic swings in abundance going from high levels of harvest to low levels several times over two decades (McKelvey 1999, pp. 13–14). Since the 1970s, the area appears to have been unoccupied due to a lack of verifiable reports of lynx. Snow-tracking surveys conducted from 1992 to 1996 in the Kettle Range resulted in only two sets of tracks: one in 1991–1992 and one in 1995–1996. This indicates the lack of a reproducing population of lynx at that time. The Kettle Range currently has suitable lynx habitat (Koehler 2008) and the possibility that lynx occur does exist; however, the lack of verified occurrences since 1995 leads us to conclude that it is not likely to be occupied.

We are not currently proposing any areas outside the geographical area presently occupied by the species because we have determined that occupied areas are sufficient for the conservation of the species because these areas adequately address the concepts of representation, resiliency, and redundancy necessary for conservation of a species (Shaffer and Stein 2000). Resiliency of a species allows the species to recover from periodic disturbance. Areas are resilient if they are relatively large and contain particularly high-quality habitat or if their location or characteristics make them less susceptible to certain threats than other portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. The proposed revised critical habitat addresses the concept of resiliency because the total area of the five units covers a large geographic area (42,753 mi^2 (110,727 km2)), and because it contains the highest quality habitat in the United States. Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. The proposed revised critical habitat addresses the concept of redundancy because it includes five units distributed across a broad geographic area. Catastrophic events that could affect all five units are extremely improbable. Adequate representation insures that the species' adaptive capabilities (often as indicated by genetic diversity) are conserved. Genetic representation is not an issue for lynx, because lynx across the range are similar and all share the same haplotypes (Rueness *et al.* 2003, p. 71). Thus, we have determined that the five units contained in this proposed revised critical habitat address the concept of representation.

Lynx in the southern portion of their range exhibit metapopulation dynamics (*i.e.,* populations exist as semi-isolated subpopulations connected to other subpopulations by migration) (Thiel 1987, p. 94; McKelvey *et al.* 1999, p. 24). The southern extensions of the North American lynx population that extend into the contiguous United States occur in marginal and naturally fragmented habitats and are likely dependent on migration from the core portion of the metapopulation in the Canadian taiga for genetic and demographic enrichment (McCord and Cardoza 1982, p. 729; McKelvey 1999, p. 232). Occupied areas within the current distribution of lynx (except for the reintroduced Colorado population) are the areas that have been most consistently occupied by reproducing populations (McKelvey 1999, pp. 211–232) and are the largest patches of suitable lynx habitat within the range of the DPS. Patches of lynx habitat outside of this occupied range are generally smaller and more isolated and have inconsistent records of lynx presence and reproduction, or no record at all (McKelvey 1999, pp. 211–232). Due to their high mobility, lynx may periodically occupy these areas; however, the lack of consistent occupation and reproduction means that these areas do not materially contribute to persistence of the DPS while the proposed areas clearly do.

In summary, the area occupied by the lynx in the contiguous United States is broadly delineated by the distribution of the southern extensions of boreal forest, which occur in the Northeast (portions of Maine, New Hampshire, Vermont, New York); the western Great Lakes (portions of Minnesota, Wisconsin, Michigan); the Northern Rocky Mountains/Cascades (portions of Washington, Oregon, Idaho, Montana, northwestern Wyoming, Utah); and the Southern Rocky Mountains (portions of Colorado, southeastern Wyoming) (Agee 2000, pp. 39–45; McKelvey *et al.* 2000b, pp. 211–232, 242–253; Hoving *et al.* 2003, pp. 368–373). Within this broad distribution, the recovery outline (Service 2005, entire) delineated core areas that contain consistent, verified records of lynx over time and evidence of reproduction within the past 20 years. The long-term occupation of these general areas by lynx supports the assumption that they contain habitats sufficient in quality and quantity to continue to sustain lynx populations. An additional factor strongly influencing the sustainability of all core areas with the exception of the GYA is their connection with larger lynx populations in Canada. Each proposed revised critical habitat unit occurs within one of the areas identified as core in the recovery outline.

Relationship to Recovery Outline

We considered the lynx recovery outline (Service 2005) when developing this proposed revised critical habitat rule for lynx. However, the recovery outline and this proposed rule contain some differences. Recovery outlines are brief, internally-developed documents intended as preliminary strategies for the conservation of a listed species until a formal recovery plan is completed (Service 1989, entire; Service 1990, p. 6; National Marine Fisheries Service 2004, pp. 3.0–1 to 3.1–1). The lynx recovery outline was prepared by Service staff experienced in lynx conservation and recovery planning under the Act and two lynx experts from the USFS. The lynx recovery outline presented the understanding of historical and current lynx distribution, ecology, and population dynamics at the time it was written in 2005. The outline introduces concepts regarding the relative importance of different geographic areas to the persistence of lynx in the contiguous United States, identifying areas as either core, provisional core, secondary, or peripheral based primarily on lynx records over time and evidence of reproduction. Additionally, the outline describes preliminary recovery objectives and actions.

The recovery outline and this proposed revised critical habitat rule used different standards and criteria. The recovery outline did not consider what areas contain the physical and

biological features that are essential to the conservation of lynx; rather, the preparers concentrated on distinguishing between areas with past or present lynx populations and those with lynx occurrence records that were unlikely to support reproducing populations. In designating critical habitat, we are required to determine those areas that contain the physical and biological features essential to the conservation of lynx within the geographical area occupied by the species. We have determined that areas that contain the physical and biological features essential to the conservation of lynx are those with verified records of lynx persistence into the present time and with verified evidence of reproduction. The areas identified as core in the recovery outline roughly coincide with the areas proposed as revised critical habitat with the following exceptions: (1) Mapping for the purposes of the recovery outline was done on a course scale without refined GIS layers, while the mapping done for the purposes of this proposed rule were more exact; and (2) further analysis shows that some areas considered core in the recovery outline (*e.g.,* the Kettle Range and New Hampshire) do not meet the criteria for core because they do not have long-term evidence of reproduction or current occupancy (see discussion below).

The recovery outline did not define which areas are essential to the conservation of lynx as is necessary for this revised proposed critical habitat designation. The criteria we used for determining areas essential to the conservation of lynx for this proposed revised critical habitat were more narrowly defined than those used for delineating the recovery areas in the lynx recovery outline; in particular, for critical habitat we focused closely on areas with reliable evidence of lynx reproduction since 1995. We used 1995 because of the Act's definition at 3(5)(A)(i) that occupied habitat include specific areas within the geographical area occupied by the species at the time it is listed. We believe that the documented lynx observations since 1995 best depict the range of the species both at the time it was listed (2000) and at the time of our clarification of findings (2003). Furthermore, the boundaries for the recovery areas were drawn on a gross scale compared to the proposed revised critical habitat boundaries. As a result, the proposed revised critical habitat units are subsets of five of the six areas preliminarily delineated as core in the lynx recovery outline.

In this revision, we do not propose revised critical habitat in one area the recovery outline defined as core: the Kettle Range in north-central Washington. The Kettle Range historically supported lynx populations (Stinson 2001, pp. 13–14). However, although boreal forest habitat within the Kettle Range appears of high quality for lynx, there is no evidence that the Kettle Range is currently occupied by a lynx population nor has it been for at least two decades (McKelvey 1999, p. 228; Koehler 2008, entire). Furthermore, it does not have recent (*i.e.*, 20 years) evidence of reproduction. Thus, it does not meet the criteria for ''core'' outlined in the recovery outline (Service 2005, p. 5). Snowtracking surveys conducted from 1992 to 1996 in the Kettle Range resulted in only two sets of tracks: one in 1991–1992 and one in 1995–1996 (McKelvey 1999, p. 228), indicating that although lynx may have been able to reach the range, they were unable to establish a population there. The above described attributes of the Kettle Range indicate that while this area may be considered a core area in the recovery outline, its importance for lynx conservation is less than those areas that we consider essential for the conservation of lynx due to their historic and recent history of reproduction and population occupation. We have made the preliminary determination that the area is not essential for the conservation of lynx; therefore, we do not propose to include it as revised critical habitat.

Likewise, the areas included in the recovery outline as core in western Maine and New Hampshire do not appear now to meet the criteria for core. No lynx were detected in New Hampshire and western Maine in the course of surveys done according to the standard lynx protocol for this region in 2005 (for New Hampshire) and 2006–2007 (in western Maine) (McCullough 2008, entire).

The recovery outline identified the Southern Rocky Mountains as a ''provisional core'' because of the current uncertainty that ongoing lynx reintroduction efforts will result in a self-sustaining lynx population. Native lynx were functionally extirpated from their historic range in Colorado and southern Wyoming in the Southern Rocky Mountains by the time the lynx was listed in 2000. In 1999, the State of Colorado began an intensive effort to reintroduce lynx. Initial results of this reintroduction were encouraging, with documented rates of reproduction similar to other lynx populations in the DPS (Shenk 2007, pp. 12–13). However, subsequent monitoring indicates that rates of reproduction have fallen in recent years, with zero reproduction detected for 34 females with radio collars in 2007 (Shenk 2007, p. 13). Although it is still too early to determine whether the introduction will result in a self-sustaining population, the reintroduced lynx have produced kittens and now are distributed throughout the lynx habitat in Colorado and southern Wyoming. These animals are not designated as experimental under section 10(j) of the Act. Although Colorado's reintroduction effort is an important step toward the recovery of lynx, we do not propose habitat in the Southern Rockies for revised designation because of the current uncertainty that a self-sustaining lynx population will become established. Determination of establishment will be based on the maintenance of a stable or naturally oscillating population structure composed of breeding individuals derived from wild mating and births (rather than introduced animals). A population that has demonstrated robustness to natural fluctuations due to oscillations in prey abundance is key to determining that they are established.

Many areas within the contiguous United States contain varying levels of individual lynx records with no evidence of persistent, reproducing lynx populations. Our review of many years of occurrence records reveals lynx records in areas with unsuitable habitats or snow conditions. However, we do not consider these areas capable of supporting lynx populations because they do not have the habitat or snow conditions suitable for lynx or snowshoe hare. Lynx occurrence in these areas is due to the population dynamics of lynx and their dispersal abilities that lead to lynx attempting to colonize new areas with little ability to support lynx reproduction. That is why we rely on a combination of consistent, verifiable evidence of lynx presence and reproduction, along with habitat characteristics to delimit critical habitat. Reliance on occurrence records alone, without consideration of reproduction and habitat variables, would lead to designation of large areas that may occasionally hold dispersing lynx for a short time, but due to their marginal nature and lack of sufficient food supply, will not support lynx reproduction and so do not contribute to lynx conservation. It is unlikely that these areas support undocumented, persistent populations of lynx because the forest types, snow conditions, and snowshoe hare populations are absent or are of such marginal condition due to

natural fragmentation that their ability to support lynx is minimal. In many cases these areas also support populations of bobcats, a species that excludes lynx from areas with low snow accumulation and act as a general indicator of habitat that cannot support lynx. Most of the records in these areas are likely a result of wide-ranging dispersal events through less suitable habitats that are mostly disjunct from areas that contain persistent lynx populations. Our recovery outline defines these areas as secondary or peripheral (see Service 2005, p. 21 for a map of core, secondary, and peripheral areas), and their role in sustaining persistent lynx populations is unclear. Such areas may provide habitat to dispersing lynx, especially when populations are extremely high and some of these animals may eventually settle in areas capable of supporting lynx populations. Areas delineated as secondary or peripheral in the lynx recovery outline are not included in our proposed revised critical habitat designation because they lack evidence of reproducing lynx populations and they lack large areas of contiguous habitat required to support populations. During natural lynx population fluctuations, these peripheral areas are likely to be the last areas to be colonized by excess lynx and the first to lose lynx as populations recede. We expect the areas in the proposed revised units to maintain lynx populations through natural population lows and serve as source populations for secondary areas as populations expand. We expect the areas in the proposed revised units will support lynx through cyclic population fluctuations, the most crucial time being the population lows. We consider the proposed revised units as the areas essential to provide for the long-term conservation of lynx across its contiguous United States range, as it is these areas that will serve as source populations for secondary areas as the populations expand. For this reason, we have determined the units in this proposed revision contain the physical and biological features essential to the conservation of lynx while other areas do not.

We propose critical habitat on lands we have determined were occupied at the time of listing; currently support the most abundant, reproducing lynx populations in the contiguous United States; and contain the physical and biological features essential to the conservation of the lynx and that may require special management. The focus of our proposed critical habitat revision is on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations necessary to support interbreeding lynx populations or metapopulations over time. Individual lynx maintain large home ranges; the areas proposed as revised critical habitat are large enough to encompass multiple home ranges. A secondary consideration is that, in addition to supporting breeding populations, these areas provide connectivity among patches of foraging habitat (*e.g.*, patches containing abundant snowshoe hares), whose locations in the landscape shift through time.

When determining proposed revised critical habitat boundaries within this proposed rule, we made every effort to avoid including water bodies (lakes, rivers, and streams) and developed areas such as buildings, paved areas, and other structures that lack the physical and biological features essential for the conservation of the lynx. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as revised critical habitat. Therefore, Federal actions involving these areas would not trigger consultation under section 7 of the Act with respect to critical habitat, unless the specific action would affect the primary constituent element.

Proposed Revised Critical Habitat Designation

We are proposing five units as revised critical habitat for the lynx. These areas occur in northern Maine, northeastern Minnesota, the Northern Rocky Mountains (northwestern Montana/northeastern Idaho), the North Cascades (north-central Washington), and the GYA (southwestern Montana, northwestern Wyoming). The areas are distributed across the known occupied range of the lynx in the contiguous United States, and are essential to the conservation of the species. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for lynx. To better understand the location of these proposed areas, please see the associated maps found within this proposed rule or examine them at *http://mountain-prairie.fws.gov/species/mammals/lynx/*. The five proposed revised critical habitat units are: (1) Northern Maine unit; (2) Northeastern Minnesota unit; (3) Northern Rocky Mountains unit (northwestern Montana/northeastern Idaho); (4) North Cascades unit (north-central Washington); and (5) Greater Yellowstone Area (southwestern Montana, northwestern Wyoming).

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE CANADA LYNX

Critical habitat unit	Miles [2]	Kilometers [2]
1. Northern Maine	10,633	27,539
2. Northeastern Minnesota	8,226	21,305
3. Northern Rocky Mountains (ID/MT)	11,304	29,276
4. North Cascades (WA)	2,000	5,180
5. Greater Yellowstone Area (MT/WY)	10,590	27,427
Total	42,753	110,727

TABLE 2.—CRITICAL HABITAT PROPOSED FOR THE CANADA LYNX BY LANDOWNERSHIP AND STATE (MI^2/KM^2)

	Federal	State	Private	Tribal	Other
Idaho	50/131	1/3	0/0	0/0	0/0
Maine	13/34	758/1,962	9,741/25,230	86/223	35/90
Minnesota	4,279/11,082	1,099/2,848	1,548/4,008	72/187	1,149/2,976
Montana	11,182/28,960	372/964	1,985/5,140	347/898	72/188

TABLE 2.—CRITICAL HABITAT PROPOSED FOR THE CANADA LYNX BY LANDOWNERSHIP AND STATE (MI²/KM²)—Continued

	Federal	State	Private	Tribal	Other
Washington	1,831/4,742	164/424	5/13	0/0	0.1/0.2
Wyoming	7,695/19,930	14/36	133/343	0/0	43/110
Total	25,050/64,879	2,408/6,237	13,412/34,737	505/1,308	1,299/3,364

We present brief descriptions of each critical habitat unit below.

Unit 1: Northern Maine [10,633 mi² (27,539 km²)]

Unit 1 is located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties. This area was occupied by the lynx at the time of listing and is currently occupied by the species. Lynx in northwestern Maine have high productivity: 91 percent of available adult females (greater than 2 years) produced litters, and litters averaged 2.83 kittens (Vashon *et al.* 2005b, pp. 4–6). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is also important for lynx conservation because it is the only area in the northeastern region of the lynx's range within the contiguous United States that currently supports breeding lynx populations and likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the Northeast. Timber harvest and management is the dominant land use within the unit; therefore, special management is required depending on the silvicultural practices conducted (68 FR 40075). Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, other habitat-related threats to lynx are lack of an International conservation strategy for lynx, traffic, and development (68 FR 40075).

Unit 2: Northeastern Minnesota [8,226 mi² (21,305 km²)]

Unit 2 is located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties, and Superior National Forest. In 2003, when we last formally reviewed the status of the lynx, numerous verified records of lynx existed from northeastern Minnesota (68 FR 40076, July 3, 2003). The area was occupied at the time of listing and is currently occupied by the species. Lynx are currently known to be distributed throughout northeastern Minnesota, as has been confirmed through DNA analysis, radio- and GPS-collared animals, and documentation of reproduction (Moen *et al.* 2004, entire; Minnesota DNR 2005, entire; S. Loch, unpubl. data; Minnesota Department of Natural Resources, unpubl. data). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it is the only area in the U.S. Great Lakes region for which we have evidence of recent lynx reproduction. It likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the region. Timber harvest and management is a dominant land use (68 FR 40075). Therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, lack of an International conservation strategy for lynx, fire suppression or fuels treatment, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

Specific sections of land encompassing a mining district in Minnesota known as the Iron Range are not included in this proposed revised designation because they do not contain the physical and biological features essential to the conservation of lynx. In much of the Iron Range, mining has removed all vegetation and much of this area was subsequently flooded. Areas that are still vegetated and not flooded are extensively fragmented by the mined areas and haul roads. We used the ''GAP Land Cover—Tiled Raster'' dataset (Minnesota Department of Natural Resources 2002) to identify sections that are heavily influenced by mining activities. Areas described as ''Barren'' and ''Mixed Developed'' in the GAP dataset seemed to correspond to areas that were mined or extensively disturbed by mining-related activities (*e.g.,* service roads), based on aerial photos (National Agricultural Imagery Program 2003). Further inspection of the aerial photos indicate there are additional sections with extensive effects of mining, beyond that indicated by the GAP data, which is based on 10–15-year-old satellite imagery. These disturbed areas are not proposed as revised lynx critical habitat.

Unit 3: Northern Rocky Mountains [11,304 mi² (29,276 km²)]

Unit 3 is located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties in Montana. It includes the Flathead Indian Reservation, National Forest lands, and Bureau of Land Management (BLM) lands in the Garnet Resource Area. This area was occupied by lynx at the time of listing and is currently occupied by the species. Lynx are known to be widely distributed throughout this unit and breeding has been documented in multiple locations (Gehman *et al.* 2004, pp. 24–29; Squires *et al.* 2004a, pp. 7–10 and 2004b, pp. 8–10). This area contains the physical and biological features essential to the conservation of the lynx as it is comprised of the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range. It likely acts as a source for lynx and provides connectivity to other portions of the lynx's range in the Rocky Mountains, particularly the Yellowstone area. Timber harvest and management is a dominant land use (68 FR 40075); therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, fire suppression or fuels treatment, lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

Unit 4: North Cascades [2,000 mi² (5,180 km²)]

Unit 4 is located in north-central Washington in portions of Chelan and Okanogan Counties, and includes BLM lands in the Spokane District. This area

was occupied at the time lynx was listed and is currently occupied by the species. This unit supports the highest densities of lynx in Washington (Stinson 2001). Evidence from limited recent research and DNA shows lynx distributed within this unit, with breeding being documented (von Kienast 2003, p. 36; K. Aubry, Pacific Northwest Research Station, unpubl. data; B. Maletzke, Washington State University, unpubl. data). Although there appear to be fewer records in the portion of the unit south of Highway 20, few surveys have been conducted in this portion of the unit. This area contains boreal forest habitat and the components essential to the conservation of the lynx. Further, it is contiguous with the portion of the unit north of Highway 20, particularly in winter when deep snows close Highway 20. The northern portion of the unit adjacent to the Canadian border also appears to support few recent lynx records; however, it is designated wilderness, so access to survey this area is difficult. This northern portion contains extensive boreal forest vegetation types and the components essential to the conservation of the lynx. Additionally, lynx populations exist in British Columbia directly north of this unit (E. Lofrothe, British Columbia Ministry of the Environment, unpubl. data). This area contains the physical and biological features essential to the conservation of the lynx as it contains the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it is the only area in the Cascades region of the lynx's range that is known to support breeding lynx populations. Timber harvest and management is a dominant land use; therefore, special management is required depending on the silvicultural practices conducted. Timber management practices that provide for a density understory are beneficial for lynx and snowshoe hares. In this area, Federal land management plans have not been amended to incorporate lynx conservation. The lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075).

Unit 5: Greater Yellowstone Area [10,590 mi² (27,427 km²)]

Unit 5 is located in Yellowstone National Park and surrounding lands in southwestern Montana and northwestern Wyoming. Lands in this unit are found in Gallatin, Park, Sweetgrass, Stillwater, and Carbon Counties in Montana, and Park, Teton, Fremont, Sublette, and Lincoln Counties in Wyoming. This area was occupied by lynx at the time of listing and is currently occupied by the species. The area contains the physical and biological features essential to the conservation of the lynx as it contains the primary constituent element and its components laid out in the appropriate quantity and spatial arrangement. The GYA is naturally marginal lynx habitat with highly fragmented foraging habitat. For this reason lynx home ranges in this unit are likely to be larger and incorporate large areas of non-foraging matrix habitat. In this area, fire suppression or fuels treatment, lack of an International conservation strategy for lynx, traffic, and development are other habitat-related threats to lynx (68 FR 40075). Therefore, special management is required depending on the fire suppression and fuels treatment practices conducted and the design of highway development projects.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Jones 2004, p. 3).

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us in most cases. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify critical habitat, but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We then define ''Reasonable and Prudent Measures'' considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific ''Terms and Conditions'' that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect lynx or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or an activity involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent element(s) to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for lynx. Generally, the conservation role of the proposed revised lynx critical habitat units is to support viable populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that that when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and therefore should result in consultation for the lynx include, but are not limited to, the following:

(1) Actions that would reduce or remove understory vegetation within boreal forest stands. Such activities could include, but are not limited to, pre-commercial thinning or fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support persistent lynx populations is at least temporarily diminished. Where moist boreal forest stands occur in a mosaic along with matrix habitat, the above described activities within the matrix habitat portions of the unit would not affect the physical and biological features essential to the conservation of the lynx.

(2) Actions that would cause permanent loss or conversion of the boreal forest. Such activities could include, but are not limited to, recreational area developments, certain types of mining activities and associated developments, and road building. Such activities would eliminate and fragment lynx and snowshoe hare habitat. Where moist boreal forest stands occur in a mosaic surrounded by matrix habitats, the above described activities within the matrix habitat portion of the unit would not affect the physical and biological features essential to the conservation of the lynx.

(3) Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx and could result in increased mortality of lynx within the proposed revised critical habitat units as lynx are highly mobile and frequently cross roads during dispersal, exploratory movements, or travel within their home ranges.

Note that the scale of these activities would be a crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat for the survival and recovery of lynx would be appreciably diminished.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone No.
Maine	1168 Main Street, Old Town, Maine 04468	(207) 827–5938
Minnesota	4101 East 80th Street, Bloomington, Minnesota 55425	(612) 725–3548
Montana	585 Shepard Way, Helena, Montana 59601	(406) 449–5225
Idaho and Washington	11103 E. Montgomery Drive, Spokane, Washington 99206	(509) 893–8015
Wyoming	5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009	(307) 772–2374

Application of Section 4(a)(3)(B)(i) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed Integrated Natural Resource Management Plan within the proposed revised critical habitat designation.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we must consider economic impacts. We also consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether landowners having proposed critical habitat on their lands have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social or other impacts that might occur because of the designation. The National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) analysis we will conduct may also disclose other impacts we may consider in our section 4(b)(2) analysis.

We are conducting an updated economic analysis of the impacts of the proposed critical habitat designation, which will be available for public review and comment when it is complete. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

Relationship of Critical Habitat to Tribal Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments''; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goal of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We believe that conservation of lynx can be achieved off of Tribal lands within the critical habitat units or with the cooperation of Tribes; the amount of Tribal lands within the proposed revised units is relatively small: 86 mi^2 (223 km^2) in the Maine unit; 72 mi^2 (187 km^2) in the Minnesota unit; and 347 mi^2 (898 km^2) in the Northern Rocky Mountains unit. No Tribal lands occur within the North Cascades and GYA units. We have requested comment with regard to the Tribal lands in the Northern Rocky Mountains, Maine, and Minnesota and whether the conservation of lynx can occur with designation of critical habitat on other lands.

The Tribal lands in the Northern Rockies unit (portions of the Flathead Indian Reservation) are managed by the Confederated Salish and Kootenai Tribes (CSKT) under a Forest Management Plan that incorporates the provisions of the LCAS (CSKT 2000). The Tribes manage these lands in a way that is consistent with lynx conservation.

TRIBAL LANDS UNDER CONSIDERATION FOR EXCLUSION FROM FINAL DESIGNATION AS CRITICAL HABITAT

Critical habitat unit	Reservation or tribe
Maine	Maliseet Tribe.
	Micmac Tribe.
	Passamaquoddy Tribe.
	Penobscot Tribe.
Minnesota	Grand Portage Indian Reservation.
	Vermillion Lake Indian Reservation.
Northern Rocky Mountains.	Flathead Indian Reservation.
North Cascades	None.
Greater Yellowstone Area.	None.

Economic Analysis

We conducted an analysis of the potential economic impacts of proposing critical habitat for the lynx in 2006 when we designated critical habitat. We will update that analysis with any new information that may be available in addition to considering the economic impacts on lands that are proposed in this revision but that were not previously proposed. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available on the Internet at *www.regulations.gov*, on the Internet at *http://www.mountain-prairie.fws.gov/species/mammals/lynx/*, or by contacting the Montana Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these

peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of revised critical habitat.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to an address listed in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review (E.O 12866)

This document is not a significant rule and the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA, 5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Based on our 2005 proposed designation of critical habitat for lynx (70 FR 68294) and associated draft economic analysis, we conducted a preliminary evaluation of the effects to a substantial number of small entities by considering the number of small entities affected within particular types of economic activities (*e.g.,* timber, recreation, public and conservation land management, transportation, and mining). We considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; other activities are not affected by the designation.

If this revised proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Private companies may also be subject to consultation or mitigation impacts.

Several of the activities potentially affected by lynx conservation efforts within the study area (timber, recreation, grazing) involve small businesses. Given the rural nature of the proposed designation, most of the potentially affected businesses in the affected regions are small.

Our draft economic analysis of the 2005 proposed designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in the following categories: timber activities; residential and commercial development; recreation; public lands management and conservation planning; transportation, utilities, and municipal activities; and mining operations. Based on our analysis, impacts associated with small entities are anticipated to occur to timber activities, recreation, public lands management, conservation planning, transportation, and mining. Because no information was available regarding how residential and commercial development may be affected by lynx conservation, the analysis does not quantify specific impacts to residential and commercial development but rather provides the full option value for development within the study area. Thus, residential and commercial development impacts to small entities are not addressed in the SBREFA screening analysis. We are seeking comments from potentially affected small entities involved in timber activities, residential and commercial development, recreation, and mining. The following is a summary of the information contained in the draft economic analysis:

(a) Timber Activities

According to the draft economic analysis for the 2005 proposed critical habitat, impacts on timberlands have historically resulted from implementation of lynx management plans and project modifications. The majority of forecast impacts on timber relate to potential restrictions on pre-commercial thinning, with nearly half of these impacts occurring on private timberland in Maine. The economic analysis applied two scenarios to bound the impacts resulting from potential changes to timber activities. Under Scenario 2, the upper bound, timber impacts range from $15.6 million (discounted at 7 percent) to $33.3 million (discounted at 3 percent) over 20 years. When compared to forestry-related earning across counties in the study area ($454 million in 2003), these potential losses are approximately 3 to 7 percent of total forestry-related earnings. Total forecast impacts to timber activities range from $117 million to $808 million over 20 years. Exhibits C–1 through C–4 of the economic analysis quantify the small timber companies that may be affected by the proposed rule. However, the draft economic analysis states that it is uncertain whether private timber companies will be affected by the designation of critical habitat. Government agencies, such as the U.S. Forest Service, are subject to critical habitat consultations.

(b) Residential and Commercial Development

Because specific information on how residential and commercial development projects would mitigate for impacts to lynx and its habitat is unknown, the draft economic analysis does not attempt to quantify the economic impacts of mitigating development activities. Instead, it presents the full value that may be derived from potential future development within the potential critical habitat. The total projected future development value of areas proposed for designation as critical habitat for the lynx is approximately $2.26 billion. Approximately 69.1 percent ($1.56 billion) of this is the value of future development in Minnesota (Unit 2); 25.7 percent ($579 million) of this is the value of future development in Maine (Unit 1), of which $1.57 million is proposed for exclusion; and 5.2 percent ($117 million) of this is the value of future development in Montana. Lands

proposed for critical habitat in Washington are characterized by public lands managed for timber and recreation. As such, residential and commercial development is not considered to be a future land use, and the value of these lands for future development is considered to be negligible. Recognizing that approximately 80 percent of the projected value of potential future residential and commercial development within the area proposed as critical habitat consist of lands within Minnesota and recognizing the potential effects on landowners and development companies, we will consider this information pursuant to section 4(b)(2) of the Act during the development of the final designation.

No North American Industry Classification System (NAICS) code exists for landowners, and the Small Business Administration does not provide a definition of a small landowner. However, recognizing that it is possible that some of the landowners may be small businesses, this analysis provides information concerning the number of landowners potentially affected: An upward estimate of 38 in Maine, 53 in Minnesota, and 110 in Montana. It is possible that a portion of these affected landowners could be small businesses in the residential or commercial land development industry or could be associated businesses, such as builders and developers. Actual conservation requirements undertaken by an individual landowner will depend on how much of a parcel lies within or affects proposed critical habitat. Individual single-family home development has not historically been subject to consultation or habitat conservation requirements for lynx, although consultation could be required if Federal permits from the Army Corps of Engineers, Environmental Protection Agency, or Federal Emergency Management Agency are required.

For these reasons and because the scale of this revised proposed critical habitat is significantly different than the 2005 proposed critical habitat, we are requesting comments from any potentially affected small businesses involved in residential and commercial development activities, about the impacts resulting from the proposed designation of critical habitat. How will small businesses, such as landowners, builders or developers be affected by this critical habitat designation? The economic analysis presents the full potential development value of impacted lands within the potential critical habitat as a baseline, but does not provide a cost estimate. How could this estimate be refined to demonstrate how small businesses in the residential and commercial development field will be affected by this critical habitat designation? What would you suggest as another measure of these costs?

(c) Recreation

Recreational activities that have the potential to affect the lynx and its habitat include over-the-snow trails for snowmobiling and cross-country skiing, accidental trapping or shooting, and recreation area expansions such as ski resorts, campgrounds, or snowmobile areas. Total forecast costs to all recreation activities in areas proposed for designation are $1.05 to $3.46 million, or an annualized estimate of $57,600 to $178,000 (applying a 7 percent discount rate) or $54,500 to $175,000 (applying a 3 percent discount rate). Impacts to recreation activity forecast in the draft analysis include welfare impacts to individual snowmobilers; however, the level of participation is not expected to change. As no decrease in the level of snowmobiling activity is forecast, impacts to small businesses that support the recreation sector are not anticipated.

Because the scale of this revised proposed critical habitat is significantly different than the 2005 proposed critical habitat, we are requesting comments from any potentially affected small businesses in the involved in recreation activities, about the impacts resulting from the proposed designation of critical habitat. What are the estimated cost impacts of this proposed designation to your small business?

(d) Public lands management and conservation planning

The draft economic analysis for the 2005 proposed critical habitat estimates that total post-designation costs of lynx conservation efforts associated with public and conservation lands management in areas proposed for designation to be approximately $12.8 million over the next 20 years, or an annualized cost of $940,000 (present value applying a 7 percent discount rate) or $767,000 (applying a 3 percent discount rate). The majority of public lands are managed by Federal and State entities that do not qualify as small businesses. As such, designation of critical habitat for lynx is not anticipated to have a significant impact on a substantial number of small businesses involved in public lands management or conservation planning.

(e) Transportation, Utilities, and Municipal Activities

The draft economic analysis for the 2005 proposed critical habitat estimates that total post-designation costs resulting from lynx conservation efforts associated with transportation, utilities, and municipal activities for areas proposed for designation will range from $34.9 million to $55.1 million over the next 20 years, or an annualized value of $1.9 to 2.9 million (present value applying a 7 percent discount rate) or $1.8 to $2.8 million (present value applying a 3 percent discount rate). Of the total post-designation costs, approximately 71 percent are attributed to transportation activities, and 29 percent are attributed to utility and municipal activities. Impacts to transportation and municipal projects are expected to be borne by the Federal and State agencies undertaking lynx-related modifications to these types of projects, including the Federal Highway Administration, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and State transportation departments. Since Federal and State entities do not qualify as small businesses, the designation of critical habitat for the lynx is not anticipated to have a significant impact on a substantial number of small businesses associated with transportation, utilities, and municipal activities.

Impacts to dam projects, including costs of remote monitoring for lynx that could be required for relicensing of dams, could be borne by the companies that own the dams. In particular, 14 dams in Minnesota and two in Maine are expected to consider lynx conservation at the time of relicensing. The economic analysis estimated costs of $13,000 to $18,000 to each of these 16 dam projects in 2025. Based on these small costs, we do not anticipate that this would be a significant impact to dam operators.

(f) Mining Operations

The draft economic analysis for the 2005 proposed critical habitat estimates total post-designation costs resulting from lynx conservation efforts associated with mining projects of approximately $430,000, or an annualized rate of $38,000 (present value applying a 7 percent discount rate) or $28,100 (present value applying a 3 percent discount rate). Unit 2 (Minnesota) is the only area of potential critical habitat for which future surface mining expansion and development projects have been identified; specifically, three new or expanded mining projects are forecast to occur on leased lands of Superior National Forest. The greatest impact estimated is $375,000 or an annualized impact of $33,100 for the East Reserve Mine, which has a total value of $819 million,

which equates to less than a 1 percent annual impact to the mine relative to its total value. There is an uncertainty for realized impacts on the mining industry from lynx conservation activities.

Because the scale of this revised proposed critical habitat is significantly different than the 2005 proposed critical habitat, we are requesting comments from any potentially affected small businesses involved in the mining industry, about the impacts resulting from the proposed designation of critical habitat. What are the estimated cost impacts of this proposed designation to your small business?

We evaluated small business entities relative to the revised proposed designation of critical habitat for the lynx to determine potential effects to these business entities and the scale of any potential impact using, in part, the draft economic analysis for the 2005 proposed critical habitat. Based on our analysis, there may be potential projected impacts associated with small entities in the areas of timber activities, recreation, public lands management, conservation planning, transportation, and mining. There is also a possibility of potential projected impacts to development activities. Due to the lack of information, the economic analysis for this critical habitat does not attempt to assign development impacts to specific small entities, rather leaving open the question of whether any small entities will be affected. We have outlined above potential projected future impacts to these entities resulting from conservation-related activities for the lynx, and asked potential affected small entities for input as to what the likely impacts will be for their industry sectors. We do, however, recognize that there may be disproportionate impact to certain sectors and geographic areas within lands proposed for designation. As such, we will more fully evaluate these potential impacts during the development of the final designation, and may, if appropriate, consider such lands for exclusion pursuant to section 4(b)(2) of the Act.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) On the basis of the economic analysis for our previous designation of critical habitat for the lynx in 2006, we do not believe that this rule will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, we do not believe that a Small Government Agency Plan is required at this time. However, as we conduct our revised economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for the lynx in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the lynx does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, our previous proposed critical habitat designation with appropriate State resource agencies in Idaho, Maine, Minnesota, Montana, Washington, and Wyoming. The information gathered in that coordination effort was used in this revised proposal. We believe that the designation of critical habitat for the lynx will have little incremental impact on State and local governments and their activities. The designation of critical habitat in areas currently occupied by the lynx imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the PCE necessary to support the life processes of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case consultations under section 7 of the Act to occur).

Civil Justice Reform

In accordance with E.O. 12988, (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the lynx.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996). However, when the range of the species includes States within the tenth circuit, such as that of the lynx, under the tenth circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of a NEPA document for this proposal.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, the Department of Interior's manual at 512 DM 2, and Secretarial Order 3206, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Tribal lands in the Maine, Minnesota, and Northern Rocky Mountains units are included in this proposed designation; however, we are asking the public if Tribal lands need to be included as critical habitat in light of Secretarial Order 3206.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to revise critical habitat for the lynx is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it to significantly affect energy supplies, distribution, or use based on the economic analysis we completed for the 2005 proposed lynx critical habitat rule. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available online at *http://mountain-prairie.fws.gov/species/mammals/lynx/* or upon request from the Field Supervisor, Montana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary author(s) of this package are staff from the Maine and Montana Ecological Services Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(a), revise the entry for ''Canada lynx *(Lynx Canadensis)''* to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Canada lynx *(Lynx canadensis)*

(1) Critical habitat units are depicted on the maps below for the following States and counties:

(i) Idaho: Boundary County;

(ii) Maine: Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties;

(iii) Minnesota: Cook, Koochiching, Lake, and St. Louis Counties;

(iv) Montana: Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, Teton, Gallatin, Park, Sweetgrass, Stillwater, and Carbon Counties;

(v) Washington: Chelan and Okanogan Counties; and

(vi) Wyoming: Park, Teton, Fremont, Sublette, and Lincoln Counties.

(2) Within these areas the primary constituent element for the Canada lynx is boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(i) Presence of snowshoe hares and their preferred habitat conditions, including dense understories of young trees or shrubs tall enough to protrude above the snow;

(ii) Winter snow conditions that are generally deep and fluffy for extended periods of time;

(iii) Sites for denning having abundant, coarse, woody debris, such as downed trees and root wads; and

(iv) Matrix habitat (*e.g.,* hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range. The important aspect of matrix habitat for lynx is that these habitats retain the ability to allow unimpeded movement of lynx through them as lynx travel between patches of boreal forest.

(3) Critical habitat does not include waterbodies (lakes, rivers, streams), or man-made structures existing on the effective date of this rule, such as buildings, airports, paved and gravel roadbeds, active railroad beds, and the land on which such structures are located. Critical habitat does not include the following towns or populated areas as they exist now:

(i) *Maine:* Allagash, Ashland, Chapman, Dennistown, Dickey, Eagle Lake, Frenchville, Grindstone, Jackman, Kokadjo, Oxbow, Portage, Rockwood, Saint Francis, Saint John, Smyrna Center, Wallagrass, Winterville.

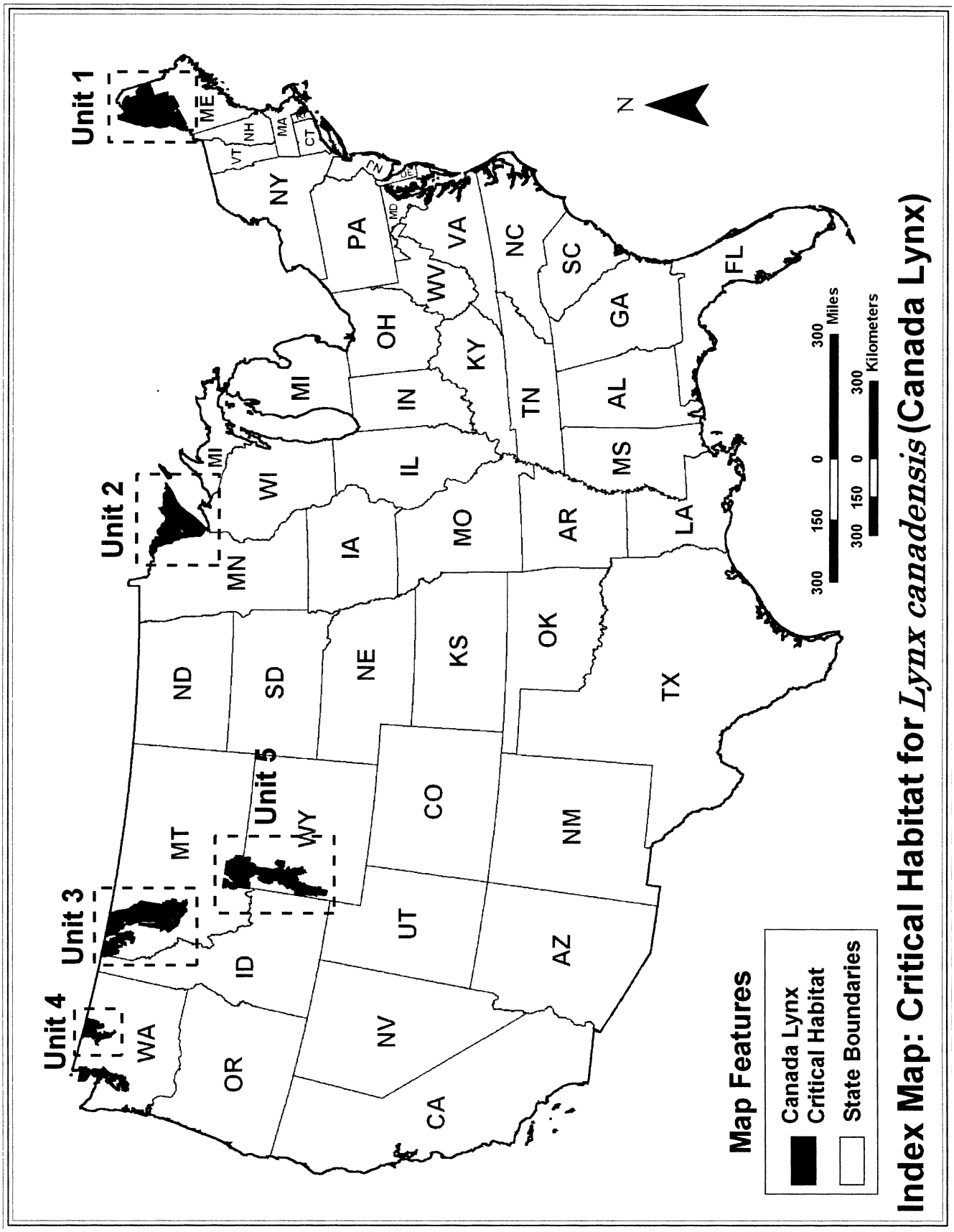
(ii) *Minnesota:* Alger, Allen, Angora, Arnold, Aurora, Babbitt, Baptism Crossing, Bartlett, Beaver Bay, Beaver Crossing, Belgrade, Bell Harbor, Biwabik, Breda, Brimson, Britt, Burntside, Burntside Lake, Buyck, Canyon, Castle Danger, Chippewa City, Clappers, Clifton, Cook, Cotton, Covill, Cramer, Crane Lake, Croftville, Cusson, Darby Junction, Duluth, Duluth Heights, Eagles Nest, East Beaver Bay, Ely, Embarrass, Fairbanks, Falls Junction, Finland, Forest Center, Forsman, Four Corners, Fredenberg, French River, Gappas Landing Campground, Genoa, Gheen, Gheen Corner, Gilbert, Glendale, Grand Portage, Grand Marais, Greenwood Junction, Haley, Happy Wanderer, Highland, Hornby, Hovland, Hunters Park, Idington, Illgen City, Isabella, Island View, Jameson, Jay See Landing, Jordan, Kabetogama, Kelly Landing, Kettle Falls, Knife River, Lakewood, Larsmont, Lauren, Lax Lake, Leander, Lester Park, Little Marais, Little Marais Postoffice, London, Lutsen, Makinen, Manitou Junction, Maple, Maple Hill, Markham, Martin Landing, McComber, McNair, Melrude, Midway, Murphy City, Murray, Norshor Junction, Orr, Palmers, Palo, Peyla, Pigeon River, Pineville, Prairie Portage, Ranier, Red Rock, Reno, Robinson, Rollins, Rothman, Salo Corner, Sawbill Landing, Schroeder, Scott Junction, Section Thirty, Sha-Sha Resort, Shaw, Silver Bay, Silver Creek, Silver Rapids, Skibo, Soudan, South International Falls, Sparta, Spring Lodge Resort and Marina, Stewart, Taconite Harbor, Taft, Thunderbird Resort, Tofte, Toimi, Tower, Tower Junction, Two Harbors, Wahlsten, Wakemup, Waldo, Wales, Wheeler Landing, White Iron, Whiteface, Whyte, Winter, Winton, Woodland, York.

(iii) *Montana:* Aldridge, Alpine, Avon, Beartown, Bison, Blacktail, Blossburg, Brock Creek, Calamity Janes Trailer Court, Cassidy Curve, Coloma, Contact, Cooke City, Copper Cliff, Corwin Springs, Coughlin, Crystal Ford, Crystal Point, Dodge Summit, Dutton, Electric, Elliston, False Summit, Finn, Forest Heights, Frontier Town, Gardiner, Garnet, Geary, George Norman Trailer Court, Helmville, Huckleberry Trailer Court, Independence, Jardine, Keiley, Kotke, Limestone, Lincoln, Mannix, McDonald, McGillvary, Meyers Creek, Mountain View, Ovando, Packers, Quigley, Reynolds City, Ricci Trailer Terraces, Rising Sun, Riverside, Rocky Mountain Trailer Park, Silver Gate, Singleshot, Siyeh Bend, Skyline, Snowslip, Sperry Chalets, Sphinx, Springtown, Stoner Place, Summit, Swiftcurrent, Three Forks, Top O'Deep, White City, Woodworth, Yreka.

(iv) *Wyoming:* Afton, Bannock Ford, Bedford, Bondurant, Buffalo Ford, Canyon Junction, Canyon Village, Devils Den, DuNoir, Etna, Fossil Forest, Hoback, Hoback Junction, Jack Pine, Mammoth, Osmond Community, Pahaska Tepee, Sylvan Bay Summer Home Area, Thayne, Tower Junction, Turnerville, Yanceys.

(4) Index map for lynx critical habitat follows:

BILLING CODE 4310–55–P

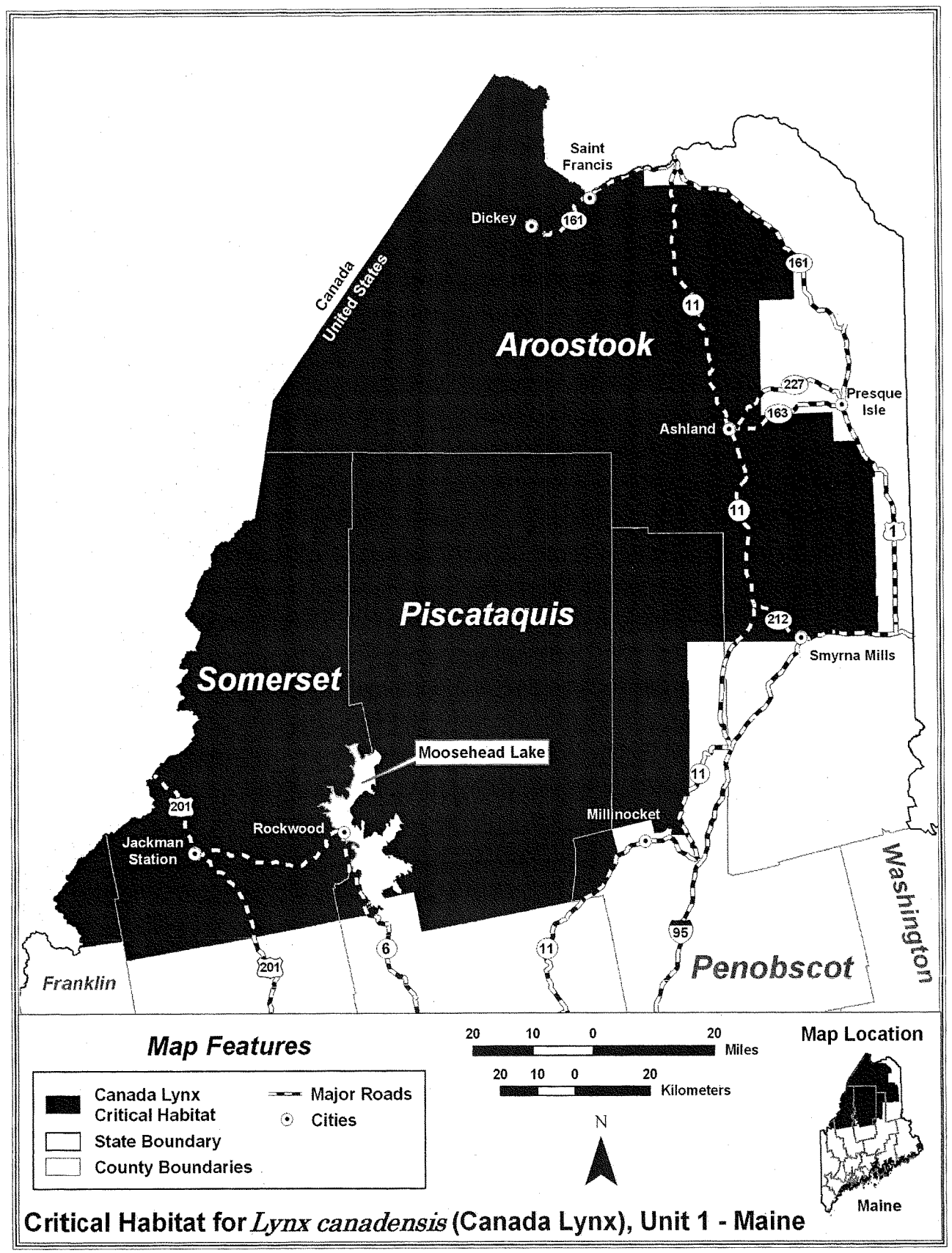


Index Map: Critical Habitat for *Lynx canadensis* (Canada Lynx)

(5) Unit 1: Northern Maine; Aroostook, Franklin, Penobscot, Piscataquis and Somerset Counties, Maine.

(i) Coordinate projection: UTM, NAD83, Zone 19, Meters. Coordinate definition: (easting, northing). Starting at Maine/Canada Border (SW corner of Merrill Strip Twp.) (371910, 5028021), follow township boundary east to SE corner of Skinner Twp. (383434, 5029673). Follow township boundary SE to SW corner of T5 R6 Twp. (383438, 5029673). Follow township boundaries NE to boundary of Moosehead Lake (450963, 5036788). Follow Moosehead Lake boundary to intersection with Beaver Cove Twp. (452704, 5040915). Follow township boundary to Moosehead Lake boundary (453125, 5040999). Follow Moosehead Lake boundary to township boundary (453705, 5041123). Follow township boundary to NW corner of Bowdoin College Grant West Twp. (460415, 5042546). Follow township boundary to SW corner of township (462537, 5032002). Follow township boundaries to intersection with State Highway 11 in Long A Twp. (506181, 5040542). Follow State Highway 11 NE to intersection with T4 Indian Purchase Twp. Boundary (515204, 5052175). Follow township boundary NW to SW corner of T1 R8 Twp. (513460, 5059043). Follow township boundary NE to intersection with Grindstone Twp. Boundary (523967, 5061550). Follow township boundary south and east to intersection with State Highway 11 (533826, 5057404). Follow State Highway 11 north to intersection with Soldiertown Twp. boundary (533178, 5067644). Follow township boundary east to SE corner of township (534261, 5067639), then follow township boundaries north to SE corner of T6 R7 Twp. (533735, 5108030). Follow township boundaries east to intersection with U.S. Highway 2 (563731, 5108104). Follow U.S. Highway 2 to intersection with New Limerick Twp. boundary (584664, 5109885). Follow township boundaries north to intersection with U.S. Highway 1 (583834, 5153895). Follow U.S. Highway 1 NW to intersection with Westfield Twp. boundary (579218, 5160782). Follow township boundary west to intersection with Chapman Twp. boundary (572903, 5160530). Follow township boundary north to NE corner of township (572577, 5168198). Follow township boundaries west to intersection with Ashland Twp. boundary (553502, 5167377). Follow township boundaries north to SW corner of Westmanland Twp. (553279, 5197228). Follow township boundary east to SE corner of township (562523, 5197586). Follow township boundaries north to intersection with State Highway 161 (562361, 5209395). Follow State Highway 161 NE to New Canada Twp. boundary (536315, 5227346). Follow township boundaries west to NW corner of Wallagrass Twp. (522883, 5227037). Follow township boundaries north to Maine/Canada border (522876, 5231986). Follow Maine/Canada border to beginning.

(ii) Map of Northern Maine Unit follows:



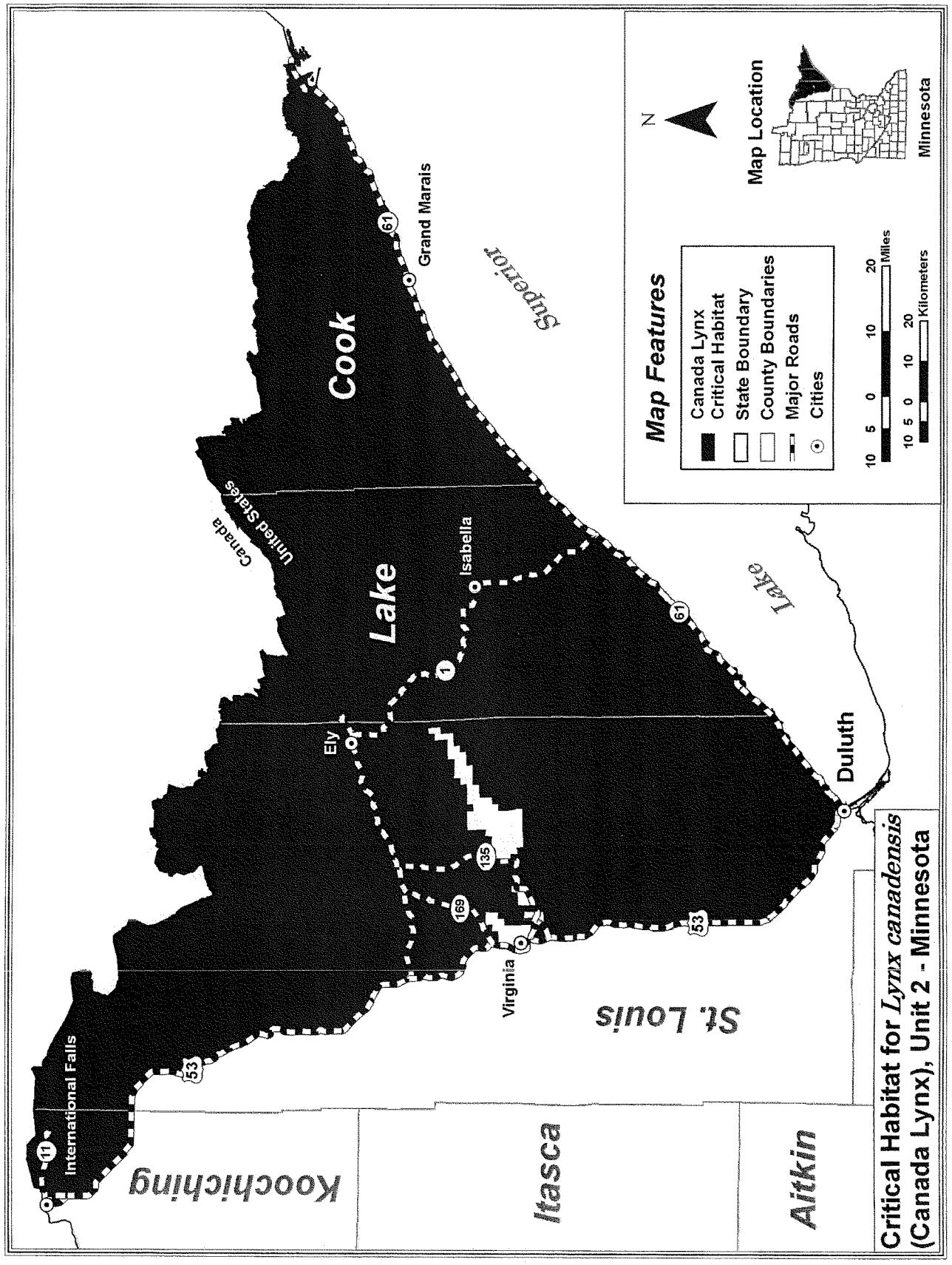
Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 1 - Maine

(6) Unit 2: Northeastern Minnesota; Cook, Koochiching, Lake, and St. Louis Counties.

(i) Coordinate Projection: UTM, NAD83, Zone 15, Meters. Coordinate Definition: (easting, northing)

(ii) Starting at the intersection (470383, 5383928) of the Minnesota/Canada border and U.S. Highway 53, follow U.S. Highway 53 to the intersection (533455, 5265811) with the north boundary of T. 58N, R. 17W, Section 6. Follow the section line east to the NE corner of section 6 (534436, 5265846). Follow the section line north to the NW corner of T. 59N, R. 17W, Section 29 (534449, 5269188). Follow the section line east to the NE corner of T. 59N R. 17W, Section 28 (537595, 5269278). Follow the section line north to the NW corner of T. 59N, R. 17W, Section 22 (537612, 5270884). Follow the section east to the NE corner of section 22 (539244, 5270743). Follow the section line north to the NW corner of T. 59N, R. 17W, Section 14 (539166, 5272477). Follow the section line east to the NE corner of T. 59N, R. 17W, Section 13 (542538, 5272377). Follow the section line south to the SE corner of T. 59N, R, 17W, Section 24 (542468, 5269207). Follow the section line west to the SW corner of section 24 (540886, 5269302). Follow the section line south to SE corner of T. 59N, R. 17W, Section 26 (540871, 5267661). Follow the section line west to the SW corner of section 26 (539258, 5267619). Follow the section line south to the SE corner of T. 58N, R. 17W, Section 15 (539373, 5261082). Follow the section line west to the intersection with U.S. Highway 53 (535956, 5261013). Follow U.S. Highway 53 to the intersection with U.S. Interstate 35/State Highway 61 (568056, 5180758). Follow U.S. Interstate 35/Highway 61 to coordinate 568974, 5181862. Go approximately 178 meters east to the shore of Lake Superior (569151, 5181874). Follow the shore of Lake Superior to the Minnesota/Canada border (761503, 5322824). Follow the Minnesota/Canada border to the beginning. This area is found within the following USGS 1:24000 Quads; Pine Mountain, Grand Marais, Kadunce River, Marr Island, Hovland, Mineral Center OE S, Good Harbor Bay OE E, Linden Grove, Cook, Sassas Creek, Lost Lake, Tower, Idington, Britt, Biwabik NE, Biwabik NW, Virginia, McKinley, Biwabik, Eveleth, Gilbert, Palo, Central Lakes, Makinen, Zim, Cotton, Whiteface, Canyon, Shaw, Twig, Independence, Adolph, Ranier OE N, Island View OE N, Cranberry Bay OE N, Soldier Point OE N, Ranier, Island View, Cranberry Bay, Soldier Point, Kempton Bay, Kettle Falls, International Falls, Kabetogama, Daley Bay, Ash River NE, Namakan Island, Hale Bay, Ericsburg, Ray, Redhorse Bay, Ash River SW, Ash River SE, Marion Lake, Johnson Lake, Crane Lake, Snow Bay, Ash Lake, Orr NE, Elephant Lake, Kabustasa Lake, Echo Lake, Lake Jeanette, Orr, Myrtle Lake, Buyck, Picket Lake, Astrid Lake, Gheen, Haley, Norwegian Bay, Vermilion Dam, Sioux Pine Island, Coleman Island, Iron Lake OE N, Takucmich Lake, Shell Lake, Lake Agnes, Iron Lake, Friday Bay, Jackfish Lake, Dutton Lake, Ester Lake, Munker Island, Conners Island, Bootleg Lake, Lapond Lake, Angleworm Lake, Fourtown Lake, Ensign Lake West, Ensign Lake East, Kekekabic Lake, Ogishkemuncie Lake, Gillis Lake, Long Island Lake, Gunflint Lake, South Lake, Hungry Jack Lake, Crocodile Lake, Pine Lake West, Pine Lake East, South Fowl Lake, The Cascades, Grand Portage OE N, Pigeon Point OE N, Basswood Lake West, Basswood Lake East, Pigeon Point OE NE, Ely, Farm Lake, Alice Lake, Lake Polly, Kelso Mountain, Cherokee Lake, Brule Lake, Eagle Mountain, Lima Mountain, Tom Lake, Farquhar Peak, Mineral Center, Grand Portage (digital), Pigeon Point (digital), Crab Lake, Northern Light Lake, Boulder Lake Reservoir, Thompson Lake, Barrs Lake, McCarthy Creek, Two Harbors, Castle Danger, Split Rock Point OE S, Arnold, French River, Knife River, Two Harbors OE S, Fredenberg, Duluth, Lakewood, Duluth Heights, Chad Lake, Lake Insula, Shagawa Lake, Ojibway Lake, Snowbank Lake, Soudan, Eagles Nest, Bear Island, Bogberry Lake, Quadga Lake, Isabella Lake, Perent Lake, Kawishiwi Lake, Beth Lake, Sawbill Camp, Tait Lake, Mark Lake, Devil Track Lake, Kangas Bay, Gabbro Lake, Embarrass, Babbitt, Slate Lake West, Slate Lake East, Mitawan Lake, Sawbill Landing, Silver Island Lake, Wilson Lake, Toohey Lake, Honeymoon Mountain, Lutsen, Isaac Lake, Babbitt NE, Deer Yard Lake, Good Harbor Bay (digital), Aurora, Allen, Babbitt SW, Babbitt SE, Greenwood Lake West, Greenwood Lake East, Isabella, Cabin Lake, Cramer, Schroeder, Lutsen OE S, Isabella Station, Tofte, Turpela Lake, Bird Lake, Skibo, Cloquet Lake, Doyle Lake, Little Marais OE E, Toimi, Mount Weber, Whyte, Finland, Little Marais (digital), Whiteface Reservoir, Harris Lake, Fairbanks, Brimson, Legler Lake, Silver Bay SW, Silver Bay, Illgen City, Kane Lake, Comstock Lake, Pequaywan Lake, King Lake, Split Rock Point, Split Rock Point NE, Boulder Lake Reservoir NE, Highland, Two Harbors NE. This entire area is designated proposed critical habitat expect for the following lands: T. 58N, R.17W, Sections 13, 24–26; T. 58N, R. 16W, Sections 3, 8–10,16,17; T. 58N, R 15W, Sections 1–3,11,12; T. 58N R. 14W, Sections 3–10; T. 59N, R. 15W, Sections 21–28, 33–36; T. 59N, R. 14W, Sections 1–5, 8–23, 27–34; T. 59N., R. 13W, Sections 5,6; T. 60N, R. 14W, Sections 32–34, 36; T. 60N, R. 13W, Sections 22–28, 31–35; T. 60N, R.12W Sections 2, 3, 10, 15–20, 30; T. 61N, R. 12W, Sections 12, 35. These areas area found within the following USGS 1:24000 Quads; McKinley, Bawabik, Gilbert, Embarrass, Babbitt, IsaacLake, Babbitt NE, Aurora, Allen

(iii) Map of Northeastern Minnesota unit follows:



Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 2 - Minnesota

(7) Unit 3: Northern Rocky Mountains; Boundary County, Idaho; Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, and Teton Counties, Montana.

(i) Coordinate Projection: UTM, NAD83, Zone 12, Meters. Coordinate Definition: (easting, northing).

(A) Starting at the intersection of the Idaho/Canada border and 4000 feet elevation contour (122032, 5440460), follow the 4000 feet elevation contour to intersection with Montana/Canada border (151617, 5438492). Follow Montana/Canada border west to intersection with 4000 feet elevation contour (147739, 5438749). Follow 4000 feet elevation contour to intersection with Montana/Canada border (147356, 5438775). Follow Idaho/Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Eastport, Canuck Peak, Northwest Peak, Garver Mountain, Bonnet Top, Yaak, Clark Mountain, Mount Baldy, Line Point, Meadow Creek, Curley Creek, and Newton Mountain.

(B) Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (152307, 5438447), follow the 4000 feet elevation contour to intersection with Montana/Canada border (157205, 5438130). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Garver Mountain and Bonnet Top.

(C) Starting at coordinate (158408, 5437023), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quad; Bonnet Top.

(D) Starting at coordinate (160775, 5430791), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Bonnet Top and Mount Henry.

(E) Starting at coordinate (161176, 5427344), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Bonnet Top, Mount Henry, Yaak, and Lost Horse Mountain.

(F) Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (163418, 5437730), follow the 4000 feet elevation contour to intersection with Montana/Canada border (186741, 5436254). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Mount Henry, Robinson Mountain, Red Mountain, Webb Mountain, Boulder Lakes, Lost Horse Mountain, Yaak, Clark Mountain, Mount Baldy, Sylvanite, Flatiron Mountain, Pink Mountain, Parsnip Mountain, Inch Mountain, Volcour, Ural, Banfield Mountain, Gold Hill, Turner Mountain, Alexander Mountain, and Vermiculite Mountain.

(G) Starting at coordinate (143538, 5402032), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Sylvanite, Flatiron Mountain, Turner Mountain, Pulpit Mountain, Kilbrennan Lake, Kootenai Falls, and Scenery Mountain.

(H) Starting at coordinate (154367, 5393646), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Turner Mountain, Gold Hill, Libby, and Scenery Mountain.

(I) Starting at coordinate (174032, 5379043), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Vermiculite Mountain and Alexander Mountain.

(J) Starting at coordinate (199737, 5417559), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Webb Mountain, Beartrap Mountain, Eureka South, Inch Mountain, McGuire Mountain, Pinkham Mountain, Edna Mountain, Volcour, Davis Mountain, Skillet Mountain, Alexander Mountain, Cripple Horse Mountain, Warland Peak, Bowen Lake, Tony Peak, Richards Mountain, Wolf Prairie, and Fisher Mountain.

(K) Starting at coordinate (217651, 5399051), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Stryker, Skillet Mountain, Sunday Mountain, Radnor, Bowen Lake, Dunsire Point, Johnson Peak, Tally Lake, Wolf Prairie, Horse Hill, Sylvia Lake, Ashley Mountain, Lost Creek Divide, Rhodes, Deer Creek, Lynch Lake, Dahl Lake, Pleasant Valley Mountain, Lone Lake, Blue Grass Ridge, Thompson Lakes, Meadow Peak, McGregor Peak, Marion, Haskill Mountain, and Kila.

(L) Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (205956, 5435192), follow the 4000 feet elevation contour to intersection with Montana/Canada border (245279, 5433300). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Eureka North, Ksanka Peak, Stahl Peak, Tuchuck Mountain, Mount Hefty, Trailcreek, Polebridge, Whale Buttes, Red Meadow Lake, Mount Thompson-Seton, Mount Marston, Fortine, Stryker, Bull Lake, Upper Whitefish Lake, Moose Peak, Cyclone Lake, Demers Ridge, Huckleberry Mountain, Skookoleel Creek, Werner Peak, Olney, Beaver Lake, Whitefish, and Columbia Falls North.

(M) Starting at coordinate (263061, 5395697), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Demers Ridge and Huckleberry Mountain.

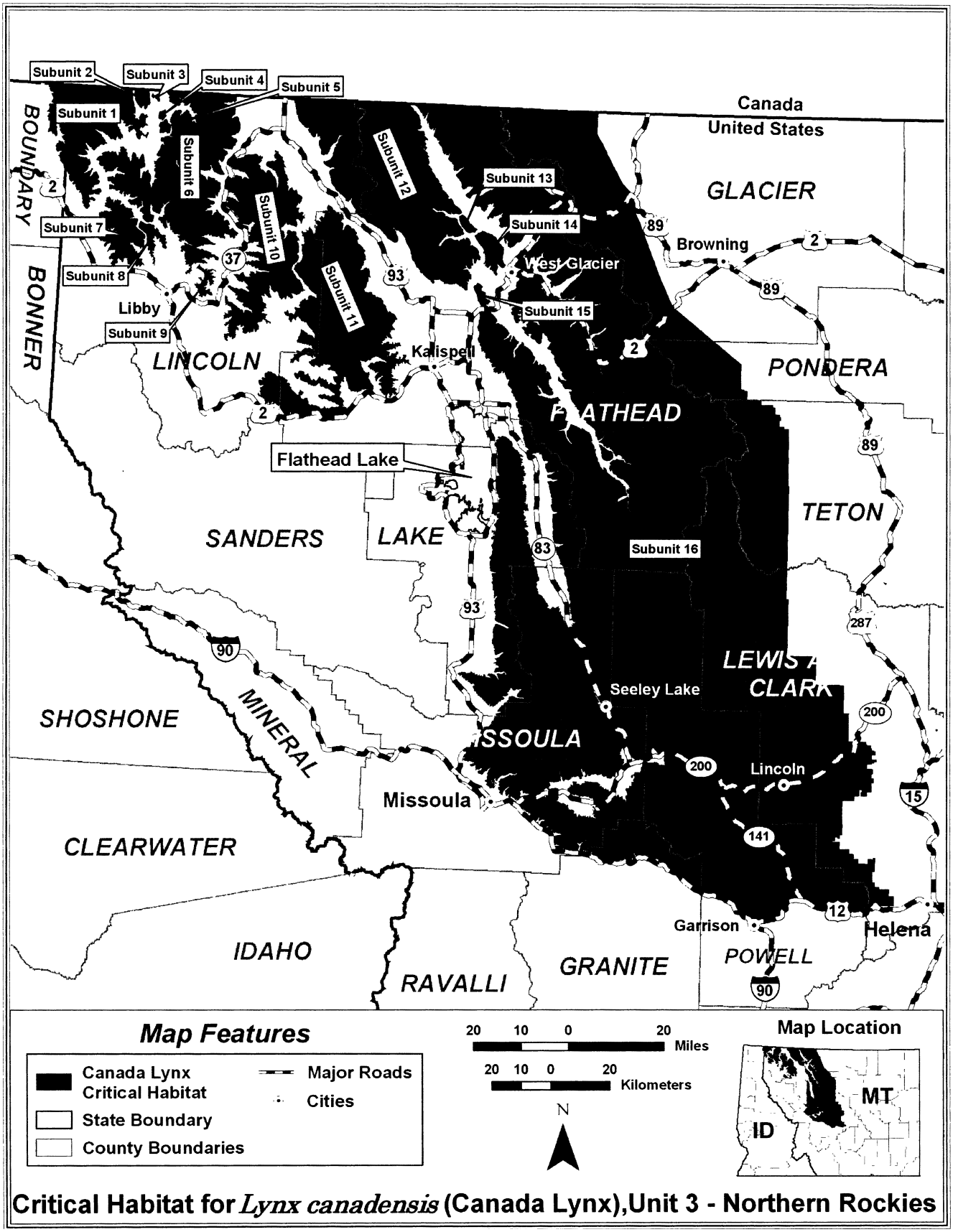
(N) Starting at coordinate (269763, 5390173), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; McGee Meadow, Huckleberry Mountain, and Hungry Horse.

(O) Starting at coordinate (268105, 5372525), follow 4000 feet elevation contour to beginning. This area is found within the following USGS 1:24000 Quads; Columbia Falls North and Hungry Horse.

(P) Starting at the intersection of the Montana/Canada border and 4000 feet elevation contour (247220, 5433213), follow the 4000 feet elevation contour to intersection with Interstate Highway 90 (338356, 5167811). Follow Interstate Highway 90 to intersection with USFS boundary (402512, 5159444). Follow USFS boundary to NPS boundary (334101, 5364611). Follow NPS boundary to intersection with Montana/Canada border (309104, 5430544). Follow Montana/Canada border west to intersection with 4000 feet elevation contour (247562, 5433194). Follow 4000 feet elevation contour to intersection with Montana/Canada border (247373, 5433204). Follow Montana/Canada border west to beginning. This area is found within the following USGS 1:24000 Quads; Trailcreek, Kintla Lake, Kintla Peak, Mount Carter, Porcupine Ridge, Mount Cleveland, Gable Mountain, Chief Mountain, Babb, Lake Sherburne, Many Glacier, Ahern Pass, Mount Geduhn, Vulture Peak, Quartz Ridge, Polebridge, Demers Ridge, Camas Ridge West, Camas Ridge East, Mount Cannon, Logan Pass, Rising Sun, Saint Mary, Kiowa, Cut Bank Pass, Mount Stimson, Mount Jackson, Lake McDonald East, Lake McDonald West, McGee Meadow, West Glacier, Nyack, Stanton Lake, Mount Saint Nicholas, Mount Rockwell, Squaw Mountain, East Glacier Park, Mitten Lake, Half Dome Crag, Hyde Creek, Summit, Blacktail, Essex, Pinnacle, Mount Grant, Nyack SW, Doris Mountain, Columbia Falls South, Hash Mountain, Jewel Basin, Pioneer Ridge, Felix Ridge, Nimrod, Mount Bradley, Red Plum Mountain, Crescent Cliff, Morningstar Mountain, Swift Reservoir, Fish Lake, Volcano Reef, Walling Reef, Gateway Pass, Gooseberry Peak, Gable Peaks, Capitol Mountain, Horseshoe Peak, Circus Peak, Quintonkon, Big Hawk Mountain, Crater Lake, Woods Bay, Yew Creek, Swan Lake, Connor Creek, Tin Creek, Spotted Bear Mountain, Whitcomb Peak, Trilobite Peak, Pentagon Mountain, Porphyry Reef, Mount Wright, Cave Mountain, Ear Mountain, Our Lake,

Gates Park, Three Sisters, Bungalow Mountain, Cathedral Peak, Meadow Creek, String Creek, Thunderbolt Mountain, Cilly Creek, Porcupine Creek, Cedar Lake, Salmon Prairie, Swan Peak, Sunburst Lake, Marmot Mountain, Pagoda Mountain, Amphitheatre Mountain, Slategoat Mountain, Glenn Creek, Arsenic Mountain, Castle Reef, Sawtooth Ridge, Patricks Basin, Pretty Prairie, Prairie Reef, Haystack Mountain, Big Salmon Lake East, Big Salmon Lake West, Holland Peak, Condon, Peck Lake, Piper-Crow Pass, Mount Harding, Hemlock Lake, Cygnet Lake, Holland Lake Shaw Creek, Una Mountain, Pilot Lake, Trap Mountain, Benchmark, Wood Lake, Double Falls, Bean Lake, Steamboat Mountain, Jakie Creek, Scapegoat Mountain, Flint Mountain, Danaher Mountain, Hahn Creek Pass, Crimson Peak, Morrell Lake, Lake Inez, Lake Marshall, Gray Wolf Lake, Saint Marys Lake, Upper Jocko Lake, Seeley Lake West, Seeley Lake East, Morrell Mountain, Dunham Point, Spread Mountain, Lake Mountain, Olson Peak, Heart Lake, Caribou Peak, Blowout Mountain, Rogers Pass, Cadotte Creek, Silver King Mountain, Stonewall Mountain, Arrastra Mountain, Coopers Lake, Ovando Mountain, Ovando, Woodworth, Salmon Lake, Belmont Point, Gold Creek Peak, Wapiti Lake, Stuart Peak, Evaro, Northwest Missoula, Northeast Missoula, Blue Point, Sunflower Mountain, Potomac, Greenough, Bata Mountain, Chamberlain Mountain, Browns Lake, Marcum Mountain, Moose Creek, Lincoln, Swede Gulch, Stemple Pass Wilborn, Granite Butte, Nevada Mountain, Finn, Nevada Lake, Helmville, Chimney Lakes, Wild Horse Parks, Elevation Mountain, Union Peak, Mineral Ridge, Clinton, Bonner, Iris Point, Ravenna, Medicine Tree Hill, Bearmouth, Drummond, Limestone Ridge, Bailey Mountain, Windy Rock, Gravely Mountain, Ophir Creek, Esmeralda Hill, Greenhorn Mountain, Austin, Black Mountain, MacDonald Pass, Elliston, Avon, Luke Mountain, Garrison, Griffin Creek, Dunkleberg Creek, Saint Ignatius, Ravalli, Saddle Mountain, Arlee, Gold Creek, and Belmore Slough.

(iii) Map of Northern Rocky Mountains unit follows:

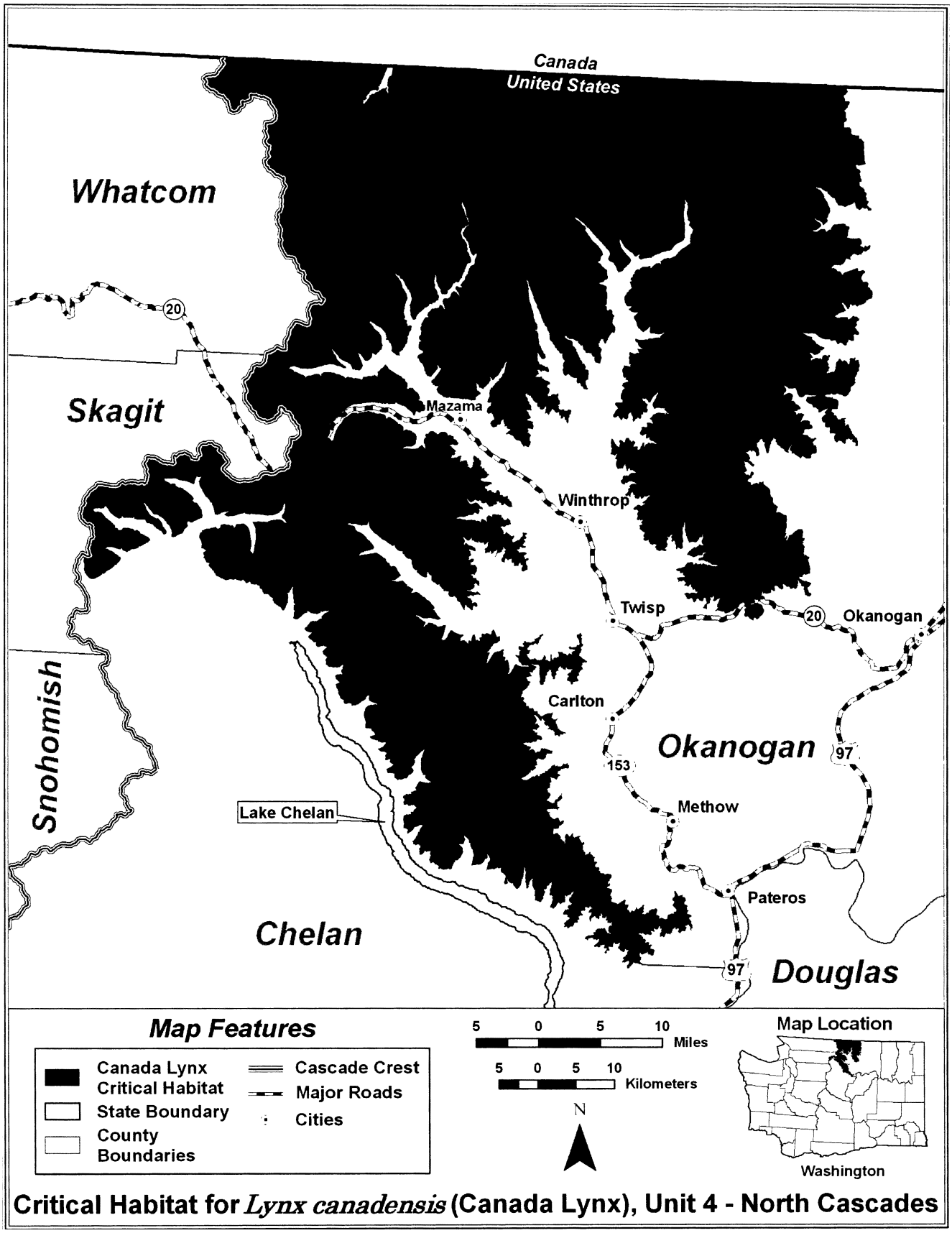


Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 3 - Northern Rockies

(8) Unit 4: North Cascades; Chelan and Okanogan Counties, Washington.

(i) Coordinate Projection: UTM, NAD83, Zone 11, Meters. Coordinate Definition: (easting, northing). Starting at the Washington/Canada border (Whatcom/Okanogan Counties boundary—''Cascade Crest'') (218319, 5434639), follow the ''Cascade Crest'' south to coordinate (200268, 5369981). Go south approximately 250 meters (200241, 5369733) to watercourse (headwaters—Flat Creek). Follow watercourse (Flat Creek) to intersection with 4000 feet elevation contour (201629, 5366872) (Cascade Pass Quad—USGS 1:24000). Follow 4000 feet elevation contour to intersection with Washington/Canada border (298810, 5431112). Follow Washington/Canada border west to intersection with 4000 feet elevation contour (240301, 5433596). Follow 4000 feet elevation contour to intersection with Washington/Canada border (239526, 5433632). Follow Washington/Canada border to beginning. This area is found within the following USGS 1:24000 Quads; Skagit Peak, Castle Peak, Frosty Creek, Ashnola Mountain, Ashnola Pass, Remmel Mountain, Bauerman Ridge, Horseshoe Basin, Hurley Peak, Nighthawk, Tatoosh Buttes, Shull Mountain, Pasayten Peak, Mount Lago, Mount Barney, Coleman Peak, Corral Butte, Duncan Ridge, Loomis, Lost Peak, Billy Goat Mountain, Azurite Peak, Slate Peak, Robinson Mountain, McLeod Mountain, Sweetgrass Butte, Doe Mountain, Spur Peak, Tiffany mountain, Coxit Mountain, Blue Goat Mountain, Forbidden Peak, Mount Logan, Mount Arriva, Washington Pass, Silver Star Mountain, Mazama, Lewis Butte, Pearrygin Peak, Old Baldy, Conconully West, Rendevous Mountain, Conconully East McGregor Mountain, McAlester Mountain, Gilbert, Midnight Mountain, Thompson Ridge, Loup Loup Summit, Buck Mountain, Cascade Pass, Goode Mountain, Blue Buck Mountain, Stehekin, Sun Mountain, Oval Peak, Hoodoo Peak, Twisp West, Thrapp Mountain, Chiliwist Valley, Lucerne, Prince Creek, Martin Peak, Hungry Mountain, Big Goat Mountain, South Navarre Peak, Oss Peak, Cooper Mountain, Pateros, Manson, Cooper Ridge, and Azwell.

(ii) Map of North Cascades unit follows:



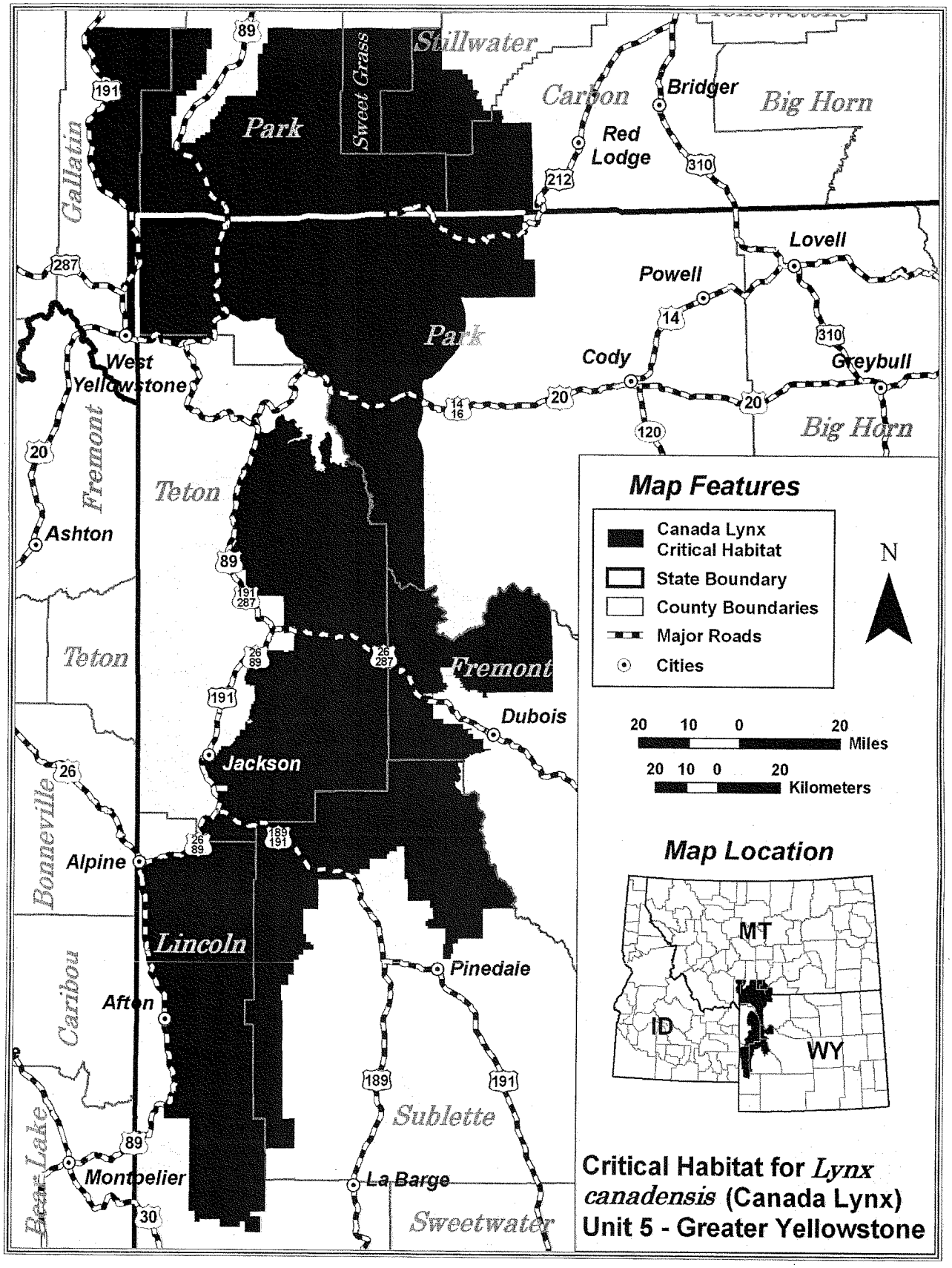
Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 4 - North Cascades

(9) Unit 5: Greater Yellowstone Area; Gallatin, Park, Sweetgrass, Stillwater, and Carbon counties in Montana; Park, Teton, Fremont, Sublette, and Lincoln Counties, Wyoming.

(i) Coordinate Projection: UTM, NAD83, Zone 12, Meters; Coordinate Definition: (easting, northing). Starting at the intersection (480972, 5041390) of U.S. Highway 191 and the north boundary of T. 4S, R. 4E, Section 4, follow U.S. Highway 191 to the intersection (4484464, 4989013) with Yellowstone National Park (NP) boundary. Follow the Yellowstone NP boundary to the intersection (492295, 4945003) with U.S. Highway 20. Follow U.S. Highway 20 (Entrance Road) to the intersection (511252, 4943604) with Grand Loop Road. Follow Grand Loop Road to the intersection (524028, 4952481) with Norris Canyon Road. Follow Norris Canyon Road to the intersection (539780, 4951312) with Grand Loop Road. Follow Grand Loop Road to the intersection (548580, 4935153) with U.S. Highway 20. Follow U.S. Highway 20 to coordinate 557355, 4928610. Go southeasterly approximately 62 meters (557295, 4928602) to the shore of Yellowstone Lake. Follow the shore of Yellowstone Lake to coordinate 535146, 4915754. Go west approximately 960 meters to the intersection (534188, 4915753) with U.S. Highway 89/287. Follow U.S. Highway 89/287 to the intersection (526800, 4886642) with the Yellowstone NP boundary. Follow the Yellowstone NP boundary to the intersection (527033, 4886643) with the Bridger-Teton National Forest (NF) boundary. Follow the Bridger-Teton NF boundary to the intersection (520702, 4802862) with U.S. Highway 26. Follow U.S. Highway 26 to the intersection (498488, 4779960) with U.S. Highway 89. Follow U.S. Highway 89 to the intersection (505452, 4703698) with the east boundary of T. 29N, R. 118W, Section 19. Follow the section line to the intersection (505447, 4699501) with the Bridger-Teton NF boundary. Follow the Bridger-Teton NF boundary to the NW corner (597743, 4754744) of T. 34N, R. 108W, Section 7. Follow the section line to the SW corner (599399, 4754756) of T. 34N, R. 108W, Section 5. Follow the section line to the NW corner (599380, 4756357) of section 5. Follow the section line to the SE corner (607400, 4756477) of T. 35N, R. 108W Section 36. Follow the section line to the NW corner (607286, 4765982) of T. 35N, R. 107W, Section 6. Follow the section line to the intersection (617268, 4766147) with USFS-Fitzpatrick Wilderness boundary. Follow the Fitzpatrick Wilderness boundary to the intersection (599238, 4811188) with the west boundary of T. 40N, R. 108W, Sectiom12. Follow the section line to the NW corner (599108, 4812285) section 12. Follow the section line to coordinate 601191, 4812390. Go north to the intersection (661183, 4812925) with the Fitzpatrick Wilderness boundary. Follow the Fitzpatrick Wilderness boundary to the intersection (609608, 4816305) with Shoshone NF boundary. Follow the Shoshone NF boundary to the SE corner (629592, 4834753) of T. 43N, R. 105W, Section 25. Follow the section line to the intersection (628768, 4860150) with the Fremont County, WY boundary. Follow the Fremont County boundary to coordinate 588156, 4866541. Go north approximately 20.6 KM/12.8 miles to coordinate 587881, 4887097. Follow a route which is approximately 9.2 km/5 miles east of the Yellowstone NP boundary to the intersection (599376, 4957892) with the south boundary of T. 55N, R. 107W, Section 3. Follow the section line to the SE corner (623296 4958237) of T. 55N, R. 105W, Section 1. Follow the section line to the NE corner (623068, 4969812) of T. 56N, R.105W, Section 1. Follow the section line to the SE corner (619728, 4969746) of T. 57N, R. 105W, Section 36. Follow the section line to the NW corner (619373, 4984494) of T. 58N, R. 104W, section 18 (Montana/Wyoming border). Follow the state border to the SE corner (622659, 4984617) of T. 9S, R. 18E, Section 36. Follow the section line to the intersection (622048, 5009101) with the Custer NF boundary. Follow the Custer NF boundary to the SE corner (593114, 5028792) of T. 5S, R. 15E, Section 12. Follow the section line to the NE corner (592962, 5041683) of T 4S, R. 15E, Section 1. Follow the section line to the intersection (538520, 5041519) with the Custer NF boundary. Follow the Custer NF boundary to the SE corner (506528, 5004163) of T. 7S, R6E, Section 25. Follow the section line to the intersection (506549, 5010565) with the Custer NF boundary. Follow the Custer NF boundary to the NW corner (514340, 5041288) of T. 4S, R. 7E, Section 1. Follow the section line to the beginning. This area is found within the following USGS 1:24000 Quads; Alpine, Pine Creek, Bailey Lake, Ferry Peak, Clause Peak, Bondurant, Raspberry Ridge, Stewart Peak, Deer Creek, Noble Basin, Kismet Peak, Etna, Pickle Pass, Hoback Peak, Thayne West, Thayne East, Man Peak, Blind Bull Creek, Lookout Mountain, Prospect Peak, Merna, Park Creek, Triple Peak, Maki Creek, Grover, Rock Lake Peak, Red Top Mountain, Box Canyon Creek, Mount Schidler, Red Castle Creek, Afton, Smoot, Poison Meadows, Wyoming Peak, Springman Creek, Mount Wagner, Salt Flat, Porcupine Creek, Graham Peak, Mount Thompson, Pine Grove Ridge, Big Park, Coal Creek, Lake Mountain, Devils Hole Creek, Nugent Park, Pole Creek, Fontenelle Basin, Ousel Falls, Lone Indian Peak, Ramshorn Peak, Miner, Dome Mountain, Iron Mountain, Monitor Peak, Mineral Mountain, Mount Wallace, Sunshine Point, Big Horn Peak, Sportsman Lake, Electric Peak, Gardiner, Ash Mountain, Specimen Creek, Hummingbird Peak, Divide Lake, Joseph Peak, Quadrant Mountain, Mammoth, Blacktail Deer Creek, Tower Junction, Lamar Canyon, Three Rivers Peak, Mount Holmes, Obsidian Cliff, Cook Peak, Mount Washburn, Amethyst Mountain, Ruby Mountain, Gallatin Gateway, Beacon Point, Garnet Mountain, Gallatin Peak, Hidden Lake, Wheeler Mountain, Mount Ellis, Bald Knob, Brisbin, Livingston Peak, Mount Rae, Mount Blackmore, Big Draw, Dexter Point, Mount Cowen, West Boulder Plateau, Fridley Peak, The Sentinel, Lewis Creek, Dailey Lake, Emigrant, Knowles Peak, The Pyramid, The Needles, Richards Creek, West Yellowstone, Mount Jackson, Madison Junction, Norris Junction, Crystal Falls, Canyon Village, White Lake, Lake, Lake Butte, West Thumb, Dot Island, Frank Island, Lewis Falls, Mount Sheridan, Heart Lake, Alder Lake, Lewis Canyon, Mount Hancock, Crooked Creek, Snake Hot Springs, Gravel Peak, Flagg Ranch, Huckleberry Mountain, Bobcat Ridge, Two Ocean Lake, Whetstone Mountain, Hunter Mountain, Moran, Davis Hill, Rosies Ridge, Shadow Mountain, Mount Leidy, Green Mountain, Blue Miner Lake, Grizzly Lake, Gros Ventre Junction, Upper Slide Lake, Jackson, Darwin Peak, Cache Creek, Turquoise Lake, Crystal Peak, Munger Mountain, Camp Davis, Bull Creek, Granite Falls, Doubletop Peak, Joy Peak, Crater Lake, Younts Peak, Hardluck Mountain, Mount Burwell, Ferry Lake, Emerald Lake, Dundee Meadows, Shoshone Pass, Five Pockets, Snow Lake, Angle Mountain, Togwotee Pass, Wiggins Peak, Tripod Peak, Lava Mountain, Kisinger Lakes, Esmond Park, Ramshorn Peak, Indian Point, Castle Rock, Burnt Mountain, Sheridan Pass, Warm Spring Mountain, Dubois, Fish Lake, Ouzel Falls, Mosquito Lake, Fish Creek Park, Union Peak, Simpson Lake, Tosi Peak, Klondike Hill, Big Sheep Mountain, Downs Mountain, Green River Lakes, Windy Mountain, Pelican Cone, Little Saddle Mountain, Pollux Peak, Stinkingwater Peak, Geers Point, Mount

Chittenden, Cathedral Peak, Pahaska Tepee, Sunlight Peak, Sylvan Lake, Plenty Coups Peak, Eagle Creek, Trail Lake, Eagle Peak, Pinnacle Mountain, Badger Creek, Open Creek, The Trident, Two Ocean Pass, Yellowstone Point, Thorofare Plateau, McLeod Basin, Squaw Peak, Sliderock Mountain, Wildcat Draw, Chrome Mountain, Picket Pin Mountain, Meyer Mountain, Nye, Beehive, Mount Douglas, Tumble Mountain, Cathedral Point, Mount Wood, Emerald Lake, Mackay Ranch, Roscoe, Haystack Peak, Granite Peak, Alpine, Sylvan Peak, Bare Mountain, Pinnacle Mountain, Little Park Mountain, Roundhead Butte, Cutoff Mountain, Cooke City, Fossil Lake, Castle Mountain, Silver Run Peak, Black Pyramid Mountain, Jim Smith Peak, Muddy Creek, Mount Hornaday, Abiathar Peak, Pilot Peak, Beartooth Butte, Deep Lake, Opal Creek, Wahb Springs, Canoe Lake, Hurricane Mesa, Hunter Peak, Dillworth Bench, Dodge Butte, Kendall Mountain, Gannett Peak, Pass Peak, Squaretop Mountain, Fremont Peak North, Bridger Lakes, Fremont Peak South, New Fork Lakes, Fremont Lake North, Cora, Fremont Lake South, Fayette Lake.

(ii) Map of Greater Yellowstone Area unit follows:


Stillwater
Sweet Grass
Park
Gallatin
Carbon
Bridger
Big Horn
Red Lodge
Lovell
Powell
Park
Cody
Greybull
West Yellowstone
Big Horn
Fremont
Teton
Ashton
Teton
Fremont
Dubois
Jackson
Bonneville
Alpine
Lincoln
Pinedale
Caribou
Afton
Sublette
Bear Lake
Montpelier
La Barge
Sweetwater
Map Features
Canada Lynx Critical Habitat
State Boundary
County Boundaries
Major Roads
Cities
N
20 10 0 20 Miles
20 10 0 20 Kilometers
Map Location
MT
ID
WY
Critical Habitat for Lynx canadensis (Canada Lynx)
Unit 5 - Greater Yellowstone

* * * * *

Dated: February 13, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 08–779 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
February 28, 2008

Part III

Securities and Exchange Commission

Progress Report of the SEC Advisory Committee on Improvements to Financial Reporting; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8896; 34–57331; File No. 265–24]

Progress Report of the SEC Advisory Committee on Improvements to Financial Reporting.

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Advisory Committee is publishing its progress report and is soliciting public comment. The progress report contains the Committee's developed proposals, conceptual approaches, and matters for future considerations on improving the financial reporting system in the United States.

DATES: Comments should be received on or before March 31, 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/other.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov.* Please include File Number 265–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–24. This file number should be included on the subject line if e-mail is used. To help us process and review your comment more efficiently, please use only one method. The Commission will post all comments on its Web site (*http://www.sec.gov/about/offices/oca/acifr.shtml*). Comments also will be 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: Questions about this release should be referred to James L. Kroeker, Deputy Chief Accountant, or Shelly C. Luisi, Senior Associate Chief Accountant, at (202) 551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6561.

SUPPLEMENTARY INFORMATION: At the request of the SEC Advisory Committee on Improvements to Financial Reporting, the Commission is publishing this release soliciting public comment on the Committee's progress report. The full text of this progress report is attached and also may be found on the Committee's web page at *http://www.sec.gov/about/offices/oca/acifr.shtml*. The progress report contains the Committee's developed proposals, conceptual approaches, and matters for future considerations on improving the financial reporting system in the United States. This progress report has been approved for issuance by the Committee. It does not necessarily reflect any position or regulatory agenda of the Commission or its staff.

All interested parties are invited to comment on the enclosed progress report. Comments on the progress report are most helpful if they (1) indicate the specific paragraph and/or page number to which the comments relate, (2) contain a clear rationale, and (3) include any alternative(s) the Committee should consider.

Authority: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), James L. Kroeker, Designated Federal Officer of the Committee, has approved publication of this release at the request of the Committee. The solicitation of comments is being made solely by the Committee and not by the Commission. The Commission is merely providing its facilities to assist the Committee in soliciting public comment from the widest possible audience.

Dated: February 14, 2008.

Nancy M. Morris,

Committee Management Officer.

Appendix

Progress Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission

February 14, 2008

Progress Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission

Table of Contents

Transmittal Letter
Executive Overview
Introduction
Chapter 1: Substantive Complexity
Chapter 2: Standards-Setting Process
Chapter 3: Audit Process and Compliance
Chapter 4: Delivering Financial Information
Appendices
A—Separate Statement of Mr. Wallison
B—Examples of Substantive Complexity
C—Committee Members, Official Observers, and Staff

SEC Advisory Committee on Improvements to Financial Reporting, Washington, DC 20549

February 14, 2008

The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, NE., Washington, DC 20549–1070

Dear Chairman Cox:

It is my pleasure and privilege to present to you, and the other Commissioners, on behalf of the Advisory Committee on Improvements to Financial Reporting, a progress report of the Committee's developed proposals, conceptual approaches, and currently identified matters for future consideration.

Our Committee has worked diligently to provide an interim progress report to you. The developed proposals in our progress report are proposals that we believe could be implemented by the Commission, its staff, or other bodies, as appropriate. These 12 proposals are summarized in the executive overview of our progress report. Conceptual approaches represent our initial views, which are based on discussions on a particular subject, but which require additional vetting before formalization into a developed proposal. Matters for future consideration are areas in which deliberations and research have not yet begun. After the conclusion of the Committee's work later this year, we will issue a final report with written recommendations.

We commend the Commission for its initiative in creating the Committee. You have been generous in furnishing staff and other resources. We would like to thank the staff members whose participation was invaluable during this phase of the Committee's work. These include from the Commission staff:

Conrad Hewitt
John W. White
James Daly
Bert Fox
Stephanie Hunsaker
Nili Shah
Brett Williams
James Kroeker
Wayne Carnall
Adam Brown
Todd E. Hardiman
Shelly Luisi
Amy Starr

These also include Russell Golden, Holly Barker and Christopher Roberge

from the Financial Accounting Standards Board and Sharon Virag from the Public Company Accounting Oversight Board.

We also want to thank our Official Observers whose participation and counsel have been invaluable to the Committee during this time:

Robert Herz
Kristen Jaconi
Mark Olson
Charles Holm
Phil Laskawy

We look forward to working with the Committee staff and Official Observers in the coming months as we develop our final report and recommendations.

Respectfully submitted on behalf of the Committee,

/s/ Robert C. Pozen

Robert C. Pozen
Committee Chairman

cc: Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Members and Official Observers of the Committee
Conrad Hewitt
John White
James L. Kroeker
Nancy M. Morris

Executive Overview [1]

In July 2007, the U.S. Securities and Exchange Commission (SEC or Commission) chartered the Advisory Committee on Improvements to Financial Reporting (Committee). The Committee's assigned objective is to examine the U.S. financial reporting system in order to make recommendations intended to increase the usefulness of financial information to investors,[2] while reducing the complexity of the financial reporting system to investors, companies, and auditors.

After the conclusion of our work, we will issue a final report with written recommendations to the Chairman of the SEC. In order to maximize our effect, we intend to issue a limited number of focused recommendations that address acknowledged problem areas and that we believe can be adopted without legislation, rather than attempting to address all perceived shortcomings in the financial reporting system.

All Committee members present at our February 11, 2008 meeting voted unanimously to issue to the Chairman of the SEC this progress report of the Committee's developed proposals, conceptual approaches, and currently identified matters for future consideration and to publish the progress report in order to encourage public feedback. Developed proposals are proposals that we believe could be implemented by the Commission, its staff,[3] or other bodies, as appropriate; these are summarized in the second part of this executive overview. Conceptual approaches represent our initial views, which are based on discussions on a particular subject, but which still require additional vetting before formalization into a developed proposal. Matters for future consideration are areas in which deliberations and research have not yet begun.

This progress report represents our work to date, which has included four public meetings where these topics were deliberated by the full Committee. In generating this progress report, we also considered all of the public comments received to date on our work.[4] All of the developed proposals, conceptual approaches and matters for future consideration were adopted unanimously (except for one dissenting vote on one proposal, as noted herein, which resulted in one separate statement from Mr. Wallison, attached as appendix A of this progress report).

We explain each of our developed proposals, conceptual approaches and matters for future consideration in the body of this progress report. The progress report is organized by the topics considered by the four subcommittees that were created in order to research, develop, and propose preliminary recommendations to the full Committee for discussion and decision-making. Thus, chapter one is on substantive complexity; chapter two on the standards-setting process; chapter three on audit process and compliance; and chapter four on delivery of financial information. Later in 2008, we will also identify and analyze some of the issues involved with the potential movement from a U.S.-based accounting regime to a global accounting system.

This executive overview highlights the key themes that tie together the chapters in this progress report, with a few examples to illustrate each theme.[5] The main themes are:

1. Increasing emphasis on the investor perspective in the financial reporting system.
2. Consolidating the process of setting and interpreting accounting standards.
3. Promoting the design of more uniform and principles-based accounting standards.
4. Creating a disciplined framework for the increased use of professional judgment.
5. Taking steps to coordinate generally accepted accounting principles in the U.S. (GAAP) with international financial reporting standards (IFRS).

I. Themes

I.A. Investor Perspective

The current system of financial reporting, including the process by which financial reporting standards are developed, attempts to balance the interests of relevant parties such as preparers, auditors, and investors. In practice, however, the system has sometimes been more responsive to the interests of preparers and auditors than to the needs of investor groups.

We believe that the financial reporting system should give pre-eminence to the needs of investors, while not ignoring the interests of other relevant parties. In this regard, we propose that investors be better represented on the Financial Accounting Standards Board (FASB) and the Financial Accounting Foundation (FAF). We also propose that the determination of how to correct financial statement errors should be based on the needs of current investors, who should, in any event, be provided with more disclosure regarding such errors.

With regard to the delivery of financial information, we propose that the SEC clarify certain legal issues related to the use of company websites as a vehicle for providing useful information to different types of investors in order to facilitate creative methods to present such information, such as in tiered formats. We also propose a gradual phase-in of interactive disclosure technology (i.e., XBRL-tagging) to facilitate the ability of investors to more easily access comparative arrays of company

[1] This report has been approved by the Committee and reflects the views of a majority of its members. It does not necessarily reflect any position or regulatory agenda of the Commission or its staff.

[2] The term ''investor(s)'' is used throughout this progress report to refer to investors, creditors, rating agencies, and other users.

[3] We note that some of our developed proposals, conceptual approaches, and matters for future considerations may require SEC action, while others may be implemented by SEC staff. We have, however, generally adopted a convention of addressing these areas to the SEC for convenience. We leave the determination of whether the proposals require SEC or SEC staff action to the discretion of the SEC and its staff.

[4] Comments to the Committee are available at *http://www.sec.gov/comments/265-24/265-24.shtml*. We have and continue to welcome feedback at any time from investors, registrants, auditors, and others on our work. Information on how to submit comments is available at: *http://www.sec.gov/about/offices/oca/acifr.shtml*.

[5] We wish to emphasize that the examples we give are illustrative only. We do not mean to imply any order of priority.

information, while minimizing the burdens on preparers (especially smaller companies). A phase-in approach would allow for enhanced understanding of the technology, proven use of the new XBRL U.S. GAAP Taxonomy, and further development of tagging and rendering software.

I.B. Setting Standards and Interpretative Process

The current financial reporting system is characterized by a large volume of standards, including individual standards that are too long or complicated; interpretations; and detailed application guidance from a variety of public and private sources. This volume and complexity have led to concerns about whether the FASB is following appropriate priorities within a consistent conceptual framework in adopting standards, and whether investors, preparers, and auditors can efficiently find the complete body of authoritative literature on an accounting issue.

While the FASB has made considerable progress in addressing both concerns, we believe that certain measures are needed to enhance the process for adopting new standards and issuing interpretations of existing standards.[6] For example, we propose that the FASB should set explicit priorities based on consultation with an Agenda Advisory Group, which would include representatives of the SEC and the Public Company Accounting Oversight Board (PCAOB), as well as representatives from the investor, preparer, and auditor communities. Further, the FASB should fully explain and expose for comment, in documents containing proposed significant new standards, its process for conducting cost-benefit studies, including field interviews and testing before finalizing any significant new accounting standard. Also, we propose that the FASB, with input from the Agenda Advisory Group, should conduct periodic assessments of existing standards to determine if they are operating as intended.

With the implementation of these proposals, we propose that the FASB should be, to the extent practicable, the sole standards-setter for GAAP and the primary source of broad interpretations of existing accounting standards. The FASB should perform these functions with a high degree of independence, but it should coordinate closely with the SEC, including through the proposed Agenda Advisory Committee. When it is necessary for the SEC to issue broadly applicable interpretations, we are considering the manner in which the SEC develops and communicates those interpretations. Nevertheless, we believe the SEC should continue to provide comments on registrant-specific matters, but these comments should not be viewed as broadly applicable. We propose that the authoritative source of GAAP should be limited, as much as possible, to the contents of the FASB's codification project, which will be updated on a regular basis.

I.C. Design of Standards

GAAP contains many detailed rules with several industry-specific exceptions and alternative accounting policies for the same transaction. Moreover, some of these rules have all-or-nothing results, which stem from bright line tests. This combination allows companies and auditors to reach a technically compliant conclusion that may be inconsistent with the underlying economic substance of the transaction, thereby potentially undermining an investor's complete and accurate understanding of the transaction. For example, transactions involving the right to use an asset for a promise to pay a series of payments in the future can be kept off a company's balance sheet if detailed rules are followed.

In response, we propose that the FASB move away from industry-specific guidance to activity-based guidance (e.g., from banking as an industry to lending as an activity by any company) and strive to reduce the number of alternative ways available under GAAP to account for the same transaction. We also plan to consider, among other possibilities, the feasibility of proportionate recognition, rather than all-or-nothing results, to better reflect the rights conveyed by agreements and obligations incurred.

Some believe an increased use of fair value measurements will better portray the current valuation of past transactions and improve financial reporting. Others believe the increased use of fair value measurements will cause unnecessary volatility, will decrease the reliability of financial statements, and will only increase investor confusion. We plan to deliberate whether, among other approaches, to support the FASB's project to consider changing the income statement format into two or more groupings designed to help investors better understand the different sources of changes in a company's income—for example, by separating cash or accrued earnings from changes resulting from fluctuations in the fair value of assets such as publicly-traded bonds.

More broadly, we will consider recommending that the FASB design accounting standards with more general principles and fewer detailed rules in order to prevent the manipulation of technical requirements to reach pre-conceived accounting results.

I.D. Professional Judgment

The preparation and audit of financial statements have always required the use of judgment. The recent evolution of accounting requires even more judgment—for example, the more frequent use of fair value involves estimates of value that may be less objectively determined than historical cost measures. Similarly, the revised auditing standards recently issued by the PCAOB emphasize the need for professional judgment in taking a risk-based approach to performing internal control audits.

As noted above, we are about to study the merits of moving in the direction of more principles and fewer detailed rules. Also, as mentioned below, international accounting standards, as they exist today, contain less detailed guidance and fewer rules than GAAP. Detailed rules not only increase the complexity of the financial reporting system, but they also permit the structuring of transactions to achieve a particular accounting result, even if the results are inconsistent with the economic substance of the transactions or the underlying purposes of the rules.

In recognition of the increasing use of accounting judgment, we are making two developed proposals. First, we propose asking the FASB to conduct post-adoption reviews of significant new standards, generally within one to two years of their effective dates to ascertain the degree of diversity in practice in using judgment when applying those standards. If that diversity is too broad or otherwise inappropriate, we would expect the FASB to amend the standard or issue interpretative guidance.

Second, we propose that the SEC and PCAOB adopt frameworks for reviewing the exercise of judgment. The framework applicable to accounting judgments would require a disciplined process, including the identification of available alternatives, analysis of the relevant literature, review of the pertinent facts, and a well-reasoned explanation of the conclusions—all

[6] We recognize that the FASB has processes that are moving in the direction of the objectives underlying our interim developed proposals. We look forward to further discussion with the FASB to evaluate whether additional improvements would more effectively achieve the desired objectives. We plan to consider this dialogue in making final recommendations for process enhancements to the U.S. standards-setter.

documented contemporaneously with the making of the accounting judgment. We believe adoption of these frameworks would encourage executives and auditors to follow a disciplined process in making judgments, and thereby give investors more confidence in the ways in which accounting and auditing judgments are being exercised.

I.E. Global Convergence

At present, U.S. companies follow GAAP; in most other countries, publicly-traded companies are increasingly following IFRS as adopted by the International Accounting Standards Board (IASB). We support the long-term goal of converging GAAP with IFRS in order to reduce accounting costs to investors and others in an increasingly global business environment. But we recognize that there are various paths to convergence, and it may take years for full convergence to be achieved. Therefore, we believe that it is quite useful to propose enhancements to the financial reporting system in the U.S.

Later in 2008, we will identify and analyze some of the issues to be resolved in the move toward global convergence of accounting standards. At this time, we note that the principles contained in IFRS are less encumbered by detailed rules than GAAP; accordingly, GAAP will probably need to become less rules-based in order to promote the goal of global convergence. We also note that IFRS has little industry-specific guidance, and we encourage the IASB to continue in this manner, consistent with our proposal that the FASB issue activity-based standards rather than industry-specific accounting standards.

On the other hand, IFRS contains a number of alternative accounting policies for the same activity, and there are political pressures to add exceptions in certain countries. As part of the effort to promote global convergence, we urge the IASB to continue to reduce the number of alternative accounting policies currently available and to resist the political pressures for country exceptions.

II. Summary of Developed Proposals

Summarized below are our developed proposals based on our work to date. These developed proposals are discussed in greater detail in the remainder of this progress report. These developed proposals are numbered consecutively in this executive overview, with a reference in parentheses to their position in the body of the report.

1. GAAP should be based on business activities,[7] rather than industries. As such, the SEC should recommend that any new projects undertaken jointly or separately by the FASB be scoped on the basis of business activities rather than industries. Any new projects should include the elimination of existing industry-specific guidance in relevant areas as a specific objective of those projects, unless, in rare circumstances, retaining industry guidance can be justified on the basis of cost-benefit considerations (discussed in section II.A of chapter 1).

The SEC should also recommend that, in conjunction with its current codification project, the FASB add a project to its agenda to remove or minimize existing industry-specific guidance that conflicts with generalized GAAP, taking into account the pace of convergence efforts.[8] (Chapter 1—developed proposal 1.1)

2. GAAP should be based on a presumption that formally promulgated alternative accounting policies should not exist. The SEC should recommend that any new projects undertaken jointly or separately by the FASB not provide additional optionality, unless, in rare circumstances, it can be justified. Any new projects should include the elimination of existing alternative accounting policies in relevant areas as a specific objective of those projects, unless, in rare circumstances, the optionality can be justified. (Chapter 1—developed proposal 1.2)

3. Additional investor representation on standards-setting bodies is central to improving financial reporting. Only if investor perspectives are properly considered by all parties will the output of the financial reporting process meet the needs of those for whom it is primarily intended to serve. Therefore, the perspectives of investors should have pre-eminence. To achieve that pre-eminence in standards-setting, the SEC should encourage the following improvements:

- Add investors to the FAF to give more weight to the views of different types of investors, both large and small.
- Give more representation on both the FASB and the FASB staff to experienced investors who regularly use financial statements to make investment decisions to ensure that standards-setting considers fully the usefulness of the resulting information. (Chapter 2—developed proposal 2.1)

4. The SEC should assist the FAF with enhancing its governance of the FASB, as follows:

- By encouraging the FAF to develop performance metrics to assess the FASB's adherence to the goals in its mission statement, objectives, and precepts and to improve its efficiency.
- By supporting the FAF's changes outlined in its Request for Comments on Proposed Changes to Oversight, Structure and Operations of the FAF, FASB and GASB, with minor modifications regarding composition of the FAF and the FASB, as proposed in section II of chapter 2, and agenda-setting, as proposed in section IV of chapter 2.
- By encouraging the FAF to amend the FASB's mission statement, stated objectives, and precepts to emphasize that an additional goal should be to minimize avoidable complexity. (Chapter 2—developed proposal 2.2)

5. The SEC should encourage the FASB to further improve its standards-setting process and timeliness, as follows:

- Create a formal Agenda Advisory Group that includes strong representation from investors, the SEC, the PCAOB, and other constituents, such as preparers or auditors, to make recommendations for actively managing U.S. standards-setting priorities.
- Refine procedures for issuing new standards by: (1) Implementing investor pre-reviews designed to assess perceived benefits to investors, (2) enhancing cost-benefit analyses, and (3) requiring improved field visits and field tests.
- Improve review processes for new standards by conducting post-adoption reviews of every significant new standard, generally within one to two years of its effective date, to address interpretive questions and reduce the diversity of practice in applying the standard, if needed.
- Improve processes to keep existing standards current and to reflect changes in the business environment by conducting periodic assessments of

[7] As discussed in section II.B of chapter 1 regarding management intent, we have not taken a position as to whether intent is an appropriate basis of accounting. Similarly, we express no view on whether intent provides a meaningful distinction between business activities.

[8] Some constituents understand ''convergence'' to mean that GAAP and IFRS (as published by the IASB) will eventually be harmonized, at which point no substantive differences will exist between the two bodies of accounting literature. Others understand it to mean a discrete transition from GAAP to IFRS at a specified date without respect to whether the two bodies of literature are substantially harmonized. The timing of these two approaches may differ, which would likely impact the prioritization of this proposal to eliminate existing U.S. industry-specific guidance on the FASB's agenda. In either case, we believe industry-specific guidance should be substantially eliminated prior to convergence—either as a component of the convergence plan, or by establishing a specified date after which the use of industry-specific guidance would be prohibited.

existing standards. (Chapter 2—developed proposal 2.3)

6. The number of parties that either formally or informally interprets GAAP and the volume of interpretative implementation guidance should continue to be reduced. The SEC should coordinate with the FASB to clarify roles and responsibilities regarding the issuance of interpretive implementation guidance, as follows:

• The FASB Codification, a draft of which was released for verification on January 16, 2008, should be completed in a timely manner. In order to fully realize the benefits of the FASB's codification efforts, the SEC should ensure that the literature it deems to be authoritative is integrated into the FASB Codification to the extent possible, or separately re-codified, as necessary.

• To the extent practical, going forward, there should be a single standards-setter for all authoritative accounting standards and interpretive implementation guidance that are applicable to a particular set of accounting standards, such as GAAP or IFRS. For GAAP, the FASB should continue to serve this function. To that end, the SEC should only issue broadly applicable interpretive implementation guidance in limited situations (see section VI of chapter 2).

• All other sources of interpretive implementation guidance should be considered non-authoritative and should not be required to be given more credence than any other non-authoritative sources that are evaluated using well-reasoned, documented professional judgments made in good faith. (Chapter 2—developed proposal 2.4)

7. The FASB or the SEC, as appropriate, should issue guidance reinforcing the following concepts:

• Those who evaluate the materiality of an error should make the decision based upon the perspective of a reasonable investor.

• Materiality should be judged based on how an error affects the total mix of information available to a reasonable investor.

• Just as qualitative factors may lead to a conclusion that a quantitatively small error is material, qualitative factors also may lead to a conclusion that a quantitatively large error is not material. The evaluation of errors should be on a ''sliding scale.''

The FASB or the SEC, as appropriate, should also conduct both education sessions internally and outreach efforts to financial statement preparers and auditors to raise awareness of these issues and to promote more consistent application of the concept of materiality. (Chapter 3—developed proposal 3.1)

8. The FASB or the SEC, as appropriate, should issue guidance on how to correct an error consistent with the principles outlined below:

• Prior period financial statements should only be restated for errors that are material to those prior periods.

• The determination of how to correct a material error should be based on the needs of current investors. For example, a material error that has no relevance to a current investor's assessment of the annual financial statements would not require restatement of the annual financial statements in which the error occurred, but would need to be disclosed in an appropriate document, and, to the extent that the error remains uncorrected in the current period, corrected in the current period.

• There may be no need for the filing of amendments to previously filed annual or interim reports to reflect restated financial statements, if the next annual or interim period report is being filed in the near future and that report will contain all of the relevant information.

• Restatements of interim periods do not necessarily need to result in a restatement of an annual period.

• All errors, other than clearly insignificant errors, should be corrected no later than in the financial statements of the period in which the error is discovered. All material errors should be disclosed when they are corrected.

• The current disclosure during the period in which the restatement is being prepared, about the need for a restatement and about the restatement itself, is not consistently adequate for the needs of investors and should be enhanced. (Chapter 3—developed proposal 3.2)

9. The FASB or the SEC, as appropriate, should develop and issue guidance on applying materiality to errors identified in prior interim periods and how to correct these errors. This guidance should reflect the following principles:

• Materiality in interim period financial statements must be assessed based on the perspective of the reasonable investor.

• When there is a material error in an interim period, the guidance on how to correct that error should be consistent with the principles outlined in developed proposal 8 above. (Chapter 3—developed proposal 3.3)

10. The SEC should adopt a judgment framework for accounting judgments. The PCAOB should also adopt a similar framework with respect to auditing judgments. Careful consideration should be given in implementing any framework to ensure that the framework does not limit the ability of auditors and regulators to ask appropriate questions regarding judgments and take actions to require correction of unreasonable judgments.

The proposed framework applicable to accounting-related judgments would include the choice and application of accounting principles, as well as the estimates and evaluation of evidence related to the application of an accounting principle. We believe that a framework that is consistent with the principles outlined in this developed proposal to cover judgments made by auditors based on the application of PCAOB auditing standards would be very important and would be beneficial to investors, preparers, and auditors. Therefore, we propose that the PCAOB develop a professional judgment framework for the application and evaluations of judgments made based on PCAOB auditing standards. (Chapter 3—developed proposal 3.4)

11. The SEC should, over the long-term, mandate the filing of XBRL-tagged financial statements after the satisfaction of certain preconditions relating to: (1) Successful XBRL U.S. GAAP Taxonomy testing, (2) capacity of reporting companies to file XBRL-tagged financial statements using the new XBRL U.S. GAAP Taxonomy on the SEC's EDGAR system, and (3) the ability of the EDGAR system to provide an accurately rendered version of all such tagged information. The SEC should phase in XBRL-tagged financial statements as follows:

• The largest 500 domestic public reporting companies based on unaffiliated market capitalization (public float) should be required to furnish to the SEC, as is the case in the voluntary program today, a document prepared separately from the reporting companies' financial statements that are filed as part of their periodic Exchange Act reports. This document would contain the following:

○ XBRL-tagged face of the financial statements.[9]

○ Block-tagged footnotes to the financial statements.[10]

• Domestic large accelerated filers (as defined in SEC rules, which would include the initial 500 domestic public reporting companies) should be added

[9] To allow this first phase, the SEC EDGAR system must permit submissions using the new XBRL U.S. GAAP Taxonomy.

[10] We understand that tagging beyond the face of the financial statements and block-tagging of footnotes, such as granular tagging of footnotes and non-financial data, may require significant effort and would involve a significant number of tags.

to the category of companies, beginning one year after the start of the first phase, required to furnish XBRL-tagged financial statements to the SEC.

• Once the preconditions noted above have been satisfied and the second phase-in period has been implemented, the SEC should evaluate whether and when to move from furnishing to the SEC to the official filing of XBRL-tagged financial statements with the SEC for the domestic large accelerated filers, as well as the inclusion of all other reporting companies, as part of a company's Exchange Act periodic reports. (Chapter 4—developed proposal 4.1) [11]

12. The SEC should issue a new comprehensive interpretive release regarding the use of corporate Web sites for disclosures of corporate information, which addresses issues such as liability for information presented in a summary format, treatment of hyperlinked information from within or outside a company's Website, treatment of non-GAAP disclosures and GAAP reconciliations, and clarification of the public availability of information disclosed on a reporting company's Web site.

Industry participants should coordinate among themselves to develop uniform best practices on uses of corporate websites for delivering corporate information to investors and the market. (Chapter 4—developed proposal 4.2)

* * * * *

We believe publication of this progress report will increase the chances of our recommendations being implemented. The developed proposals in this progress report are described with enough detail to enable the SEC and public commentators to evaluate whether regulatory action in these areas is warranted. The description of conceptual approaches in this progress report will hopefully stimulate discussion and debate on these topics so that we can put forward additional developed proposals later this year.

Introduction[12]

I. Our Objective

In July 2007, the U.S. Securities and Exchange Commission (SEC or Commission) chartered the Advisory Committee on Improvements to Financial Reporting (Committee). The Committee's assigned objective is to examine the U.S. financial reporting system in order to make recommendations intended to increase the usefulness of financial information to investors,[13] while reducing the complexity of the financial reporting system to investors, companies, and auditors.

More specifically, our charter identifies the following areas of inquiry:

• The current approach to setting financial accounting and reporting standards, including: (1) The principles-based versus rules-based standards, (2) the inclusion within standards of exceptions, bright lines, and safe harbors, and (3) the process for providing timely guidance on implementation issues and emerging issues.

• The current process of regulating compliance with accounting and reporting standards.

• The current system for delivering financial information to investors and accessing that information.

• Other environmental factors that drive avoidable complexity, including the possibility of being second-guessed, the structuring of transactions to achieve an accounting result, and whether there is a hesitance by professionals to exercise professional judgment in the absence of detailed rules.

• Whether there are current accounting and reporting standards that do not result in useful information to investors, or impose costs that outweigh the resulting benefits.

• Whether the growing use of international accounting standards has an impact on the relevant issues relating to the complexity of U.S. accounting and reporting standards and the usefulness of the U.S. financial reporting system.

II. Our Guiding Principles

We believe that financial reporting should provide information that aids investors in making investment, credit, and similar resource allocation decisions.[14] However, some argue that, over time, financial reporting has become a burdensome compliance exercise with decreasing relevance to investors. This effect can be attributed, in part, to: (1) The evolution of new business strategies and financing techniques that stretch the limits of what the traditional reporting framework can effectively convey, and (2) an overly litigious culture that, arguably, results in financial reporting designed as much to protect against liability as to inform investors. As a result, we believe the disconnect between current financial reporting and the information necessary to make sound investment decisions has become more pronounced.

A key factor often cited as driving this disconnect is complexity, which has rarely been defined in the context of financial reporting. We have developed and applied the following definition of complexity in this context to guide our deliberations:

Definition of Complexity

The state of being difficult to understand and apply. Complexity in financial reporting refers primarily to the difficulty for:

1. Investors to understand the economic substance of a transaction or event and the overall financial position and results of a company.

2. Preparers to properly apply generally accepted accounting principles in the U.S. (GAAP) and communicate the economic substance of a transaction or event and the overall financial position and results of a company.

3. Other constituents to audit, analyze, and regulate a company's financial reporting.

Complexity can impede effective communication through financial reporting between a company and its stakeholders. It also creates inefficiencies in the marketplace (e.g., increased investor, preparer, audit, and regulatory costs) and suboptimal allocation of capital.

Causes of Complexity

The causes of complexity are many and varied. We have identified the following significant causes of complexity:

1. Complex activities—The increasingly sophisticated nature of business transactions can be difficult to understand, particularly with respect to the growing scale and scope of companies with operations that cross international boundaries and financial reporting regimes.

2. Incomparability and inconsistency—Incomparable reporting of activities within and across entities

[11] A dissenting vote on developed proposal 4.1 was cast by Peter Wallison.

[12] This report has been approved by the Committee and reflects the views of a majority of its members. It does not necessarily reflect any position or regulatory agenda of the Commission or its staff.

[13] The term ''investor(s)'' is used throughout this progress report to refer to investors, creditors, rating agencies, and other users.

[14] Adapted from the FASB Preliminary Views document and IASB Discussion Paper, Conceptual Framework for Financial Reporting: Objective of Financial Reporting and Qualitative Characteristics of Decision-Useful Financial Reporting Information (July 6, 2006), which states, ''The objective of general purpose external financial reporting is to provide information that is useful to present and potential investors and creditors and others in making investment, credit, and similar resource allocation decisions.''

arises because of factors such as exceptions to general principles, bright lines, and the mixed attribute model. Some of this guidance permits the structuring of transactions in order to achieve particular financial reporting results. Further, to the extent new pronouncements are adopted prospectively, past and present periods of operating results are not comparable. This is compounded by the rapid pace at which new accounting pronouncements are being adopted, which hinders the ability of all constituents to understand and apply new guidance in relatively short timeframes.

3. Nature of financial reporting standards—Standards can be difficult to understand and apply for several reasons, including:

- The existence of opposing points of view that were taken into account when developing standards—most importantly, the attempts by public companies to smooth amounts that vary from period to period, versus the requests from those who want such amounts marked to market each period.
- The challenge of describing accounting principles in simple terms (i.e., plain English) for highly sophisticated transactions.
- The presence of detailed guidance for numerous specific fact patterns.
- The impact of multiple bodies setting standards.
- The development of such standards on the basis of an incomplete and inconsistent conceptual framework.

4. Volume—The vast number of formal and informal accounting standards, regulations, and interpretations, including redundant requirements, make finding the appropriate standard or interpretation challenging for particular fact patterns.

5. Audit and regulatory systems that challenge the use of professional judgment—The risk of litigation and the fear of being ''second-guessed'' results in (1) a greater demand for detailed rules on how to apply accounting standards to an ever increasing set of specific situations, (2) unnecessary restatements that are not meaningful to investors, and (3) legalistic disclosures that are difficult to understand.

6. Educational shortcomings—Undergraduate and graduate education in accounting has traditionally emphasized the mechanics of double-entry bookkeeping, which favors the use of detailed rules rather than the full understanding of relevant principles. The same approach is evident in the certified public accountant exam, as well as continuing professional education requirements.

7. Information delivery—The need for information varies by investor type and is often driven by a legal, rather than an investor, perspective. In addition, the amount and timing of information, as well as the method by which it is transmitted, may result in complex and hard-to-navigate disclosures that cause investors to sort through material that they may not find relevant in order to identify pieces that are. These factors make it difficult to distinguish the sustaining elements of an entity from non-operating or other influences.

We observe that two types of substantive complexity exist: (1) Unavoidable complexity, which is a function of the underlying transaction or item being accounted for, such as the first cause of complexity noted above, and (2) avoidable complexity, which is introduced from other sources. Our focus is on avoidable complexity, with an emphasis on improvements that are feasible in the near-term.

III. Our Scope

We have limited our deliberations to matters involving SEC registrants. While financial reporting matters and, more specifically, GAAP, also apply to private entities, including nonprofit organizations, our focus is consistent with our role as an advisory committee to the SEC.

We have also focused our scope as it relates to international matters. The SEC recently amended its rules to eliminate the requirement for a GAAP reconciliation for foreign private issuers reporting under international financial reporting standards (IFRS) as issued by the International Accounting Standards Board (IASB), and issued a concept release to explore a more far-reaching prospect—the possibility of giving domestic issuers the alternative to report using IFRS. We have proceeded based on two premises: (1) That, despite any potential actions by the Commission to permit IFRS reporting by domestic issuers, GAAP will continue to be utilized by many U.S. public companies for a significant number of years, and (2) that the convergence process between GAAP and IFRS will continue. As a result, we believe it is productive to make recommendations on improving GAAP, as well as the related processes at the Financial Accounting Standards Board (FASB or the Board), the Public Company Accounting Oversight Board (PCAOB), and the SEC. At the same time, we will point out how our developed proposals can be coordinated with the work of the IASB and the development of IFRS, with the objective of promoting convergence.

IV. Our Approach

After the conclusion of our work, we will issue a final report with written recommendations to the Chairman of the SEC. In order to maximize our effect, we intend to issue a limited number of focused recommendations that address acknowledged problem areas and that we believe can be adopted without legislation, rather than attempting to address all perceived shortcomings in the financial reporting system.

To facilitate the development of these recommendations, we have created subcommittees that report to the full Committee for discussion and deliberation. The subcommittees are:

1. Substantive Complexity.
2. Standards-Setting Process.
3. Audit Process and Compliance.
4. Delivering Financial Information.

Matters related to international coordination will be addressed, as appropriate, as part of our deliberations later in 2008.

The purpose of this progress report is to present our developed proposals, conceptual approaches, and matters for future considerations based on our work to date. Developed proposals are proposals that we believe could be implemented by the Commission, its staff,[15] or other bodies, as appropriate. Conceptual approaches represent our initial views, which are based on discussions on a particular subject, but which still require additional vetting before formalization into a developed proposal. Matters for future considerations are areas in which deliberations and research have not yet begun.

Our work to date has included four public meetings where these topics were deliberated by the full Committee. In generating this progress report, we also considered all of the public comments received to date on our work.[16] All of the developed proposals, conceptual approaches and matters for future consideration were adopted unanimously (except for one dissenting vote on one proposal, as noted herein, which resulted in one separate

[15] We note that some of our developed proposals, conceptual approaches, and matters for future considerations may require SEC action, while others may be implemented by SEC staff. We have, however, generally adopted a convention of addressing these areas to the SEC for convenience. We leave the determination of whether the proposals require SEC or SEC staff action to the discretion of the SEC and its staff.

[16] Comments to the Committee are available at *http://www.sec.gov/comments/265-24/265-24.shtml*. We have and continue to welcome feedback at any time from investors, registrants, auditors, and others on our work. Information on how to submit comments is available at: *http://www.sec.gov/about/offices/oca/acifr.shtml.*

statement from Mr. Wallison, attached as appendix A of this progress report).

Chapter 1: Substantive Complexity

I. Introduction

Public companies in the U.S. submit financial statements to the SEC so investors can monitor their financial performance and make decisions about capital allocation. Traditionally, those financial statements are prepared using a common framework referred to as GAAP. A casual review of audited financial statements might create a perception that amounts reported in a balance sheet or income statement are mechanical and precise, when they in fact reflect a great deal of choices, estimation and judgment.

While ideally GAAP should provide clear and consistent guidance for preparing financial statements, this is not always true. A number of factors undermine this ideal, including the causes of complexity enumerated in the Introduction to this progress report. As a result, certain parts of GAAP may actually hinder effective comparison of financial performance between companies. For instance, a large company may purchase a smaller company to acquire a newly-developed patent that the smaller company obtained to protect a promising new product. In that scenario, the purchasing company would record the patent as an asset under GAAP. However, if the smaller company was not purchased, but continued developing the product on its own, it would be prohibited by GAAP from recording an asset to reflect the patent on its balance sheet.

This example is just one illustration of the avoidable complexity embedded in the current substantive standards of GAAP. We have identified what we consider to be the three most pressing forms of avoidable substantive complexity that currently exist in financial reporting: (1) Exceptions to general principles, (2) bright lines, and (3) the mixed attribute model that blends the use of fair value and historical cost.

Exceptions to general principles create complexity because they deviate from established standards that are applicable to most companies. In effect, investors and preparers no longer speak a uniform language to communicate financial information; they must learn new dialects. Other constituents in that communication process are similarly impacted. Our work in this area is divided into four categories. First, there are many examples of industry-specific guidance, some of which conflict with more generalized GAAP that applies across most industries.[17] Second, alternative accounting policies give preparers options among acceptable practices, such as whether or not to apply hedge accounting,[18] which reduce comparability across companies. Third, scope exceptions other than industry-specific guidance represent departures from a principle and require detailed analyses to determine whether they apply. Fourth, competing models create requirements to apply different accounting models to similar types of transactions or events, depending on the balance sheet or income statement items involved. This diversity requires all constituents to understand assorted implementation methods, even though they are based on similar fundamental principles.

Bright lines are problematic because they create superficial borders along a continuous spectrum of transactions. More fundamentally, certain reporting standards require drastically different accounting treatments on either side of a bright line. Lease accounting is often cited as an illustration of bright lines. Consider, for example, a lessee's accounting for a piece of machinery. Under current requirements, the lessee will account for the lease in one of two significantly different ways: Either (1) reflect an asset and a liability on its balance sheet, as if it owns the leased asset or (2) reflect nothing on its balance sheet. The accounting conclusion depends on the results of two quantitative tests,[19] where a mere 1% difference leads to very different accounting.

The mixed attribute model results in amounts that are a blend of accounting conventions. Some assets and liabilities are measured at historic cost, others at lower of cost or market, and still others at fair value. Combinations or subtotals of these numbers thus may not be intuitively useful to investors. While some advocate using fair value for the entire balance sheet as a solution, this would exacerbate the existing questions about relevance and reliability, including considerable subjectivity in the valuation of thinly-traded assets and liabilities.

The remainder of this chapter discusses each of these areas and the manner in which they contribute to complexity in greater depth. It also contains developed proposals or conceptual approaches to reduce their effects. The sequence in which these areas are presented does not necessarily indicate their relative priority to one another. Rather, certain areas warrant additional research and deliberation before reasonable proposals can be fully developed, such as those related to the mixed attribute model and more meaningful groupings of individual line items on the financial statements. We intend to pursue these topics during the course of our work later in 2008. Lastly, while deliberations have been conducted primarily in the context of GAAP, we believe that our analyses and proposals are similarly applicable under IFRS.

II. Exceptions to General Principles

II.A. Industry-Specific Guidance

Developed Proposal 1.1: GAAP should be based on business activities,[20] rather than industries. As such, the SEC should recommend that any new projects undertaken jointly or separately by the FASB be scoped on the basis of business activities rather than industries. Any new projects should include the elimination of existing industry-specific guidance in relevant areas as a specific objective of those projects, unless, in rare circumstances, retaining industry guidance can be justified on the basis of cost-benefit considerations (discussed below).

The SEC should also recommend that, in conjunction with its current codification project, the FASB add a project to its agenda to remove or minimize existing industry-specific guidance that conflicts with generalized GAAP, taking into account the pace of convergence efforts.[21]

[17] See comparison of Statement of Financial Accounting Standard (SFAS) No. 51, Financial Reporting by Cable Television Companies, with SEC Staff Accounting Bulletin (SAB) 104, Revenue Recognition (as codified in SAB Topic 13), later in this chapter.

[18] Hedge accounting guidance is provided in SFAS No. 133, Accounting for Derivatives and Hedging Activities.

[19] See discussion of bright lines below for further details.

[20] As discussed in section II.B of this chapter regarding management intent, we have not taken a position as to whether intent is an appropriate basis of accounting. Similarly, we express no view on whether intent provides a meaningful distinction between business activities.

[21] Some constituents understand ''convergence'' to mean that GAAP and IFRS (as published by the IASB) will eventually be harmonized, at which point no substantive differences will exist between the two bodies of accounting literature. Others understand it to mean a discrete transition from GAAP to IFRS at a specified date without respect to whether the two bodies of literature are substantially harmonized. The timing of these two approaches may differ, which would likely impact the prioritization of this proposal to eliminate existing U.S. industry-specific guidance on the FASB's agenda. In either case, we believe industry-specific guidance should be substantially eliminated prior to convergence—either as a component of the convergence plan, or by establishing a specified date after which the use of industry-specific guidance would be prohibited.

Background

Industry-specific guidance refers to: (1) Exceptions to general accounting standards for certain industries, (2) industry-specific guidance created in the absence of a single underlying standard or principle, and (3) industry practices not specifically addressed or based in GAAP. Industries covered by this guidance include, but are not limited to, the insurance, utilities, oil and gas, mining, cable television, financial, real estate, casino, broadcasting, and film industries.[22]

Industry-specific guidance has developed for a number of reasons. These include multiple standards-setters issuing guidance without consistently coordinating their efforts, a desire to enhance uniformity throughout an industry, and efforts to customize accounting standards for allegedly ''special'' transactions or investor needs. In some cases, industries have developed their own practices in the absence of applicable authoritative literature.

Industry-specific guidance contributes to avoidable complexity by making financial reports less comparable.[23] This is evident across industries, when conflicting accounting models are used for similar or identical transactions. It may also be used as an improper analogy to achieve desired results or to require more conservative accounting treatments (e.g., by auditors).[24] In addition, the use of an industry to define an accounting treatment raises serious questions about which companies are within the scope of specific guidance. This issue is especially pronounced for diversified companies, which may be involved in a number of different industries.

Further, industry-specific guidance unnecessarily increases the volume of accounting literature. This, in turn, adds to the costs of implementing such literature and maintaining it (e.g., monitoring it for interaction with other new and existing standards and expanding the size and scope of technical resources and databases). Industry-specific guidance also increases the cost of training accountants and retaining industry experts, while compounding the complexity that investors experience in understanding the present variety of accounting and disclosure standards. Lastly, it hinders more widespread use of XBRL by increasing the number of data tags that need to be created, maintained, and properly used to deliver financial information.

On the other hand, industry-specific guidance may alleviate complexity by allowing industry reporting to better meet the specific investor needs in that industry and enhancing comparability across entities within an industry. Further, it may depict important differences in the economics of an industry, particularly where application of a generalized principle may not result in accounting that is faithful to a transaction's substance. We also note that historically, some industry-specific guidance has filled a need where GAAP is otherwise lacking, and simplified or reduced the amount of guidance a preparer in an industry would need to consider (even though it might increase complexity across industries generally). Finally, specialized guidance has been able to address prevalent industry issues quickly because it was written for a narrower audience than generalized GAAP.

Industry-specific guidance can be broken into three categories. First, some industry-specific guidance is explanatory in nature and consistent with generalized GAAP, such as portions of AICPA Accounting and Auditing Guides that assist preparers interpret and apply existing, generalized GAAP. Second, other industry-specific guidance is inconsistent with generalized GAAP. For example, SFAS No. 51, Financial Reporting by Cable Television Companies, requires that initial hookup revenue (a type of nonrefundable upfront fee) is recorded to the extent of direct selling costs incurred; the remainder is deferred and recorded in income over the estimated average period that subscribers are expected to remain connected to the system. However, generalized guidance indicates this practice is inappropriate unless it is specifically prescribed elsewhere (such as SFAS No. 51).[25] Therefore, similar activities like upfront fees for gym memberships are not afforded equal treatment. Third, still other industry-specific guidance was created in the absence of a general principle that applies across industries. For instance, while there is no comprehensive revenue recognition standard, SoP 81–1, Accounting for Performance of Construction-Type and Certain Production-Type Contracts, discusses revenue and cost recognition in areas such as the construction industry.

Discussion

We generally believe that industry-specific guidance should be eliminated to reduce avoidable complexity, particularly as generalized GAAP is developed. However, we acknowledge that industry-specific guidance has merit when cost-benefit considerations indicate that the enhanced information investors would receive under generalized GAAP is not justified by the direct costs to preparers and the indirect costs to investors to account for activities in that manner. In such cases, the SEC should encourage the FASB to work with the relevant industry participants to identify long-term ways to improve the benefits and mitigate the costs of the general standard. After making these changes, the related industry-specific guidance should be phased out as efficiently as possible. Towards that end, the SEC should encourage the FASB to provide sufficient time to allow companies to adopt generalized GAAP with minimal transition costs.

Similarly, we recognize that industry-specific guidance may be helpful in situations in which: (1) It interprets, rather than contradicts, principles, and (2) the activities in question are legitimately different, which are expected to be rare. But to the extent that such guidance interprets principles (i.e., relates to implementation), we generally believe it should not be considered authoritative GAAP.[26] Further, to the extent that it applies to

[22] Refer to appendix B for additional examples.

[23] As noted previously in the Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System (July 2003):

The proliferation of specialized industry standards creates two problems that can hinder standard setters' efforts to issue subsequent standards using a more objectives-oriented regime.

- The existence of specialized industry practices may make it more difficult for standard setters to eliminate scope exceptions in subsequent standards (e.g., many standards contain exceptions for insurance arrangements subject to specialized industry accounting)
- The specialized standards may create conflicting GAAP, which makes it more difficult for accounting professionals to determine the appropriate accounting.

[24] For instance, some auditors may use concepts in revenue recognition from the software industry (Statement of Position (SoP) 97–2) as a basis for postponing the revenue recognition of companies in other industries without on-point literature. Opponents of this practice argue such revenue deferral is too conservative and does not adequately portray the extent to which a company may have satisfied its product or service obligations in a long-term or multiple-element contract.

[25] SAB Topic 13.

[26] We are aware of constituents, such as the AICPA, that have historically issued industry-specific implementation guidance. We generally believe such guidance should not be considered authoritative. Rather, all authoritative guidance should continue to be issued by designated standards-setters, such as the FASB in the U.S., as discussed in chapter 2 of this progress report. If a designated standards-setter issues implementation guidance for activities that are prevalent in particular industries, we believe it should be applicable to all transactions of the type in question, regardless of the industry in which a company operates.

activities that are legitimately different, such guidance should be scoped and applied on the basis of business activities, rather than industries.

In implementing this proposal, we note that the FASB's codification project can be used to sort existing industry-specific guidance into one of the three categories identified above (consistent with GAAP, inconsistent with GAAP, or there is no comparable GAAP). We believe efforts to reduce existing industry-specific guidance should focus primarily on cases in which it is inconsistent with generalized GAAP. Further, as the FASB develops new generalized guidance in areas like revenue recognition, it should eliminate industry-specific guidance to the maximum extent feasible. Similarly, the SEC should eliminate its industry-specific guidance in related areas, if any.

From an international perspective, we note that IFRS currently contains less industry-specific guidance than GAAP and that such guidance focuses more on the nature of the business activity (e.g., agriculture, insurance contracts, exploration and evaluation of mineral resources). Nonetheless, the SEC should encourage the IASB to be mindful of developed proposal 1.1 as it continues to develop a more comprehensive body of standards. The SEC might also encourage the IASB to limit future industry-specific guidance to activities whose economics are legitimately different from other business activities. Otherwise, we believe specialized accounting for only certain subsets of similar activities will create avoidable complexity.

We acknowledge that the elimination of existing industry-specific guidance may result in more complexity over the short-term to the industries losing special treatment. Nonetheless, we believe it is an acceptable cost for a long-term reduction in avoidable complexity.

II.B. Alternative Accounting Policies

Developed Proposal 1.2: GAAP should be based on a presumption that formally promulgated alternative accounting policies should not exist. The SEC should recommend that any new projects undertaken jointly or separately by the FASB not provide additional optionality, unless, in rare circumstances, it can be justified. Any new projects should include the elimination of existing alternative accounting policies in relevant areas as a specific objective of those projects, unless, in rare circumstances, the optionality can be justified.

Background

Alternative accounting policies refer to optionality in GAAP. The following discussion addresses formally-promulgated options in GAAP, but does not address choices available to preparers at more of a practice or implementation level.[27] Examples of optionality in GAAP include:[28]

- The indirect versus the direct method of presenting operating cash flows on the statement of cash flows.
- The application of hedge accounting.[29]
- The option to measure certain financial assets and liabilities at fair value.
- The immediate or delayed recognition of gains/losses associated with defined benefit pension and other post-retirement employee benefit plans.
- The successful efforts or full cost accounting method followed by oil and gas producers.

Alternative accounting policies arise for a number of reasons. These reasons include circumstances in which the pros and cons of competing policies may be balanced and thus do not result in a single, clearly preferable approach. Other causes encompass political pressure that results in standards-setters providing for a preferred and an alternative accounting method, high administrative costs of the preferred alternative to preparers (e.g., cost-benefit considerations), and a portrayal of differences in management intent.

Alternative accounting policies contribute to avoidable complexity by making financial reports less comparable. This is evident across companies when identical activities are accounted for differently. Such alternatives may permit accounting that is less reflective of economic substance to the extent that they are based on political pressure, and facilitate differences in accounting policies selected by preparers to achieve the most favorable treatment. The unnecessary proliferation of accounting literature to codify these alternatives also adds to avoidable complexity.

On the other hand, alternative accounting policies may alleviate complexity by allowing preparers to determine the best accounting for particular entities based on cost and economic substance, to the extent that more than one accounting policy is conceptually sound. In addition, certain alternative policies may be developed more quickly than a final ''perfect'' standard to minimize the effect of other unacceptable practices. In other words, they may function as a short-term fix on the road to ideal accounting.

Management Intent

Some alternative accounting policies are based on management intent.[30] Management intent is a present assertion about management's plans for future courses of action.[31]

We have separately considered the merits of alternative accounting policies arising from differences in management intent. Opponents of the use of management intent as a basis for accounting believe that because intentions are subjective, it is difficult to use intent as a basis for accounting. Opponents also believe that intent does not change the economics of a transaction and thus, would not be a representationally faithful basis of accounting.

Proponents assert that the economics of a transaction do, in fact, change based on the nature of the activity, which is driven by management intent. Proponents also note that, while management intent is subjective and could change, this characteristic is no different from a management estimate, which is common in financial reporting. Proponents further argue that financial reporting that ignores management intent results in irrelevant information for investors, for instance, reporting the fair value of a held-to-maturity security that will not be settled for 30 years.

Due to the varying levels of management intent throughout GAAP and the merits of the arguments both for and against its use, we have determined that accounting based on management intent is too dependent on facts and circumstances to feasibly address within our timeframe.

[27] For example, companies are free to choose from among several depreciation methods—straight-line, double-declining balance, etc.

[28] Refer to appendix B for additional examples.

[29] We have noted complexities arising from the application of hedge accounting, which allows entities to mitigate reported volatility over the life of the hedge relationship. In this regard, we generally feel that instead of assessing hedge effectiveness to determine whether companies qualify for this alternative accounting treatment, a better policy would be to simply record the ineffective portion of a hedge in earnings (i.e., a proportionate approach versus an all-or-nothing approach). We are also aware of the FASB's derivatives project in this area and are generally supportive of its progress.

[30] For example, SFAS No. 115 Accounting for Certain Investments in Debt and Equity Securities, allows management to classify certain debt instruments as either a held-to-maturity, an available-for-sale, or a trading security based on the company's intent and ability with respect to the holding period of its investment. The financial statement treatment differs for all three categories.

[31] The definition of management intent and certain other concepts in the discussion of alternative accounting policies are adapted from a FASB Special Report: Future Events: A Conceptual Study of Their Significance for Recognition and Measurement (1994).

Discussion

Setting aside any consideration of management intent, we believe alternative accounting policies should be eliminated, except in limited circumstances in which they may have merit. Possible justifications for retaining alternative accounting policies include situations in which: (1) Multiple accounting alternatives exist that are consistent with the conceptual framework, and none are determined to provide significantly better information to investors than others, and (2) an alternative or interim treatment can be developed more quickly than a final ''perfect'' standard to minimize the effect of other unacceptable practices.

If one or both of the justifications above apply, we believe that the provision of alternative accounting principles should be coupled with a long-term plan by the FASB to eliminate the alternative(s) through the use of sunset provisions and that the effect of applying the alternative policy not selected by preparers should be clearly and succinctly communicated to investors (e.g., through footnote disclosure).

Further, as new guidance is issued, including that which is issued through the convergence process, the SEC should eliminate its alternative accounting policies in related areas, if any.

From an international perspective, we note that IFRS currently permits numerous alternative accounting policies. While we acknowledge the IASB's efforts in reducing some of these alternative treatments, we nonetheless believe that the SEC should encourage the IASB, like the FASB, to be mindful of this proposal, and seek to eliminate alternatives as part of its standards-setting projects.

III. Bright Lines

Conceptual Approach 1.A: We are considering recommending expanded use of the following, in place of the current use of bright lines, to better reflect the economic substance of an activity:

- Proportionate recognition—We use the term ''proportionate recognition'' in contrast to the current all-or-nothing recognition approach in GAAP. For example, consider a lease in which the lessee has the right to use a machine, valued at $100, for four years. Also assume that the machine has a 10-year useful life. Under proportionate recognition, a lessee would recognize an asset for its right to use the machine (rather than for a proportion of the asset) at approximately $40 [32] on its balance sheet. Under the current accounting literature, the lessee would either recognize the machine at $100 or recognize nothing on its balance sheet, depending on the results of certain bright line tests.
- Additional disclosure—We recognize that proportionate recognition is not universally applicable. In those cases, enhanced disclosure may be more appropriate. We have yet to define the possible scope of proportionate recognition and/or enhanced disclosure, but it may extend to areas such as leases, consolidation policy and off-balance sheet activity.
- Rules-of-thumb or presumptions, both coupled with additional considerations—We use rule-of-thumb and presumption to describe a method by which an accounting conclusion may be initially favored, subject to the consideration of additional factors. These are less stringent than bright lines, and may be appropriate where proportionate recognition may not apply.

Conceptual Approach 1.B: Further, we are considering a recommendation related to the education of students, as well as to the continuing education of investors, preparers, and auditors. The recommendation would encourage understanding of the economic substance and business purposes of transactions, in contrast to mechanical compliance with rules without sufficient context.

Background

Bright lines refer to two main areas: quantified thresholds and pass/fail tests.[33]

Quantified thresholds include hard-and-fast cutoffs, as well as rules-of-thumb or presumptions—both coupled with additional considerations. Lease accounting is often cited as an example of bright lines in the form of quantified thresholds. Consider, for example, a lessee's accounting for a piece of machinery. Under current requirements, the lessee will account for the lease in one of two significantly different ways: Either (1) reflect an asset and a liability on its balance sheet, as if it owns the leased asset, or (2) reflect nothing on its balance sheet. The accounting conclusion depends on the results of two quantitative tests,[34] where a mere 1% difference in the results of the quantitative tests leads to very different accounting.

With respect to rules-of-thumb, consolidation guidance [35] generally requires at least a 10% equity investment in a company (i.e., the equity investment expressed as a percentage of total assets) to demonstrate that the investee company is not considered a variable interest entity (VIE). The determination as to whether an entity is a VIE drives who, if anyone, ultimately consolidates the VIE in its financial statements. However, entities with investments above and below the 10% level can still be considered VIEs, depending on the particular facts and circumstances. That is, the 10% rule-of-thumb is not determinative in its own right.

Similarly, the business combination literature [36] contains an example of a presumption coupled with additional considerations. There are situations in which selling shareholders of a target company are hired as employees by the purchaser. For instance, the purchaser may wish to retain the sellers' business expertise. The payments to the selling shareholders may either be treated as: (1) Part of the cost of the acquisition, which means the payments are allocated to certain accounts on the purchaser's balance sheet, such as goodwill, or (2) compensation to the newly-hired employees, which are recorded as an expense in the purchaser's income statement, reducing net income. Some of these payments may be contingent on the selling shareholders' continued employment with the purchaser, e.g., the individual must still be employed three years after the acquisition in order to maximize the total sales price. GAAP provides several factors to consider

[32] Calculated as (4 year lease/10 year useful life) x $100 machine value. The example is only intended to be illustrative and is not prescriptive. For instance, the basis of proportionate recognition may be an asset's estimated useful life, future cash flows, or the share of a company's liabilities in a structured investment vehicle. We are planning additional deliberations in this regard.

[33] Refer to appendix B for additional examples other than those discussed in this section.

[34] Specifically, SFAS No. 13, Accounting for Leases, requires that leases be classified as capital leases and recognized on the lessee's balance sheet where (1) the lease term is greater than or equal to 75% of the estimated economic life of the leased property or (2) the present value at the beginning of the lease term of the minimum lease payments equals or exceeds 90% of the fair value of the leased property, among other criteria.

[35] FASB Interpretation No. (FIN) 46 (revised December 2003), Consolidation of Variable Interest Entities (FIN 46R).

[36] Emerging Issues Task Force (EITF) 95–8, Accounting for Contingent Consideration Paid to the Shareholders of an Acquired Enterprise in a Purchase Business Combination. We note EITF 95–8 is nullified by a new FASB standard, SFAS No. 141 (revised 2007), Business Combinations. SFAS No. 141 (revised 2007) states ''A contingent consideration arrangement in which the payments are automatically forfeited if employment terminates is compensation* * *'' However, the guidance in EITF 95–8 is still helpful in describing our approach with respect to the use of presumptions coupled with additional considerations in GAAP.

when deciding whether these payments should be treated as an expense or not, but establishes a presumption that any future payments linked to continued employment should be treated as an expense. It is possible this presumption may be overcome depending on the circumstances.

As indicated above, the other area of bright lines in this section includes pass/fail tests, which are similar to quantitative thresholds because they result in recognition on an all-or-nothing basis. However, these types of pass/fail tests do not involve quantification. For example, a software sales contract may require delivery of four elements. Revenue may, in certain circumstances, be recognized as each element is delivered. However, if appropriate evidence does not exist to support the allocation of the sales price to, for example, the second element, software revenue recognition guidance requires that the timing of recognition of all revenue be deferred until such evidence exists or all four elements are delivered.

Bright lines arise for a number of reasons. These reasons include a drive to enhance comparability across companies by making it more convenient for preparers, auditors, and regulators to reduce the amount of effort that would otherwise be required in applying judgment (i.e., debating potential accounting treatments and documenting an analysis to support the final judgment), and the belief that they reduce the chance of being second-guessed. Bright lines are also created in response to requests for additional guidance on exactly how to apply the underlying principle. These requests often arise from concern on the part of preparers and auditors of using judgment that may be second-guessed by inspectors, regulators, and the trial bar. Finally, bright lines reflect efforts to curb abuse by establishing precise rules to avoid problems that have occurred in the past.

Bright lines can contribute to avoidable complexity by making financial reports less comparable. This is evident in accounting that is not faithful to a transaction's substance, particularly when application of the all-or-nothing guidance described above is required. Bright lines produce less comparability because two similar transactions may be accounted for differently. For example, as described above, a mere 1% difference in the quantitative tests associated with lease accounting could result in very different accounting consequences. Some bright lines also permit structuring opportunities to achieve a specific financial reporting result (e.g., whole industries have been developed to create structures to work around the lease accounting rules). Further, bright lines increase the volume of accounting literature as standards-setters and regulators attempt to curb abusively structured transactions. The extra literature creates demand for additional expertise to account for certain transactions. All of these factors add to the total cost of accounting and the risk of restatement.

On the other hand, bright lines may alleviate complexity by reducing judgment and limiting aggressive accounting policies. They may also enhance perceived uniformity across companies, provide convenience as discussed above, and limit the application of new accounting guidance to a small group of companies, where no underlying standard exists. In these situations, the issuance of narrowly-scoped guidance may allow for issues to be addressed on a more timely basis. In other words, narrowly-scoped guidance and the bright lines that accompany them may function as a short-term fix on the road to ideal accounting.

Discussion

We are still in the process of debating when, if at all, bright lines are justified in accounting literature. We note that even if the FASB limits the issuance of bright lines, other parties might continue to create similar non-authoritative guidance. As such, recommendations to limit bright lines would require a cultural shift towards acceptance of more judgment. Accordingly, any recommendations in the context of bright lines will incorporate our consideration of a professional judgment framework, as discussed in chapter 3, and our consideration of interpretive implementation guidance and a new design approach to accounting standards, as discussed in chapter 2.

IV. Mixed Attribute Model and the Appropriate Use of Fair Value

Conceptual Approach 1.C: Measurement framework—While we may not have time to fully address when fair value is the appropriate measurement attribute, we understand that the FASB's joint conceptual framework project includes a measurement phase. We intend to study this project further and are considering a recommendation for the SEC to endorse that, as part of this project, the FASB develop a decision framework to provide a systematic approach for consistently determining the most appropriate measurement attribute for similar activities or assets/liabilities based on consideration of the trade off between relevance and reliability, and the various constituents involved in the financial reporting process.

Conceptual Approach 1.D: Judicious Use of Fair Value—Due to implementation complexities, as noted below, we are considering whether the SEC should request that the FASB be judicious about issuing new standards and interpretations that require the expanded use of fair value in areas where it is not already required, until completion of a measurement framework. Over the long-term, this framework would be used to determine measurement attributes systematically.[37] We will also consider whether improvements related to certain existing, particularly-complex, standards that incorporate fair value, such as SFAS Nos. 133 [38] and 140,[39] are warranted in the near-term.

Conceptual Approach 1.E: Groupings in Financial Statement Presentation—We believe that a more consistently aggregated presentation of financial statements would alleviate some of the confusion and concerns regarding the use of fair value. Such presentation should result in the grouping of amounts and line items by nature of activity and measurement attribute within and across financial statements. We believe such a grouping would be more understandable to investors, particularly as it would more clearly delineate the nature of changes in income (e.g., fair value volatility, changes in estimate, and business activity). This presentation might also help investors assess the degree to which management controls each source of income.

As part of the financial statement presentation project, the FASB has tentatively decided to segregate the financial statements into business (further divided into operating and investing) and financing activities. The FASB has also tentatively decided to require a reconciliation of the statement of cash flows to the statement of comprehensive income. This reconciliation would disaggregate changes in assets and liabilities based

[37] We recognize that the joint FASB/IASB conceptual framework project, including the measurement phase, is a significant undertaking that most likely will not be completed in the near-term. Consequently, we may explore whether a recommendation is warranted for a formal SEC study regarding when fair value is appropriate in financial reporting. The study's report could then be incorporated in future standards-setting activity.

[38] Accounting for Derivatives and Hedging Activities.

[39] Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.

on cash, accruals, and changes in fair value, among others.

We intend to study this project further and consider whether it would address the our leanings in this area and sufficiently facilitate investors' understanding of fair value.

Conceptual Approach 1.F: Additional Disclosure—We have identified potential areas for additional disclosure to more effectively signal to investors the level of uncertainty associated with fair value measurements in financial statements.[40] Specifically, we note that in some cases, there is no ''right'' number in a probability distribution of figures, some of which may be more fairly representative of fair value than others. Potential areas to be considered for additional disclosure may include:

- The valuation model.
- Statistical confidence intervals associated with certain valuation models.
- Key assumptions, including projections.
- Sensitivity analyses depending on the selection of key assumptions.
- The entity's position versus that of the entire market.

Conceptual Approach 1.G: Disclosure Framework—We seek to balance additional disclosure requirements, including, if any, those under conceptual approach 1.F, with: (1) The perception that amounts recognized in financial statements are generally subject to more precise calculations by preparers and higher degrees of scrutiny by investors compared to merely disclosing such amounts in the footnotes, and (2) concerns regarding disclosure redundancies. To minimize the effect of diminishing returns on potential new disclosure improvements identified during the course of our efforts and future standards-setting activity, we are considering recommending: (1) That the SEC request the FASB to develop a disclosure framework that integrates existing disclosure requirements into a cohesive whole (e.g., eliminate redundant disclosures and provide a single source of disclosure guidance across all accounting standards), (2) improvement to the piecemeal approach to establishing disclosures (i.e., standard-by-standard), and (3) that the SEC develop a process to regularly evaluate and, as appropriate, update its disclosure requirements as new FASB standards are issued.

[40] We acknowledge uncertainty also exists in other measurement attributes, such as historic cost, which may warrant similar disclosure.

Background

As previously noted, the mixed attribute model is one in which the carrying amounts of some assets and liabilities are measured based on historical cost, others at lower of cost or market, and still others at fair value. This complexity is compounded by requirements to record some adjustments to carrying amounts in earnings and others in comprehensive income.

Examples of accounting standards that result in mixed attribute measurement include two FASB standards related to financial instruments. SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, permits the fair valuation of certain assets and liabilities. As a result, some assets and liabilities are measured at fair value, while others are measured at amortized cost or some other basis. SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities, requires certain investments to be recognized at fair value and others at amortized cost.

In practice, the costs associated with (potentially uncertain) fair value estimates can be considerable. Some preparers' knowledge of valuation methodology is limited, requiring the use of valuation specialists. Auditors often require valuation specialists of their own to support the audit. Some view the need for these valuation specialists as a duplication of efforts, at the expense of the preparer. In addition, there are recurring concerns about second-guessing by auditors, regulators, and courts in light of the many judgments and imprecision involved with fair value estimates. Regardless of whether such estimates are prepared internally or by valuation specialists, the effort and elapsed time required to implement and maintain mark-to-model fair values is significant.

Nevertheless, some have advocated mandatory and comprehensive use of fair value as a solution to the complexities arising from the mixed attribute model. However, opponents argue that this would only shift the burden of avoidable complexity from investors to preparers and auditors, among others. Specifically, certain investors may find uniform fair value reporting simpler and more meaningful than the current mixed attribute model. But under a full fair value approach, some objectivity would be sacrificed because many amounts that would change to fair value are currently reported on a more verifiable basis, such as historic cost. These amounts would have to be estimated by preparers and certified by auditors, as discussed above. Such estimates are made even more subjective by the lack of a single set of generally accepted valuation standards and the use of inputs to valuation models that vary from one company to the next. Likewise, significant variance exists in the quality, skill, and reports of valuation specialists, which preparers have limited ability to assess. Finally, there is no mechanism to ensure the ongoing quality, training, and oversight of valuation specialists. As a result, some believe a wholesale transition to fair value would reduce the reliability of financial reports to an unacceptable degree.

Therefore, we assume that a complete move to fair value is most unlikely. Within this context, the partial use of fair value increases the volume of accounting literature. Said differently, when more than one measurement attribute is used, guidance is required for each one. In addition, some entities may operate under the impression that investors: (1) Are averse to market-driven volatility, and as a result, (2) incorporate unfavorable assumptions or discounts within their assessments of a company's financial performance. Consequently, entities have demanded exceptions from the use of fair value in financial reporting, resisted its use, and/or entered into transactions that they otherwise would not have undertaken to artificially limit earnings volatility. These actions have resulted in a build up in the volume of accounting literature. More generally, some believe that attempts by companies to smooth amounts that are not smooth in their underlying economics reduce the efficiency and the effectiveness of capital markets.

Information delivery is made more difficult by fair value. Investors may not understand the uncertainty associated with fair value measurements (i.e., that they are merely estimates and in many instances lack precision), including the quality of unrealized gains and losses in earnings that arise from changes in fair value. Some question whether the use of fair value may lead to counterintuitive results. For example, an entity that opts to fair value its debt may recognize a gain when its credit rating declines. Others question whether the use of fair value for held to maturity investments is meaningful. Finally, preparers may view disclosure of some of the inputs to the assumptions as sensitive and competitively harmful.

Despite these difficulties, the use of fair value may alleviate some aspects of avoidable complexity. Such information may provide investors with

management's perspective, to the extent management makes decisions based on fair value, and it may improve the relevance of information in many cases, as historical cost is not meaningful for certain items.

Fair value may enhance consistency by reducing confusion related to measurement mismatches. For example, an entity may enter into a derivative instrument to hedge its exposure to changes in the fair value of debt attributable to changes in the benchmark interest rate. The derivative instrument is required to be recognized at fair value, but, assuming no application of hedge accounting or the fair value option, the debt would be measured at amortized cost, resulting in measurement mismatches. Fair value might also mitigate the need for detailed application guidance explaining which instruments must be recorded at fair value and help prevent some transaction structuring. Specifically, if fair value were consistently required for all similar activities, entities would not be able to structure a transaction to achieve a desired measurement attribute.

Fair value also eliminates issues surrounding management's intent. For example, entities are required to evaluate whether investments are impaired. Under certain impairment models, entities are currently required to assess whether they have the intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. As discussed in section II.B of this chapter, management intent is subjective and, thus, less auditable. However, use of fair value would generally make management intent irrelevant in assessing the value of an investment.

Discussion

We acknowledge the view that a complete transition to fair value would alleviate avoidable complexity resulting from the mixed attribute model. However, we also recognize that expanded use of fair value would increase avoidable complexity, as discussed above, unless numerous implementation questions related to relevance and reliability are addressed, which extend beyond the scope of our work.

In light of our limited duration, we recognize that we may not independently develop a comprehensive measurement framework, but we plan to provide input to the FASB's projects in this area (see conceptual approach 1.C on the measurement framework and conceptual approach 1.E on groupings in financial statement presentation). As a result, we believe that recommendations requiring a systematic measurement framework and better communication of measurement attributes would more feasibly reduce avoidable complexity resulting from the mixed attribute model. Such communication encompasses footnote disclosure of each measurement attribute's characteristics (e.g., uncertainty associated with fair value), as well as a more systematic presentation of distinct measurement attributes on the face of the primary financial statements.

V. Future Considerations

As noted in the introduction to this chapter, exceptions to general principles create complexity because they deviate from established standards that are applicable to most companies. Our developed proposals with respect to industry-specific guidance and alternative accounting policies address two forms of this diversity. We intend to deliberate two remaining forms of such diversity during the course of our work later in 2008.

Scope Exceptions in GAAP Other Than Industry-Specific Guidance [41]

As noted previously, scope exceptions other than industry-specific guidance represent departures from a principle. They contribute to avoidable complexity because they result in different accounting for similar activities, require detailed analyses to determine whether or not they apply in particular situations, and increase the volume of accounting literature. On the other hand, the value of scope exceptions will be considered in light of cost-benefit considerations, practical approaches to issuing guidance in the near-term before more principled standards can be developed, and the magnitude of change that would result from eliminating or reducing them.

Examples of scope exceptions include: (1) A contract that has the characteristics of a guarantee under FIN 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness to Others, but is treated as contingent rent under SFAS No. 13, Accounting for Leases; (2) the business scope exception to the applicability of FIN 46R, Consolidation of Variable Interest Entities, subject to certain criteria; and (3) the application of SFAS No. 157, Fair Value Measurements, to share-based payment transactions.

Competing Models

Competing models are distinguished here from alternative accounting policies. Alternative accounting policies, as explained above, refer to different accounting treatments that preparers are allowed to choose under existing GAAP (e.g., whether to apply the direct or indirect method of cash flows). By contrast, competing models refer to requirements to apply different accounting models to account for similar types of transactions or events, depending on the balance sheet or income statement items involved.

Examples of competing models include different methods of asset impairment testing such as inventory, goodwill, and deferred tax assets, etc.[42] Other examples include different methods of revenue recognition in the absence of a general principle, as well as the derecognition of most liabilities (i.e., removal from the balance sheet) on the basis of legal extinguishment compared to the derecognition of a pension or other post-retirement benefit obligation via settlement, curtailment, or negative plan amendment.

Competing models contribute to avoidable complexity in that they lead to inconsistent accounting for similar activities, and they contribute to the volume of accounting literature. On the other hand, the value of competing models will be considered in light of cost-benefit considerations, practical approaches to issuing guidance in the near-term before more principled standards can be developed, and the

[41] We have limited our focus to scope exceptions, while acknowledging there are other types of exceptions in GAAP. This limited approach was considered appropriate in light of our short duration.

[42] For instance, inventory is assessed for recoverability (i.e., potential loss of usefulness) and remeasured at the lower of cost or market value on a periodic basis. To the extent the value of inventory recorded on the balance sheet (i.e., its ''cost'') exceeds a current market value, a loss is recorded. In contrast, goodwill is tested for impairment annually, unless there are indications of loss before the next annual test. To determine the amount of any loss, the fair value of a ''reporting unit'' (as defined in GAAP) is compared to its carrying value on the balance sheet. If fair value is greater than carrying value, no impairment exists. If fair value is less, then companies are required to allocate the fair value to the assets and liabilities in the reporting unit, similar to a purchase price allocation in a business combination. Any fair value remaining after the allocation represents ''implied'' goodwill. The excess of actual goodwill compared to implied goodwill, if any, is recorded as a loss. Deferred tax assets are tested for realizability on the basis of future expectations. The amount of tax assets is reduced if, based on the weight of available evidence, it is more likely than not (i.e., greater than 50% probability) that some portion or all of the deferred tax asset will not be realized. Future realization of a deferred tax asset ultimately depends on the existence of sufficient taxable income of the appropriate character (e.g., ordinary income or capital gain) within the carryback and carryforward periods available under the tax law.

magnitude of change that would result from eliminating or reducing them. We will also explore the relationship between competing models and the FASB's conceptual framework.

Chapter 2: Standards-Setting Process

I. Introduction

A robust standards-setting process is the foundation of an efficient system of financial accounting and reporting, on which capital providers may rely to make investment decisions. Although the U.S. approach to financial reporting has been quite effective in achieving that overarching objective, GAAP has evolved over many years to a point whereby some of the basic principles are obfuscated by detailed interpretive rules, as well as various exceptions and alternatives, which reduce the usefulness of the resulting financial reporting. Historically, interpretative rules on how to implement GAAP (interpretive implementation guidance) have proliferated from a variety of sources and, intentionally or not, have become perceived as additional GAAP. This increases the complexity of the financial reporting system and reduces its transparency for investors, especially when questions exist about the authoritative nature of such guidance or conflicts exist between interpretations.

This chapter advances developed proposals, conceptual approaches, and matters for future consideration intended to alleviate some of these concerns. Specifically, after examining the U.S. standards-setting process, we propose changes in the following areas:

- Increased investor representation in standards-setting.
- Enhancements in governance and oversight.
- Improvements in the process of setting new standards.
- Narrowing the sources of interpretive implementation guidance.

In general, we believe the design of the U.S. financial reporting system and the role played by each participant are appropriate. However, improvements to the existing standards-setting process, including the process of issuing interpretive implementation guidance, may significantly influence behaviors and thereby help financial reporting better serve the needs of investors.

Some of our proposals may be partially or substantially addressed by actions recently taken or in the process of being taken by the FAF, the FASB, and the SEC, which we reference where applicable. Other aspects of our proposals are already in place or occur informally in practice, but may not be fully effective or well understood. Nevertheless, our proposals are designed to increase the effectiveness and transparency of these processes.

II. Investor Representation

Investor representation in standards-setting is critical to maintaining an effective system of financial reporting, yet the intricacy of certain accounting matters has sometimes made it difficult to attract meaningful investor participation. Our proposals are intended to underscore the pre-eminence of investor perspectives in developing and administering a well-designed and effective system of financial reporting. The current standards-setting process attempts to balance the views of different stakeholders. However, the financial reporting system would best be served by recognizing that the perspectives of investors should be pre-eminent when competing interests cannot be aligned, because all stakeholders benefit from a system that allocates capital more efficiently.

We acknowledge the FASB's significant recent efforts to increase investor participation in standards-setting. Specifically, the FASB leveraged a number of existing advisory groups and created additional advisory groups to increase investor involvement. Our proposal below is intended to provide the FASB with more focused, efficient, and timely feedback from investors, both large and small.

Developed Proposal 2.1: Additional investor representation on standards-setting bodies is central to improving financial reporting. Only if investor perspectives are properly considered by all parties will the output of the financial reporting process meet the needs of those for whom it is primarily intended to serve. Therefore, the perspectives of investors should have pre-eminence. To achieve that pre-eminence in standards-setting, the SEC should encourage the following improvements:

- Add investors to the Financial Accounting Foundation (FAF) to give more weight to the views of different types of investors, both large and small.
- Give more representation on both the FASB and the FASB staff to experienced investors who regularly use financial statements to make investment decisions to ensure that standards-setting considers fully the usefulness of the resulting information.

FAF: Our proposal complements the FAF's recently proposed governance reforms.[43] The FAF proposes to expand the sources of FAF Trustee nominations, change terms of service, and create flexibility in the size of the FAF itself. We support these proposals, particularly the decision to reduce reliance on constituent-based sponsoring organizations to put forward FAF Trustees. However, we believe additional investor representation on the FAF should also be emphasized. Such representation should strive to consider differing perspectives in the investing community.

FASB and FASB Staff: Increasing direct investor involvement on the Board would benefit the FASB by bringing investor perspectives to the forefront of standards-setting and the process of issuing interpretive implementation guidance. We propose that the composition of the Board include no fewer than one, and perhaps more than one, experienced investor who regularly uses third-party financial statements to make investment decisions.

Our proposal assumes that the FAF will implement its proposed reduction in the size of the FASB from seven to five members. If this reduction is made, we believe the composition of the Board should be reconsidered to require that a preparer, an auditor, and at least one experienced investor who regularly uses third-party financial statements to make investment decisions are all represented. In our view, although academic representation on the Board should be actively sought, it should not be mandated. If the FASB consists of five members, our suggested approach would increase the influence of investors. While we recognize that workload capacity concerns may be created by a reduction in the size of the Board, we believe that these concerns may be mitigated by more delegation of responsibilities to senior staff members and a possible increase in the size of the FASB staff. On the other hand, if the FAF does not reduce the FASB's size, at least two investors should be required on the Board. The remaining at-large Board members should be selected from the most qualified individuals who possess a breadth of experiences that will ensure that the perspectives of investors are carefully considered.

There may be opportunities to increase investor representation on the FASB staff as well. The FASB has a few staff with professional investing experience. The FASB also has had a fellowship program for many years, but

[43] FAF, Request for Comments on Proposed Changes to Oversight, Structure and Operations of the FAF, FASB and GASB (December 18, 2007). Our deliberation of the FAF request for comments focused on the FAF and FASB proposals, as the Governmental Accounting Standards Board (GASB) is outside of our scope.

fellows usually come from the auditor and preparer communities. The FASB has approached investor groups about the possibility of sponsoring fellows, but, thus far, has had limited success. Investors should promote the fellowship positions and encourage qualified applicants to join the FASB staff to help enhance investor input in standards-setting.

In addition, the FAF should consider staffing alternatives that make greater use of part-time Board members or part-time senior staff for particular projects or purposes. However, we recognize that conflict of interest and independence issues would have to be resolved.

III. FAF and FASB Governance

The FAF Board of Trustees is responsible for the oversight, funding, and appointment of Board members of the FASB and the GASB. While the FAF Board of Trustees does not direct the standards-setting activities of the FASB, it does have a responsibility to periodically review the FASB's structure and governance to assess its effectiveness and efficiency. The FAF has always maintained oversight of the FASB as one of its main priorities. Our proposal below is designed to promote more active FAF oversight of the FASB—in order to shorten the time taken to develop standards, as well as to improve their quality:

Developed Proposal 2.2: The SEC should assist the FAF with enhancing its governance of the FASB, as follows:

- By encouraging the FAF to develop performance metrics to assess the FASB's adherence to the goals in its mission statement, objectives, and precepts and to improve its efficiency.
- By supporting the FAF's changes outlined in its ''Request for Comments on Proposed Changes to Oversight, Structure and Operations of the FAF, FASB and GASB,'' with minor modifications regarding composition of the FAF and the FASB, as proposed in section II of this chapter, and agenda-setting, as proposed in section IV of this chapter.
- By encouraging the FAF to amend the FASB's mission statement, stated objectives, and precepts to emphasize that an additional goal should be to minimize avoidable complexity.

Performance Metrics: The FAF should develop performance metrics to assess the FASB's adherence to the goals in its mission statement, objectives, and precepts. These metrics should track the timeliness and effectiveness of the FASB's standards-setting process. Such metrics would not have a detrimental impact on the FASB's independence. Rather, they would improve accountability in standards-setting.

Proposed FAF Governance Changes: We support the FAF's governance proposals as outlined below, with minor modifications regarding composition of the FAF and the FASB, as proposed in section II of this chapter, and agenda-setting, as proposed in section IV of this chapter:

FAF Oversight: The FAF proposes to increase its active oversight of the FASB. We support this proposal, but we note that the FAF has not described how it intends to implement it. Many of the developed proposals and conceptual approaches in this chapter provide input regarding how and in what areas to strengthen such oversight.

FASB Voting: The FAF proposal maintains the FASB's current simple majority voting requirement. We support simple majority rather than supermajority voting to promote the timeliness of standards-setting.

Mission and Objectives: The FASB's mission statement, objectives, and precepts acknowledge that efficient capital markets rely on credible, concise, and understandable financial information. They also recognize the importance of the following:

- Improving the usefulness of financial information by focusing on relevance, reliability, comparability, and consistency.
- Keeping standards current.
- Considering promptly significant areas of deficiency that need improvement.
- Promoting international convergence.
- Improving the understanding of the nature and purpose of information in financial reports.
- Being objective in decision-making and promoting neutrality of information.
- Weighing carefully the views of constituents.
- Satisfying the cost-benefit constraint.
- Minimizing disruption by providing reasonable effective dates and transition provisions.
- Reviewing the effects of past decisions in a timely fashion to interpret, amend, or replace standards, when necessary.
- Following an open, orderly process for standards-setting.

We believe minimizing avoidable complexity should be added to this list. Although we do not believe the FASB sets out to issue complex standards, amending the mission statement, stated objectives, and precepts may promote more explicit consideration of less complex accounting alternatives during standards-setting.

IV. Standards-Setting Process Improvements

The U.S. standards-setting process requires significant due process. The FASB's activities are open to public participation and observation, and the FASB actively solicits the views of its various constituents on accounting issues. We believe the FASB's approach to obtaining significant input through its open due process is fitting, although there is a difficult trade-off between a transparent due process and expediency.

We believe the FASB's processes need improvement. Critics argue that it may take too long for the issuance of new accounting standards or interpretive implementation guidance in response to changes in business practices or the economic environment. They point to projects that have been on the FASB's agenda for years to illustrate that fundamental issues are routinely given low priorities. They further argue that new standards are not always consistent and may be based on several different, or even conflicting, principles. This may be due to a number of reasons, including the lack of a completed conceptual framework, competing priorities placed on the Board, or the evolutionary nature of standards-setting in the U.S.

Due to its practice of being continually open to constituent input, the FASB may receive conflicting advice regarding its agenda. Projects are frequently added to the agenda in response to requests from constituents, but projects not being actively considered are seldom removed. The FASB may be working on projects that could be better addressed in other ways, or not at all. In either case, such projects divert resources from other important agenda items. Further, even though the FASB has a transparent due process, new standards are often met with requests for interpretive implementation guidance, implementation deferral, or amendment.

Our proposal below is designed to further enhance the U.S. standards-setting process and its timeliness.

Developed Proposal 2.3: The SEC should encourage the FASB to further improve its standards-setting process and timeliness, as follows:

- Create a formal Agenda Advisory Group that includes strong representation from investors, the SEC, the PCAOB, and other constituents, such as preparers or auditors, to make recommendations for actively managing U.S. standards-setting priorities.
- Refine procedures for issuing new standards by: (1) Implementing investor

pre-reviews designed to assess perceived benefits to investors, (2) enhancing cost-benefit analyses, and (3) requiring improved field visits and field tests.

• Improve review processes for new standards by conducting post-adoption reviews of every significant new standard, generally within one to two years of its effective date, to address interpretive questions and reduce the diversity of practice in applying the standard, if needed.

• Improve processes to keep existing standards current and to reflect changes in the business environment by conducting periodic assessments of existing standards.

Some of our proposed process improvements call for formalizing or improving existing processes, or implementing new processes to improve standards-setting outputs. Our proposed Agenda Advisory Group would help the FASB, the SEC, and other participants in the financial reporting community focus efforts on the most meaningful activities and centralize constituent input to improve the timeliness of standards-setting.

Agenda Advisory Group: The first step in standards-setting is agenda-setting. The FASB receives many requests to act on various topics from many constituents, including the SEC. The FASB also needs to fulfill its obligations under the Memo of Understanding with the IASB regarding international convergence. Requests for interpretations or amendments divert attention from other critical agenda items. FASB agenda decisions often add rather than delete projects. Further, given the volume of activity on the FASB agenda, Board and staff prioritization conclusions are not always clear to constituents. What may result is that projects being addressed may not be responsive to widely acknowledged needs, or projects may not have sufficiently-defined scopes to address these needs in a timely fashion. The FASB has a number of existing advisory groups and committees that it consults about issues that may affect its agenda and project priorities; however, we believe there needs to be increased accountability to the FAF on agenda-setting and project priorities.

An Agenda Advisory Group that includes strong representation from investors, the SEC, the FASB, and the PCAOB, as well as other interested parties such as preparers and auditors, should be created to provide advice on agenda-setting. By identifying emerging issues and building consensus about which group is best positioned to deal with them (e.g., the FASB, the EITF, or the SEC) and in what form, the Agenda Advisory Group would give immediate input about how best to prioritize near-term versus long-term priorities. The main goals of such a group would be to:

• Help standards-setting become more nimble.

• Assist the FASB is setting an achievable, strategic agenda, rather than one that includes projects proposed for many years with little progress.

• Recommend when it is appropriate for the SEC or other parties to issue interpretive implementation guidance related to emerging issues and issues observed by the SEC in its registrant reviews.

• Help the FASB maintain the usefulness of its authoritative guidance by recommending areas that need to be kept current.

• Shield the FASB from influence by any single group of constituents, thereby protecting its independence.

• Inject accountability into agenda-setting for all involved parties.

Our proposal complements the FAF's proposed changes to the FASB's agenda-setting process in which the FAF would give the FASB Chairman control over the FASB's agenda. We believe instilling more decision-making authority in the FASB Chairman, combined with a requirement to consult with the proposed Agenda Advisory Group, would be a positive step toward increasing the FASB's efficiency.

In creating such an Agenda Advisory Group, the SEC and the FASB should consider ways to implement the following objectives:

• Timeliness. The Agenda Advisory Group should be convened both on a regular schedule and on short notice telephonically to deal with urgent matters, as necessary.

• Accountability. The Agenda Advisory Group should vote on certain aspects of the standards-setting agenda and provide that information in an advisory capacity to the FASB Chairman, who would then make the final agenda decision. Part of the rationale for calling a vote would be to increase accountability of the FASB Chairman to the FAF regarding agenda-setting effectiveness.

• Active involvement of key groups of investors. Key investor groups should be actively involved in agenda-setting to maintain an appropriate focus on investor needs.

• Involvement of the SEC. Due to the SEC's oversight responsibility for standards-setting, one or more senior representatives from the SEC Office of the Chief Accountant (OCA) should be on the Agenda Advisory Group, as the SEC typically identifies practice issues before the FASB does. In addition, active involvement by the SEC will allow coordination of how and by whom guidance should be issued, thereby reducing the impetus for the SEC to issue interpretive implementation guidance separately from the codified version of GAAP (see section VI of this chapter).

• Involvement of the FASB. All Board members should be invited as official observers.

• Involvement of the PCAOB. A senior representative from the PCAOB should be invited as an official observer, as actions taken by the PCAOB significantly impact behavior of participants in the U.S. financial reporting community.

• Involvement of others. Constituents otherwise not represented should be able to submit agenda requests and track agenda decisions, similar to the way in which the EITF functions.

Formulating and Proposing New Standards: The FASB has an elaborate process for formulating and proposing new standards. This process is designed to ensure that proposed standards properly address significant issues, are consistent with business practices and economics, and have benefits that justify accounting changes. It involves staff preparation of a draft proposal, publication of the proposal with an opportunity for public comment, and approval of the final standard. Throughout the process, the FASB consults with and receives input from a diverse group of constituents. This process is time consuming, often taking many years, and could be made more efficient. The Board's outreach to certain constituents sometimes seeks advice only on detailed issues rather than the scope of projects and broad matters. Our proposal would increase the efficiency and effectiveness of standards-setting by obtaining more focused inputs at an earlier stage through investor pre-reviews, enhanced cost-benefit analyses, and more field visits and field testing.

Investor Pre-Reviews: Although the FASB regularly consults with a number of standing investor advisory groups, we believe that there may be opportunities to both increase and more effectively manage investor involvement, so that interested parties know when and how to engage the FASB and its staff to assist in standards-setting. Specifically, the FASB should implement a scalable investor pre-review to assess perceived investor benefits prior to exposing new standards for public comment. The FASB should consider the following attributes when designing such a pre-review:

• Seek detailed comments from a diverse panel of investors (e.g., buy-side analysts, sell-side analysts, and rating agencies), all of whom should have strong interests in the outcome.

• Ask investors to consider the accounting guidance through the eyes of a serious retail investor to determine whether the new information provided would be decision-useful (whether it will provide better information than what is currently available). This should entail an evaluation of the costs and benefits of updating data analysis models with the new or improved information, as necessary.

• Revisit or even discontinue standards-setting projects based on the feedback received.

Cost-Benefit Analyses: The FASB evaluates whether the benefits of a proposed standard justify its costs prior to exposing it for public comment. However, participants in standards-setting have long acknowledged that reliable, quantitative cost-benefit calculations are seldom feasible, in large part because of the lack of available information on the costs and the difficulty in quantifying the benefits. Further, the magnitude of the benefits and costs is difficult to assess prior to actual implementation of the standard. As a result, cost-benefit considerations are often based on anecdotal evidence and do not always include useful input from preparers, auditors, investors, and regulators. Cost-benefit analyses should be a more rigorous, essential part of standards-setting and should be given more weight than they are today.

The FASB is currently considering new initiatives to improve its cost-benefit analyses. We support these efforts and, to complement them, the FASB should consider the following enhancements to its cost-benefit procedures:

• Select preparers, auditors, investors, and regulators to be involved based on their interest in the standard or interpretive implementation guidance being developed. Such participants should be involved in the process of assessing costs and benefits, as well as performing field visits and field testing, to the extent feasible.

• Expose the entire cost-benefit analysis for public comment (rather than a summary or abstract), thereby enhancing the ability of interested constituents to comment on the conclusions reached and the basis for these conclusions.

• Attempt to better quantify the costs (in addition to providing qualitative assessments). If there is concern about the accuracy or reliability of the data, frame these concerns in the analysis rather than omitting the data. The FASB should request a cost estimate and underlying methodology from constituents who claim that costs are excessive.

• Use information collected in the investor pre-review to supplement the assessment of the benefits.

• Refrain from discussing costs and benefits on a net basis, as this sometimes creates opacity around the data underlying such conclusions. The analyses of costs and benefits should be prepared separately, with an indication of how the Board weighed the evidence in its conclusion.

• Add auxiliary information to put the accounting standard or interpretive implementation guidance in context (e.g., include an expectation of the number of companies to be impacted by the standard, their overall market capitalization, or other metrics).

• Improve the documentation of the cost-benefit conclusions in new standards so that they may be referred to over time.

• Consider hiring an economist to assist in preparing and reviewing cost-benefit analyses.

Field Visits and Field Testing: Throughout the deliberation process, the FASB meets with a number of interested constituents regarding proposed standards (referred to as ''field visits''). Once the proposed standard is exposed for public comment, the FASB at its discretion may conduct field tests, in which the implementation of a proposed standard is beta tested so that issues may be identified and resolved prior to final issuance of the new standard. However, as a practical matter, and because of resource constraints, robust field testing has not been part of the process for setting many recent standards. As a result, new standards are often met with requests for interpretive implementation guidance, implementation deferral, or amendment.

Whenever possible, scalable field visits and field tests should be a required part of standards-setting for all significant new standards to identify and resolve as many conceptual and implementation issues as practicable prior to issuance. These procedures may also identify less costly alternative accounting treatments. The rigor required for these procedures should be scaled based on the difficulty and length of time required to implement and the magnitude of the impact of the standard or interpretive implementation guidance. In addition, whenever possible, field visits and field testing should occur contemporaneously, to improve the focus and efficiency of receiving constituent input. Although robust field testing and field visits require resources and time, combining these efforts will make efficient use of the Board's and its staff's time. Moreover, by researching implementation questions prior to issuing a new standard, the FASB would reduce the amount of time spent considering possible interpretive implementation guidance, implementation deferral, or amendment.

The FASB also should leverage work already being done by preparers, auditors, and investors to assess the costs, benefits, operationality, and auditability of proposed standards. Requesting assistance from preparers, auditors, and investors, either directly or through task forces and resource groups (perhaps on more of a rotational basis than is done in practice today), would bring additional subject matter expertise and recent business experience to each field visit and field test.

Post-Adoption Reviews of New Standards: We acknowledge that it is difficult to identify and address all possible implementation issues in a new standard prior to it being issued and adopted. Issues and questions are often identified during the initial implementation phase as preparers and auditors begin to apply a new standard in practice. Preparers, auditors, and others often monitor and take measures to reduce diversity in practice when implementing new standards by conferring amongst themselves and issuing non-authoritative interpretive implementation guidance. During this initial period, requests are often made of the FASB and the SEC to provide interpretive implementation guidance for new standards.

In the current financial reporting environment, preparers and auditors are sometimes viewed as being penalized for implementing their understanding of new accounting standards immediately after adoption. This is because any ambiguity or substantial gaps identified in the implementation period may lead the regulators to issue interpretive implementation guidance that differs from conclusions originally reached by the preparers and auditors.

The FASB should improve existing processes to consistently ensure timely consideration of implementation issues for new accounting standards. The goal of post-adoption reviews of new standards would be to determine if the new standard is accomplishing its intended purpose or whether it has unintended consequences that need to be resolved. The FASB currently does address questions that arise after new

standards are issued—it regularly receives input from various constituents and periodically revisits some standards. However, the process of completing post-adoption reviews should be formalized in policy, be more systematic, involve input from a broader range of constituents, and be monitored using relevant performance metrics.

Specifically, the FASB should perform a post-adoption review for every significant new standard. The review should be completed no more than one to two years after the effective date of the standard, with completion sooner if the scale of the new standard is narrow or a large number of implementation questions arise. At the end of the review period, the FASB should reach a formal conclusion on each new standard to determine if interpretive implementation guidance would serve the needs of investors by reducing diversity in practice or otherwise improving the application of the standard (e.g., by resolving ambiguities in the wording or filling-in unintended gaps in the standard).

We believe that, when necessary, interpretive implementation guidance for new standards is best given by the FASB using:

- A transparent due process with public comment.
- Appropriate transition guidance and required disclosures that will provide investors with useful information regarding possible changes in accounting.
- The codified version of GAAP.

Understandably, some interpretive implementation guidance may be of such an urgent nature that a transparent due process would not be responsive to the needs of market participants. Therefore, we envision that the SEC or other parties, through representation on the Agenda Advisory Group, could assist by agreeing to issue interpretive implementation guidance in such situations (see section VI of this chapter).

Under our proposal, it is not contemplated that preparers would have the flexibility to implement new standards at different times nor have the ability to adopt early or late. Following the recent policy decision by the FASB precluding early adoption of new standards, our proposal contemplates transition guidance for a new standard with a stated, required implementation date. Similarly, this proposal is not a safe harbor. Violations of GAAP will continue to be dealt with by the SEC through the review, comment, restatement, and enforcement processes. However, the SEC should give appropriate consideration to situations in which there were ambiguities or gaps in the new standards that could be subject to more than one reasonable interpretation. For example, it may be inappropriate for the SEC to bring an SEC enforcement proceeding based on a new accounting standard if, after careful analysis and due diligence made in good faith, the registrant took a reasonable and supportable view of that standard, which was subsequently changed by formal amendment or published interpretation.

Periodic Assessment of Existing Standards: After a new accounting standard has been in place for a reasonable period, more data is likely to be available to evaluate its benefits and costs. Further, over time economic conditions and business practices may change, such that older accounting standards may lose their relevance and effectiveness. Some participants in the financial reporting community have commented that numerous accounting standards or models need immediate reevaluation. In today's economic environment, the accounting for securitizations and structured products with off-balance sheet risk are cited as needing reevaluation.[44] The accounting for financial guarantees, convertible debt, and derivatives and hedging activities are also frequently cited areas for improvement.

The process by which the FASB receives, evaluates, and addresses concerns about the usefulness of standards in a timely fashion is critical to the proper functioning of the U.S. capital markets. The FASB should improve and formalize this process to ensure that standards continue to be useful in the current economic and business environment. This should be done by formalizing the process of periodically requesting feedback from investors, preparers, auditors, and regulators regarding what areas of GAAP need reevaluation because they create practice problems or are unnecessarily complex. In addition, to identify other specific areas of GAAP in need of review, the FASB should consider the following:

- Restatement activity.
- Emerging issues and the amount of interpretive implementation guidance issued on particular standards.
- Changes in business practices and the economy.
- New cost-benefit information as it becomes available.

Further, when evaluating the feedback received from constituents and the results of its own research, the FASB should seek advice from the Agenda Advisory Group to help prioritize its agenda.

V. Interpretive Implementation Guidance

We believe that there are too many sources of interpretive implementation guidance. Historically, this guidance proliferated from a variety of sources, which intentionally or not, has been viewed as additional GAAP. In other words, interpretive implementation guidance that is not formally authoritative often is erroneously perceived by participants in the financial reporting and legal communities to be quasi-authoritative. The key risks associated with a proliferation of interpretive implementation guidance are that: (1) The appropriate rule may not be identified and considered, and (2) it may conflict with authoritative guidance, as well as with other non-authoritative guidance, causing uncertainty in application and legal risk.

Over the past few years, the FASB and the SEC have taken steps intended to reduce the proliferation of interpretive implementation guidance from different authoritative bodies. For example, the SEC recognized the standards of the FASB as generally-accepted, and the FASB limited the ability of other bodies to create authoritative guidance without FASB ratification. Nevertheless, the SEC staff continues to be a source of interpretive implementation guidance in its own right, through such vehicles as comment letters, staff speeches, SABs, and other forms of exchange that, although typically non-authoritative, are perceived as quasi-authoritative. Similarly, actions taken by the FASB and the SEC have not sufficiently curbed the creation of other non-authoritative interpretive implementation guidance, such as that from audit firms, preparer and industry groups, academia, the Center for Audit Quality (CAQ), and other regulators.

Our proposal below, which should be read in conjunction with conceptual approach 2.A, is designed to recognize recent accomplishments in this area, clarify what guidance is authoritative and non-authoritative, and further influence the behaviors that have led to the desire for more guidance:

Developed Proposal 2.4: The number of parties that either formally or informally interprets GAAP and the volume of interpretative implementation guidance should

[44] SEC Staff, Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 On Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers (June 2005).

continue to be reduced. The SEC should coordinate with the FASB to clarify roles and responsibilities regarding the issuance of interpretive implementation guidance, as follows:

• The FASB Codification, a draft of which was released for verification on January 16, 2008, should be completed in a timely manner. In order to fully realize the benefits of the FASB's codification efforts, the SEC should ensure that the literature it deems to be authoritative is integrated into the FASB Codification to the extent possible, or separately re-codified, as necessary.

• To the extent practical, going forward, there should be a single standards-setter for all authoritative accounting standards and interpretive implementation guidance that are applicable to a particular set of accounting standards, such as GAAP or IFRS. For GAAP, the FASB should continue to serve this function. To that end, the SEC should only issue broadly applicable interpretive implementation guidance in limited situations (see section VI).

• All other sources of interpretive implementation guidance should be considered non-authoritative and should not be required to be given more credence than any other non-authoritative sources that are evaluated using well-reasoned, documented professional judgments made in good faith.

FASB Codification: The FASB has undertaken a significant project to develop a comprehensive, integrated Codification of existing accounting literature organized by subject matter that is intended to become an easily retrievable single source of GAAP. To that end, on January 16, 2008, the FASB released a draft of the FASB Codification that will be subject to a one-year verification period. We applaud the FASB's foresight on such a project and recognize the significant effort the project has entailed. The FASB Codification:

• Brings together all GAAP from all authoritative sources except the SEC and classifies it by topic into a single, searchable database so that it may be more easily researched.

• Clarifies what guidance is authoritative versus non-authoritative.

• Puts accounting standards into a consistent format, to the extent possible.

Although the FASB Codification does not change the substance of GAAP, it should make its application easier. However, SEC literature, which has developed through different mechanisms, is not as easily integrated into the FASB Codification.[45] Similarly, the FASB Codification does not deal with either the root causes of the proliferation of interpretive implementation guidance or the behavior of participants in the U.S. financial reporting community that caused the complexity. Notwithstanding these concerns, we support the FASB's efforts to verify the Codification. To further improve the Codification, the SEC should re-codify its guidance using a consistent format, and the FASB and the SEC should consider a second phase of the codification project that would systematically revisit GAAP, as discussed in section VI of this chapter.

Non-Authoritative Guidance: Although the FASB Codification will help clarify the roles of authoritative and non-authoritative guidance, meaningful improvements in financial reporting will be difficult if non-authoritative interpretive implementation guidance continues to be perceived, as it is today, as having quasi-authority in the marketplace. Our proposal is intended to foster acceptance of reasonable professional judgments made in good faith when they are supportable under GAAP. Specifically, non-authoritative interpretive implementation guidance should not be used to force restatements when other reasonable views exist that are supportable under GAAP.

We recognize there is often a need for interpretive implementation guidance and that such guidance can serve an important purpose. The volume of interpretative implementation guidance should be reduced, and it should be clearly identified as non-authoritative.

VI. Conceptual Approaches and Future Considerations

As discussed more fully below, we are considering a number of conceptual approaches and matters for future consideration to improve standards-setting:

Conceptual Approach 2.A: To further reduce interpretive implementation guidance associated with GAAP, we are considering proposing that the SEC further clarify its role vis-à-vis the FASB, as well as its internal roles and responsibilities, to mitigate the risk of its actions unintentionally driving behavior by market participants, as follows:

• The SEC should clarify that registrant-specific matters are not authoritative forms of interpretive implementation guidance under GAAP and, accordingly, registrants other than the specific registrant in question are not required to take into account such registrant-specific matters.

• The SEC staff should refrain from informally communicating broadly applicable interpretive implementation guidance (e.g., staff speeches) that are likely to be perceived as changing the application of GAAP. Rather, such communications should be used to highlight authoritative interpretive implementation guidance that has already been issued.

• In instances in which the SEC staff identifies registrant-specific accounting matters that it believes may result in the need for broader interpretive implementation guidance or a clarification of an accounting standard under GAAP, the SEC staff should refer these items to the FASB as part of the Agenda Advisory Group.

• When it is necessary for the SEC or its staff to issue broadly applicable interpretive implementation guidance, it should try to provide such guidance: (1) In a clear communication identified as authoritative, (2) so that it can easily and immediately be integrated into a codification of SEC literature (as proposed in section V of this chapter), and (3) when expected to significantly change the application of GAAP, only after transparent due process and public comment to the extent practicable.

• The SEC staff should revisit internal procedures and take further steps necessary to improve the consistency of its views on the application of GAAP.

The SEC sometimes issues rules and interpretations that comprise part of authoritative GAAP. The SEC's rule-making activities are generally open to public participation and observation. However, other activities of the SEC and its staff do not occur with the same level of transparent due process and public comment. As discussed below, registrant-specific guidance is published in the form of comment letters, but appropriately does not need to be proposed in advance or subject to public comment. On the other hand, to the extent the SEC promulgates interpretive implementation guidance that is broadly applicable and is expected to significantly change the application of GAAP, we are considering whether it should do so only after public notice and comment, whenever practicable.

[45] Two of the benefits of the FASB Codification are its search feature and decimal system, which consistently organizes topics and subtopics within GAAP. No SEC guidance is currently included in the FASB Codification. To improve its usability in the future, the Codification will include authoritative content issued by the SEC, as well as selected SEC staff interpretations. However, the inclusion of SEC guidance will be for administrative convenience and will not supersede such guidance in its current form. Further, the SEC guidance will not follow the same organizational structure as the rest of GAAP.

Registrant-Specific Guidance: The SEC Division of Corporation Finance (Corp Fin) reviews and comments on financial reports filed by registrants that are not investment companies. Corp Fin has a process for facilitating the public availability of comment letters and registrant responses to these comment letters on the SEC's Web site upon completion of the review process. Corp Fin also receives letters from specific registrants requesting concurrence on various reporting and disclosure issues. Similarly, OCA and Corp Fin receive requests from specific registrants for concurrence on specific interpretative implementation issues. These letters are commonly referred to in the marketplace as ''pre-clearance'' letters.

Preparers and auditors may misconstrue registrant-specific accounting outcomes as quasi-authoritative. However, registrant-specific matters are appropriately not subject to the same public deliberation and comment as SEC rule-making, because they are registrant-specific and are not intended to be applied more broadly. Nevertheless, preparers and auditors may overreact by applying these outcomes to similar, yet different, transactions, sometimes believing that restatement is required.

We are deliberating whether the SEC should make clear that comments provided to a specific registrant are not binding on other registrants. Clarifying that such comments are non-authoritative would help:

- Prevent preparers and auditors from giving undue significance to SEC staff comments made to individual registrants.
- Reduce the need for other parties to issue interpretive implementation guidance.
- Support our proposal to refer broadly applicable accounting matters that require interpretive implementation guidance to the FASB.

Broadly Applicable Guidance: To inform the public about broadly applicable interpretive implementation guidance, the SEC uses various forms of communication, including SABs,[46] letters to industry, staff speeches, public announcements, and training manuals. In addition, Corp Fin publishes and maintains interpretive implementation guidance on the SEC's Web site. While all of these publications contain disclaimers as to their non-authoritative nature, many participants in the financial reporting community consider these disclaimers to be boilerplate and regard such interpretive implementation guidance as quasi-authoritative.

These publications are typically viewed by the SEC staff as confirmations of existing accounting standards, rather than as supplemental interpretive implementation guidance. However, many of these publications have and continue to influence market behavior because they sometimes include SEC staff views that do, in fact, supplement existing GAAP. The SEC staff sometimes refers registrants to these publications to support their views on registrant-specific matters. As such, many argue that these documents exemplify the SEC staff effectively setting standards without transparent due process and public comment and point to restatements sometimes following the release of these documents as evidence of their quasi-authoritative nature in practice.

In addition, other individual sources of non-authoritative implementation guidance (e.g., audit firms and the CAQ) often publish their own guidance to broadly communicate what they perceive to be SEC staff's views and to drive consistency in practice. However, as discussed below, if the SEC were to increase its formal referral of broadly applicable interpretive matters to the FASB, which could issue guidance in an authoritative, timely fashion, the overall volume of interpretive implementation guidance would be reduced, as would conflicts between interpretations from different sources. We believe this would further influence behaviors that have led to the desire for more guidance.

We recognize that the SEC staff publishes guidance to address issues other than the application of GAAP. This conceptual approach is not directed towards such publications. We also recognize that the SEC staff, based on its review of thousands of filings each year, is in a unique position to publish its comment letters. Such publications are intended to reduce comments that each registrant receives in the review process by promoting a high degree of compliance with GAAP. We continue to consider what proposals to make in this area, but believe that the SEC staff should be diligent when preparing this information not to present comments in a manner that is likely to be perceived as interpretative implementation guidance.

Referral of Issues to the FASB: As discussed in section IV of this chapter, there were a number of standards that were communicated to the FASB that were in need of improvement that have yet to be improved. The SEC should formalize the mechanism by which it refers issues to the FASB, and one of the goals of SEC representation on the proposed Agenda Advisory Group would be to strengthen such a referral mechanism. This will permit the FASB to address the need for authoritative interpretive implementation guidance that is broadly applicable in a codified form, thereby reducing the need for the SEC to do so. It will also give the SEC greater insight into when the FASB and the EITF do not intend to issue interpretive implementation guidance, which will allow the SEC to be more responsive by issuing guidance, in the limited circumstances when necessary.

Consistency: We are considering whether there is a need for more coordination between the various offices and divisions within the SEC to improve the consistency of accounting advice given by the SEC staff. Although there are processes in place to build consensus on accounting matters within the SEC, there may be room for improvement.

The possibility of inconsistent accounting advice emanating from the SEC staff creates confusion in the marketplace.

Two processes exist (one in Corp Fin and one in OCA) for registrants to request reconsideration of conclusions expressed in either comment letters or in pre-clearance letters when registrants disagree with staff guidance or believe they are receiving inconsistent advice compared to other registrants. However, registrants may not always use these processes for a number of reasons, such as: (1) To avoid additional delays and missed market opportunities, (2) to avoid the risk of opening other accounting conclusions to reconsideration, and (3) fear of possible retribution (misguided or not). Therefore, although the SEC staff has created checks-and-balances in the form of reconsideration processes, they may not be utilized as anticipated.

We do not intend to limit the ability of the SEC staff to carry out its regulatory responsibilities in a timely fashion. That is why we have not yet proposed a specific course of action. We understand the SEC staff is reviewing its procedures in many of these areas and expects to unveil a number of changes in the coming months, including new procedures to enhance the consistency

[46] The SEC authorized the use of SABs in 1975 to achieve a wider dissemination of the administrative interpretations and practices utilized by the SEC staff in reviewing financial statements. There had been concern that smaller audit firms and issuers would be disadvantaged because there had previously been no formal dissemination of staff practices. SABs were also designed to provide a means by which new or revised interpretations and practices could be quickly and easily communicated to registrants and their advisors. As they are designed to disseminate staff administration practices on a timely basis to the broader public, SABs are generally not exposed for public comment before release.

of registrant-specific accounting interpretations during filing reviews and increasing the understanding and usefulness of its reconsideration processes. We support these efforts and plan to review progress with the SEC staff in the coming months as we continue our deliberations.

Conceptual Approach 2.B: We are considering proposing that the SEC continue to encourage improvement in the way standards are written, as follows:

• By supporting the writing of accounting standards according to an agreed-upon framework of what constitutes an optimal standard. Such standards should not strive to answer every question and close every loophole, but should be written with more clearly stated objectives and principles that may be applied to broad categories of transactions.

• By supporting the writing of accounting standards in a manner that promotes trust and confidence in efficient markets by encouraging the use of professional judgments made in good faith. Specifically, preparers and auditors should apply the standards faithfully, and regulators should monitor and address abusive application of the standards.

Optimal Design of Standards: Some participants in the U.S. financial reporting community believe that certain accounting standards do not clearly articulate the objectives and principles upon which they are based, because they are sometimes obscured by detailed rules, examples, scope exceptions, safe harbors, cliffs, thresholds, and bright lines. In addition, GAAP is often not written in plain English. This can create uncertainty in the application of GAAP, as rules cannot cover all possibilities and the underlying principles and objectives may not be clear.

Another significant concern about the current system of accounting standards is that the proliferation of accounting rules fosters accounting-motivated structured transactions. As discussed further in chapter 1, standards that have scope exceptions, safe harbors, cliffs, thresholds, and bright lines are vulnerable to manipulation by those seeking to avoid accounting for the substance of transactions using structured transactions that are designed to achieve a particular accounting result. This ultimately hurts investors, because it reduces comparability and the usefulness of the resulting financial information. Therefore, a move toward more objectives-oriented (or principles-based) standards may ultimately improve the quality of the financial reporting upon which investors rely.

The question of how to design standards going forward is at the center of a decade-long principles-based versus rules-based accounting standards debate. There has been much discussion in the marketplace on this topic, and there are differing views. The SEC has been a frequent participant in the debate and has long been supportive of principles-based (or objectives-oriented) standards.[47] The question of how standards should be designed going forward is a critical aspect of the standards-setting process.

Rather than engaging in a debate over terms such as ''principles-based,'' ''objectives-oriented,'' or ''rules-based,'' we prefer to think of the design of accounting standards in terms of the characteristics they should possess. We are considering various suggestions for the optimal design of standards, including the work of the CEOs of the World's Six Largest Audit Networks. These CEOs are attempting to build consensus in the financial reporting community about what optimal accounting standards should look like in the future and whether a framework could be created that the standards-setters may refer to over time to ensure that these characteristics are optimized.

Their proposed framework was presented at the Global Public Policy Symposium in January 2008, which recommends that optimal accounting standards have the following characteristics:

• Faithful presentation of economic reality.

• Responsive to investors' needs for clarity and transparency.

• Consistency with a clear conceptual framework.

• Based on an appropriately-defined scope that addresses a broad area of accounting.

• Written in clear, concise, and plain language.

• Allows for the use of reasonable judgment.[48]

As we continue to deliberate this and other work, we are considering supporting the increased use of objectives-oriented standards.

Future Considerations: We also plan to deliberate what optimal transition provisions should be in the future and whether new standards should be applied prospectively or retrospectively. The goal of such deliberations will be to balance the investor need for consistent information with preparer and auditor concerns about feasibility and the costs of recasting historical information.

Conceptual Approach 2.C: In addition to considering the other proposals in this report (and subject to the conclusions reached in our future deliberations of international considerations), we are considering proposing that the SEC encourage a re-prioritization of the standards-setting agenda that balances the need for international convergence, improvements to the conceptual framework, and maintaining existing GAAP. Further, we are deliberating whether the FASB and the SEC should add to their agendas a second phase of the codification project to consider systematically revisiting GAAP to:

• Be more coherent after codification.

• Remove conflicts between standards or with the conceptual framework.

• Be less complex, where possible.

• Be designed more optimally as discussed above.

• Readdress frequent practice problems (as identified by restatement volumes, input from the SEC, implementation guidance issued, or frequently asked questions).

• Remove redundancies between SEC disclosure requirements and other sources of GAAP.

• Amend, replace, or remove outdated standards.

As part of our deliberation of the Agenda Advisory Group proposed in section IV of this chapter, we are also deliberating a conceptual approach regarding immediate standards-setting priorities in the current environment. We plan to finalize a proposal after completing deliberations on international considerations later in 2008, which may significantly affect our approach. In fact, some participants in the U.S. financial reporting community have indicated that a full-scale adoption of IFRS in the U.S. may be the most expeditious way to shorten the lengthy timeline that would be required to complete such a list of priorities.

Second Phase of Codification: As noted above, the Codification does not

[47] For example, the SEC issued Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter (April 2003), which included numerous recommendations for the FAF and FASB to consider, including greater use of principles-based accounting standards whenever reasonable to do so. The SEC staff also issued Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System (July 2003), which further lauded the benefits of objectives-oriented standards.

[48] In his testimony before the U.S. Senate Subcommittee on Securities, Insurance and Investment (October 24, 2007), the Chairman of the IASB, Sir David Tweedie, noted a similar set of four characteristics, two of which augment the aforementioned six, including whether they: (1) Can be explained simply in a matter of a minute or so, and (2) make intuitive sense.

change the substance of GAAP, which continues to be encumbered by detailed rules, bright lines, scope exceptions, industry guidance, accounting alternatives, and other forms of complexity. Because of the evolutionary nature of U.S. standards-setting, the Codification does not read consistently in all parts. Further, even after any needed re-codification of SEC literature proposed in section V of this chapter, there will be opportunities to remove redundancies between SEC and FASB disclosure requirements and make other simplifications. Therefore, we are deliberating whether and when the FASB and the SEC should perform a second phase of the codification project, which would involve a comprehensive periodic assessment of existing accounting standards like the one we proposed previously in this chapter.

Chapter 3: Audit Process and Compliance

I. Introduction

We have concentrated our efforts to date regarding audit process and compliance on the subjects of financial restatements, including the potential benefits from providing guidance with respect to the materiality [49] and correction of errors; and professional judgment: Specifically, whether a judgment framework would enhance the quality of judgments and the willingness of others to respect judgments made.

II. Financial Restatements

II.A. Background

Likely Causes of Restatements

The number of financial restatements [50] in the U.S. financial markets has been increasing significantly over recent years, reaching approximately 1,600 companies in 2006.[51] Restatements generally occur because errors that are determined to be material are found in a financial statement previously provided to the public. Therefore, the increase in restatements appears to be due to an increase in the identification of errors that were determined to be material.

The increase in restatements has been attributed to various causes. These include more rigorous interpretations of accounting and reporting standards by preparers, outside auditors, the SEC, and the PCAOB; the considerable amount of work done by companies to prepare for and improve internal controls in applying the provisions of section 404 of the Sarbanes-Oxley Act; and the existence of control weaknesses that companies failed to identify or remediate. Some have also asserted that the increase in restatements is the result of an overly broad application of the concept of materiality and discussions regarding materiality in SAB 99, Materiality (as codified in SAB Topic 1M)—that is, resulting in errors being deemed to be material when an investor may not consider them to be important.

It is essential that companies, auditors, and regulators strive to reduce the frequency and magnitude of errors in financial reporting. However, the goal is not to reduce the number of restatements per se. Indeed, companies should restate their financial statements to correct errors that are important to current investors. Investors need accurate and comparable data and restatement is the only means to achieve those goals when previously filed financial statements contain material errors. Efforts to improve company controls and audit quality in recent years should reduce errors, and there is evidence this is currently occurring.[52] We believe that public companies should focus on reducing errors in financial statements. At the same time, we believe that some of our developed proposals in the areas of substantive complexity, as discussed in chapter 1, and the standards-setting process, as discussed in chapter 2, will also be helpful in reducing some of the frequency of errors in financial statements.

While reducing errors is the primary goal, it is also important to reduce the number of unnecessary restatements (i.e., those that do not provide important information to current investors). Unnecessary restatements can be costly for companies and auditors, may reduce confidence in reporting, and may create confusion that reduces the efficiency of investor analysis. This portion of this chapter describes our proposals regarding: (1) Additional guidance on the concept and application regarding materiality, and (2) the process for and disclosure of the correction of errors.

Our Research

We have considered several publicly-available studies on restatements.[53] We are also aware that the Treasury Department has recently selected University of Kansas Professor Susan Scholz to conduct an examination of the impact of and the reasons for restatements of public company financial statements. We will review the Treasury Department's study and consider its findings as they are made available.

The restatement studies we have reviewed all indicate that the total number of restatements has increased in recent years. Market reaction to restatements may be one indicator as to whether restatements contain information considered by investors to be material. While there are limitations [54] to using market reaction as a proxy for materiality, based on these studies, it would appear to us that there may be restatements occurring that investors may not consider important due to a lack of a statistically significant market reaction. We, therefore, believe additional guidance on determining whether an error is material and whether a restatement is necessary would be beneficial in reducing the frequency of unnecessary restatements.

We have also considered input from equity and credit analysts and others about investors' views on materiality and how restatements are viewed in the

[49] A fact is material if there is a substantial likelihood that a reasonable investor in making an investment decision would consider it as having significantly altered the total mix of information available. *Basic, Inc.* v. *Levinson,* 485 U.S. 224, 231–32 (1988); *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976).

[50] For the purposes of this chapter, a restatement is the process of revising previously issued financial statements to reflect the correction of a material error in those financial statements. An amendment is the process of filing a document with revised financial statements with the SEC to replace a previously filed document. A restatement could occur without an amendment, such as when prior periods are revised in a current filing with the SEC.

[51] U.S. Government Accountability Office (GAO) study, Financial Restatements: Update of Public Company Trends, Market Impacts, and Regulatory Enforcement Updates (March 2007), and Audit Analytics study, 2006 Financial Restatements A Six Year Comparison (February 2007).

[52] A Glass Lewis & Co. report, Brief Alert Weekly Trend (December 17, 2007), shows that restatements in companies subject to section 404 of the Sarbanes Oxley Act have declined for two consecutive years, although the total number of restatements has been increasing.

[53] Studies considered include the GAO study, Financial Restatements: Update of Public Company Trends, Market Impacts, and Regulatory Enforcement Updates (March 2007); Glass Lewis & Co. study, The Errors of Their Ways (February 2007); and two Audit Analytics studies, 2006 Financial Restatements A Six Year Comparison (February 2007) and Financial Restatements and Market Reactions (October 2007). We have also considered findings from the PCAOB's Office of Research and Analysis's (ORA) working paper, Changes in Market Responses to Financial Statement Restatement Announcements in the Sarbanes-Oxley Era (October 18, 2007), understanding that ORA's findings are still preliminary in nature as the study is still going through a peer review process.

[54] Examples of the limitations in using market reaction as a proxy for materiality include (1) the difficultly of measuring market reaction because of the length of time between when the market becomes aware of a potential restatement and the ultimate resolution of the matter, (2) the impact on the market price of factors other than the restatement, and (3) the disclosure at the time of the restatement of other information, such as an earnings release, that may have an offsetting positive market reaction.

marketplace. Feedback we have received included:

• Bright lines are not really useful in making materiality judgments. Both qualitative and quantitative factors should be considered in determining if an error is material.

• Companies often provide the market with little financial data during the time between a restatement announcement and the final resolution of the restatement. Limited information seriously undermines the quality of investor analysis, and sometimes triggers potential loan default conditions or potential delisting of the company's stock.

• The disclosure provided in connection with restatements is not consistently adequate to allow an investor to evaluate the likelihood of errors in the future. Notably, disclosures often do not provide enough information about the nature and impact of the error, and the resulting actions the company is taking.

• Interim periods should be viewed as more than just a component of an annual financial statement for purposes of making materiality judgments.

II.B. Developed Proposals

Based on our work to date, we believe that, in attempting to eliminate unnecessary restatements, it is helpful to consider two sequential questions: (1) Was the error in the financial statement material to those financial statements when originally filed? and (2) How should a material error in previously issued financial statements be corrected? We believe that framing the principles necessary to evaluate these questions would be helpful. We also believe that in many circumstances investors could benefit from improvements in the nature and timeliness of disclosure in the period between identifying an error and filing restated financial statements.

With this context, we have developed the following proposals regarding the assessment of the materiality of errors to financial statements and the correction of financial statements for errors.[55]

Developed Proposal 3.1: The FASB or the SEC, as appropriate, should issue guidance reinforcing the following concepts:

• Those who evaluate the materiality of an error should make the decision based upon the perspective of a reasonable investor.

• Materiality should be judged based on how an error affects the total mix of information available to a reasonable investor.

• Just as qualitative factors may lead to a conclusion that a quantitatively small error is material, qualitative factors also may lead to a conclusion that a quantitatively large error is not material. The evaluation of errors should be on a ''sliding scale.''

The FASB or the SEC, as appropriate, should also conduct both education sessions internally and outreach efforts to financial statement preparers and auditors to raise awareness of these issues and to promote more consistent application of the concept of materiality.

We believe that those who judge the materiality of a financial statement error should make the decision based upon the interests, and the viewpoint, of a reasonable investor and based upon how that error impacts the total mix of information available to a reasonable investor. One must ''step into the shoes'' of a reasonable investor when making these judgments. We believe that too many materiality judgments are being made in practice without full consideration of how a reasonable investor would evaluate the error. When looking at how an error impacts the total mix of information, one must consider all of the qualitative factors that would impact the evaluation of the error. This is why bright lines or purely quantitative methods are not appropriate in determining the materiality of an error to annual financial statements. It is possible that an error that results in a misclassification on the income statement (without a change in net income) may not be deemed to be material, while an error of the same magnitude that impacts net income may be deemed material based on the effect of the error on the total mix of information available to a reasonable investor.

We believe that, in current practice, materiality guidance such as SAB Topic 1M is interpreted as being one-directional in that qualitative considerations can make a quantitatively small error material, but a quantitatively large error is material without regard to qualitative factors. We believe that qualitative factors not only can increase, but also can decrease, the importance of an error to the reasonable investor. Specifically, we believe that there should be a ''sliding scale'' for evaluating errors. On this scale, the higher the quantitative significance of an error, the stronger the qualitative factors must be to result in a judgment that the error is not material. Conversely, the lower the quantitative significance of an error, the stronger the qualitative factors must be to result in a judgment that the error is material.

The following are examples of some of the qualitative factors that could result in a conclusion that a large error is not material. (Note that this is not an exhaustive list of factors, nor should this list be considered a ''checklist'' whereby the presence of any one of these items would make an error not material. Companies and their auditors should continue to look at the totality of all factors when making a materiality judgment):

• The error impacts metrics that do not drive reasonable investor conclusions or are not important to reasonable investor models.

• The error is a one time item and does not alter investors' perceptions of key trends affecting the company.

• The error does not impact a business segment or other portion of the registrant's business that investors regard as driving valuation or risks.

• The error relates to financial statement items whose measurement is inherently highly imprecise.

Education and outreach efforts can be instrumental in increasing the awareness of these concepts and ensuring more consistent application of materiality. Many of the issues with materiality in practice are caused by misunderstandings by preparers, auditors and regulators. Elimination of these misunderstandings would be a significant step toward reducing unnecessary restatements.

Developed Proposal 3.2: The FASB or the SEC, as appropriate, should issue guidance on how to correct an error consistent with the principles outlined below:

• Prior period financial statements should only be restated for errors that are material to those prior periods.

• The determination of how to correct a material error should be based on the needs of current investors. For example, a material error that has no relevance to a current investor's assessment of the annual financial statements would not require restatement of the annual financial statements in which the error occurred, but would need to be disclosed in an appropriate document, and, to the extent that the error remains uncorrected in the current period, corrected in the current period.

• There may be no need for the filing of amendments to previously filed

[55] We have developed principles that we believe will be helpful in reducing unnecessary restatements. In developing these principles, we have not determined if the principles are inconsistent with existing GAAP, such as SFAS No. 154, Accounting Changes and Error Corrections, or APB Opinion No. 28, Interim Financial Reporting. To the extent that the implementation of our proposals would require a change to GAAP, the SEC should work with the FASB to revise GAAP.

annual or interim reports to reflect restated financial statements, if the next annual or interim period report is being filed in the near future and that report will contain all of the relevant information.

- Restatements of interim periods do not necessarily need to result in a restatement of an annual period.
- All errors, other than clearly insignificant errors, should be corrected no later than in the financial statements of the period in which the error is discovered. All material errors should be disclosed when they are corrected.
- The current disclosure during the period in which the restatement is being prepared, about the need for a restatement and about the restatement itself, is not consistently adequate for the needs of investors and should be enhanced.

The current guidance that is detailed in SAB 108 (as codified in SAB Topic 1N) may result in the correction of prior annual periods for immaterial errors occurring in those periods because the cumulative effect of these prior period errors would be material to the current annual period, if the prior period errors were corrected in the current annual period. In the process of reflecting these immaterial corrections to prior annual periods, some believe that the prior annual period financial statements should indicate that they have been restated. There is diversity in practice on this issue, and clarification is needed from the SEC on the intent of SAB Topic 1N. We believe that prior annual period financial statements should not be restated or corrected for errors that are immaterial to the prior annual period. Instead of the approach specified in Topic 1N, we believe that, where errors are not material to the prior annual periods in which they occurred but would be material if corrected in the current annual period, the error could be corrected in the current annual period [56] with appropriate disclosure at the time the current annual period financial statements are filed with the SEC.

We believe that the determination of how errors should be corrected should be based on the needs of current investors. This determination should be based on the facts and circumstances of each error. For example, an error that does not affect the annual financial statements included within a company's most recent filing with the SEC may be determined to not be relevant to current investors. For errors that do not require restatement but were material in the annual period in which they occurred, companies could be required to provide appropriate disclosure about the error and the periods impacted.

For material errors that are discovered within a very short time period prior to a company's next regularly scheduled reporting date, it may be appropriate in certain instances to report the restatement in the next filing with appropriate disclosure of the error and its impact on prior periods, instead of amending previous filings with the SEC. This option should be further studied with regard to the possibility of abuse and, if appropriate, should be included in the overall guidance on how to correct errors.

Assuming that there is an error in an interim period within an annual period for which financial statements have previously been filed with the SEC, the following guidance should be utilized:

- If the error is not material to either the previously issued interim period or to the previously issued annual period, the previously issued financial statements should not be restated.
- If the prior period error is determined to be material only to the previously issued interim period, but not the previously issued annual period, then only the previously issued interim period should be restated (i.e., the annual period that is already filed should not be restated and the Form 10–K should not be amended). However, there should be appropriate disclosure in the company's next Form 10–K to explain the discrepancy in the results for the interim periods during the previous annual period on an aggregate basis and the reported results for that annual period.

We believe that all errors, excluding clearly insignificant errors, should be corrected no later than in the financial statements of the annual or interim period in which the error is discovered. That being said, there should be a practicality exception for immaterial errors discovered shortly before the issuance of the financial statements, but in this case, the errors should be corrected in the next annual or interim period being reported upon.[57] Nevertheless, all material errors should be disclosed during the period in which they are corrected.

Typically, the restatement process involves three primary reporting stages:

1. The initial notification to the SEC and investors that there is a material error and that the financial statements previously filed with the SEC can no longer be relied upon;
2. The ''dark period'' or the period between the initial notification to the SEC and the time restated financial statements are filed with the SEC; and
3. The filing of restated financial statements with the SEC.

We believe that a major effect on investors due to restatements is the lack of information when companies are silent during stage 2, or the ''dark period.'' This silence creates significant uncertainty regarding the size and nature of the effects on the company of the issues leading to the restatement. This uncertainty often results in decreases in the company's stock price. In addition, delays in filing restated financial statements may create default conditions in loan covenants; these delays may adversely affect the company's liquidity. We understand that, in the current legal environment, companies are often unwilling to provide disclosure of uncertain information. However, we believe that when companies are going through the restatement process, they should be encouraged to continue to provide any reasonably reliable financial information that they can, accompanied by appropriate explanations of ways in which the information could be affected by the restatement. Consequently, regulators should evaluate the company's disclosures during the ''dark period'' taking into account the difficulties of generating reasonably reliable information before a restatement is completed.

We believe that the current disclosure surrounding a restatement is often not adequate to allow investors to evaluate the company's operations and the likelihood that such errors could occur in the future. Specifically, we believe that all companies that have a restatement should be required to disclose information related to: (1) The nature of the error, (2) the impact of the

[56] We are focused on the principle that prior periods should not be restated for errors that are not material to those periods. Correction in the current period for errors that are not material to prior periods could be accomplished through an adjustment to equity or to current period income (which might potentially require an amendment to GAAP). We believe that there are merits in both approaches and that the FASB and the SEC, as appropriate, should carefully weigh both approaches before determining the actual approach to utilize.

[57] We understand that sometimes there may be immaterial differences between a preparer's estimate of an amount and the independent auditor's estimate of an amount that exist when financial statements are issued. These differences might or might not be errors, and may require additional work to determine the nature and actual amount of the error. This additional work is not necessary for the preparer or the auditor to agree to release the financial statements. Due care should be taken in developing any guidance in this area to provide an exception for these legitimate differences of opinion, and to ensure that any requirement to correct all ''errors'' would not result in unnecessary work for preparers or auditors.

error, and (3) management's response to the error, to the extent known, during all three stages of the restatement process. Some suggestions of disclosures that would be made by companies include the following:

Nature of Error

- Description of the error.
- Periods affected and under review.
- Material items in each of the financial statements subject to the error and pending restatement.
- For each financial statement line item, the amount of the error or range of potential error.
- Identity of business units/locations/segments/subsidiaries affected.

Impact of Error

- Updated analysis on trends affecting the business if the error impacted key trends.
- Loan covenant violations, ability to pay dividends, and other effects on liquidity or access to capital resources.
- Other areas, such as loss of material customers or suppliers.

Management Response

- Nature of the control weakness that led to the restatement and corrective actions, if any, taken by the company to prevent the error from occurring in the future.
- Actions taken in response to covenant violations, loss of access to capital markets, loss of customers, and other consequences of the restatement.

If there are material developments related to the restatement, companies should update this disclosure on a periodic basis during the restatement process, particularly when quarterly or annual reports are required to be filed, and provide full and complete disclosure within the filing with the SEC that includes the restated financial statements.

We believe that the issuance by the FASB or the SEC, as appropriate, of guidance on how to correct and disclose errors in previously issued financial statements will provide to investors higher quality information (e.g., prior periods would not be restated for immaterial items and for errors that have no relevance to current investors, and more consistently good disclosure would be made during and about the restatement process) and reduce the burdens on companies related to unnecessary restatements. In addition, since our proposals would require that all material errors be disclosed, relevant information about such errors would be communicated to investors.

Developed Proposal 3.3: The FASB or the SEC, as appropriate, should develop and issue guidance on applying materiality to errors identified in prior interim periods and how to correct these errors. This guidance should reflect the following principles:

- Materiality in interim period financial statements must be assessed based on the perspective of the reasonable investor.
- When there is a material error in an interim period, the guidance on how to correct that error should be consistent with the principles outlined in developed proposal 3.2.

Based on prior restatement studies, approximately one-third of all restatements involved only interim periods. Authoritative accounting guidance on assessing materiality with respect to interim periods is currently limited to paragraph 29 of APB Opinion No. 28, Interim Financial Reporting.[58] Differences in interpretation of this paragraph have resulted in variations in practice that have increased the complexity of financial reporting. This increased complexity impacts preparers and auditors, who struggle with determining how to evaluate the materiality of an error to an interim period, and also impacts investors, who can be confused by the inconsistency between how companies evaluate and report errors. We believe that guidance as to how to evaluate errors related to interim periods would be beneficial to preparers, auditors and investors.

We have observed that a large part of the dialogue about interim materiality has focused on whether an interim period should be viewed as a discrete period or an integral part of an annual period. Consistent with the view expressed at the outset of this section, we believe that the interim materiality dialogue could be greatly simplified if that dialogue were refocused to address two sequential questions: (1) What principles should be considered in determining the materiality of an error in interim period financial statements? and (2) How should errors in previously issued interim financial statements be corrected? We believe that additional guidance on these questions, which are extensions of the basic principles outlined in developed proposals 3.1 and 3.2 above, would provide useful guidance in assessing and correcting interim period errors. We believe that while these principles would assist in developing guidance related to interim periods, additional work should also be performed to fully develop robust guidance regarding errors identified in interim periods.

We believe that the determination of whether an interim period error is material should be made based on the perspective of a reasonable investor, not whether an interim period is a discrete period, an integral part of an annual period, or some combination of both. An interim period is part of a larger mix of information available to a reasonable investor. As one example, a reasonable investor would use interim financial statements to assess the sustainability of a company's operations and cash flows. In this example, if an error in interim financial statements did not impact the sustainability of a company's operations and cash flows, the interim period error may very well not be material given the total mix of information available. Similarly, just as a large error in annual financial statements does not determine by itself whether an error is material, the size of an error in interim financial statements should also not be necessarily determinative as to whether an error in interim financial statements is material.

We believe that applying the principles set forth above would reduce restatements by providing a company the ability to correct in the current period immaterial errors in previously issued financial statements and as a practical matter obviate the need to debate whether the interim period is a discrete period, an integral part of an annual period, or some combination of both.

We also note that these principles will provide a mechanism, other than restatement, to correct through the current period a particular error that has often been at the center of the interim materiality debate—a newly discovered error that has accumulated over one or more annual or interim periods, but was not material to any of those prior periods.

III. Professional Judgment

III.A. Background

Overview

Professional judgment is not new to the areas of accounting, auditing, or securities regulation—the criteria for making and evaluating professional judgment have been a topic of discussion for many years. The recent increased focus on professional judgment, however, comes from several

[58] Paragraph 29 of APB Opinion No. 28, Interim Financial Reporting, states the following:

In determining materiality for the purpose of reporting the cumulative effect of an accounting change or correction of an error, amounts should be related to the estimated income for the full fiscal year and also to the effect on the trend of earnings. Changes that are material with respect to an interim period but not material with respect to the estimated income for the full fiscal year or to the trend of earnings should be separately disclosed in the interim period.

different developments, including changes in the regulation of auditors and a focus on more ''principles-based'' standards—for example, FASB standards on fair value and IASB standards. Investors will benefit from more emphasis on ''principles-based'' standards, since ''rules-based'' standards (as discussed in chapters 1 and 2) may provide a method, such as through exceptions and bright-line tests, to avoid the accounting objectives underlying the standards. If properly implemented, ''principles-based'' standards should improve the information provided to investors while reducing the investor's concern about ''financial engineering'' by companies using the ''rules'' to avoid accounting for the substance of a transaction. While both auditors and issuers appear supportive of a move to less prescriptive guidance, they have expressed concern regarding the perception that current practice by auditors and regulators in evaluating judgments does not provide an environment in which such judgments may be generally respected. This, in turn, can lead to repeated calls for more rules, so that the standards can be comfortably implemented.

Many regulators also appear to encourage a system in which professionals can use their judgment to determine the most appropriate accounting and disclosure for a particular transaction. Regulators assert that they do respect judgments, but may also express concerns that some companies and auditors may attempt to inappropriately defend certain errors as ''reasonable judgments.'' Identifying standard processes for making professional judgments and criteria for evaluating those judgments, after the fact, may provide an environment that promotes the use of judgment and encourages consistent evaluation practices among regulators.

Goals of a Framework

The following are several issues that a potential framework may help address:

a. Investors' lack of confidence in the use of judgment—A professional judgment framework may provide investors with greater comfort that there is an acceptable rigor that companies follow in exercising reasonable professional judgment.

b. Preparers' and auditors' concern regarding whether reasonable judgments are respected—In the current environment, preparers and auditors may be afraid to exercise judgment for fear of having their judgments overruled, after the fact, by auditors, regulators and legal claimants.

c. Lack of agreement in principle on the criteria for evaluating judgments—The criteria for evaluating reasonable judgment, including the appropriate role of hindsight in the evaluation, may not be clearly defined and thus may lead to increased uncertainty.

d. Concern over increased use of ''principles-based'' standards—Companies, auditors and investors may be less comfortable in their ability to implement more ''principles-based'' standards if there is a concern over how reasonable judgments are reached and how they will be assessed.

Categories of Judgments That Are Made in Preparing Financial Statements

There are many categories of accounting and auditing judgments that are made in preparing financial statements, and a framework should encompass all of these categories, if practicable. Some of the categories of accounting judgment are as follows:

1. Selection of Accounting Standard

In many cases, the selection of the appropriate accounting standard under GAAP is not a highly complex judgment (e.g., leases would be accounted for using lease accounting standards and pensions would be accounted for using pension accounting standards). However, there are cases in which the selection of the appropriate accounting standard can be highly complex.

For example, the standards on accounting for derivatives contain a definition of a derivative and provide scope exceptions that limit the applicability of the standard to certain types of derivatives. To evaluate how to account for a contract that has at least some characteristics of a derivative, one would first have to determine if the contract met the definition of a derivative in the accounting standard and then determine if the contract would meet any of the scope exceptions that limited the applicability of the standard. Depending on the nature and terms of the contract, this could be a complex judgment to make, and one on which experienced accounting professionals can have legitimate differing, yet acceptable, opinions.

2. Implementation of an Accounting Standard

After the correct accounting standard is identified, there are judgments to be made during its implementation.

Examples of implementation judgments include determining if a hedge is effective, if a lease is an operating or a capital lease, and what inputs and methodology should be utilized in a fair value calculation. Implementation judgments can be assisted by implementation guidance issued by standards-setters, regulators, and other bodies; however, this guidance could increase the complexity of selecting the correct accounting standard, as demonstrated by the guidance issued on accounting for derivatives.

Further, many accounting standards use wording such as ''substantially all'' or ''generally.'' The use of such qualifying language can increase the amount of judgment required to implement an accounting standard. In addition, some standards may have potentially conflicting statements.

3. Lack of Applicable Accounting Standards

There are some transactions that may not readily fit into a particular accounting standard. Dealing with these ''gray'' areas of GAAP is typically highly complex and requires a great deal of judgment and accounting expertise. In particular, many of these judgments use analogies from existing standards that require a careful consideration of the facts and circumstances involved in the judgment.

4. Financial Statement Presentation

The appropriate method to present, classify and disclose the accounting for a transaction in a financial statement can be highly subjective and can require a great deal of judgment.

5. Estimating the Actual Amount to Record

Even when there is little debate as to which accounting standard to apply to a transaction, there can be significant judgments that need to be made in estimating the actual amount to record.

For example, opinions on the appropriate standard to account for loan losses or to measure impairments of assets typically do not differ. However, the assumptions and methodology used by management to actually determine the allowance for loan losses or to determine an impairment of an asset can be a highly judgmental area.

6. Evaluating the Sufficiency of Evidence

Not only must one make a judgment about how to account for a transaction, the sufficiency of the evidence used to support the conclusion must be evaluated. In practice, this is typically one of the most subjective and difficult judgments to make.

Examples include determining if there is sufficient evidence to estimate sales returns or to support the collectability of a loan.

Levels of Judgment

There are many levels of judgment that occur related to accounting and auditing. Preparers must make initial judgments about uncertain accounting issues; the preparer's judgment may then be evaluated or challenged by auditors, investors, regulators, legal claimants, and even others, such as the media. Similarly, planning and performing an audit requires numerous judgments. These judgments are also potentially subject to evaluation and challenge by investors, regulators, legal claimants and others, especially when, in hindsight, it has become clear that the auditor failed to detect material errors in the financial statements. Therefore, in developing a potential framework, differences in role and perspective between those who make a judgment and those who evaluate a judgment should be carefully considered. A framework should not make those who evaluate a judgment (auditors, regulators, and others) re-perform the judgment according to the framework. Instead, a framework should provide guidance to those who would evaluate a judgment on factors to consider while making that evaluation.

Hindsight

One appropriate tool used in auditing is hindsight—the ability of the auditor to use facts that are available through the completion of the audit work to evaluate the sufficiency of management's estimates and assumptions based on actual facts that become available after those estimates are made.

For example, auditors will frequently test the accuracy of the company's accounts payable balance at period-end by looking at cash disbursements made after the period-end. This evidence allows the auditor to determine whether the accrual for unpaid expenses at year-end is adequate.

However, the use of hindsight to evaluate a judgment where the relevant facts were not available at the time of the initial release of the financial statements (including interim financial statements) is not appropriate. Determining at what point the relevant facts were known to management or the auditor, or should have been known,[59] can be difficult, particularly for regulators who are often evaluating these circumstances after substantial time has passed. Therefore, the use of hindsight should only be used based on the facts reasonably available at the time the annual or interim financial statements were issued.

Form of Framework

Some have proposed that a ''safe harbor'' be developed that protects the exercise of judgment in accordance with a specified framework. That approach would seem to provide greater support to auditors and preparers than a statement of policy. However, it is unclear to us whether a legal or regulatory safe harbor (i.e., an effective legal or regulatory defense based on conformity with the framework) could be adopted by the SEC or whether it would require changes to existing statutes.

Another approach is for the SEC and the PCAOB to issue policy statements that describe a framework for the exercise of professional judgment and state that auditors, the SEC or the PCAOB, as applicable, would take into account the implementation of the framework in evaluating a judgment made by a registrant or an auditor. The SEC has utilized similar frameworks in the past with success. Examples of previous frameworks by the SEC include the ''Seaboard'' report (October 23, 2001) on the relationship of cooperation by a company to taking action in an enforcement case and the SEC's framework for assessing the appropriateness of corporate penalties (January 4, 2006).

While not an automatic defense of the registrant's or auditor's judgment, a framework would provide more support to registrants and auditors that the applicable regulator would be likely to accept a judgment made if the registrant or the auditor had fully implemented the framework. The framework is likely to enhance the quality of judgments by providing incentives to follow a rigorous process for making accounting and auditing judgments. The increased use of this rigorous process should, in turn, provide more comfort to investors about the quality of accounting judgments made in connection with financial statements.

It is unclear to us whether, as a matter of regulatory strategy, this judgment framework should be implemented through a safe harbor or policy statement. We leave to the SEC and its staff the resolution of these difficult issues.

The Nature and Limitations of GAAP

Some have suggested that the standard in a potential professional judgment framework for the selection and implementation of GAAP be a requirement to reflect the economic substance of a transaction or be a standard of selecting the ''high road'' in accounting for a transaction. We agree that qualitative standards for GAAP such as these would be desirable and we encourage regulators and standards-setters to move financial reporting in this direction. However, such standards are not always present in financial reporting today and we cannot recommend the adoption of such standards in a professional judgment framework without anticipating a fundamental long-term revision of GAAP—a change that would be beyond our purview and one that would not be doable in the near- or intermediate-term.

For example, there is general agreement that accounting should follow the substance and not just the form of a transaction or event. Many believe that this fundamental principle should be extended to require that all GAAP judgments should reflect economic substance. However, reasonable people disagree on what economic substance actually is, and many would conclude that significant parts of current GAAP do not require and do not purport to measure economic substance (e.g., accounting for leases, pensions, certain financial instruments and internally developed intangible assets are often cited as examples of items reported in accordance with GAAP that would not meet many reasonable definitions of economic substance).

Similarly, some would like financial reporting to be based on the ''high road''—a requirement to use the most preferable principle in all instances. Unfortunately, today a preparer is free to select from a variety of acceptable methods allowed by GAAP (e.g., costing inventory, measuring depreciation, and electing to apply hedge accounting are just some of the many varied methods allowed by GAAP) without any qualitative standard required in the selection process. In fact, a preferable method is required to be followed only when a change in accounting principle is made, and a less preferable alternative is fully acceptable absent such a change.

We believe that adopting a requirement that accounting judgments reflect economic substance or the ''high road'' would require a revolutionary change not achievable in the foreseeable future. Our suggested judgment framework could and, we believe, would enhance adherence to GAAP, but it cannot be expected to correct inherent weaknesses in the standards to which it would be applied.

[59] We believe that those making a judgment should be expected to exercise due care in gathering all of the relevant facts prior to making the judgment.

III.B. Developed Proposals

We have developed the following proposal:

Developed Proposal 3.4: The SEC should adopt a judgment framework for accounting judgments. The PCAOB should also adopt a similar framework with respect to auditing judgments. Careful consideration should be given in implementing any framework to ensure that the framework does not limit the ability of auditors and regulators to ask appropriate questions regarding judgments and take actions to require correction of unreasonable judgments.

The proposed framework applicable to accounting-related judgments would include the choice and application of accounting principles, as well as the estimates and evaluation of evidence related to the application of an accounting principle. We believe that a framework that is consistent with the principles outlined in this developed proposal to cover judgments made by auditors based on the application of PCAOB auditing standards would be very important and would be beneficial to investors, preparers, and auditors. Therefore, we propose that the PCAOB develop a professional judgment framework for the application and evaluations of judgments made based on PCAOB auditing standards.

We propose that the framework for accounting judgments be consistent with the following concepts:

Framework for Professional Judgment in Accounting

The Concept of Professional Judgment

Professional judgment, with respect to accounting matters, should be the outcome of a process in which a person or persons with the appropriate level of knowledge, experience, and objectivity form an opinion based on the relevant facts and circumstances within the context provided by applicable accounting standards. Professional judgments could differ between knowledgeable, experienced, and objective persons. Such differences between reasonable professional judgments do not, in themselves, suggest that one judgment is wrong and the other is correct. Therefore, those who evaluate judgments should evaluate the reasonableness of the judgment, and should not base their evaluation on whether the judgment is different from the opinion that would have been reached by the evaluator.

This framework would serve as the primary, though not exclusive, approach to evaluating the process of making professional judgments. While regulators would strongly support the principles of this framework, the mere completion of the process outlined in the framework in making a judgment would not prevent an auditor and/or regulator from asking appropriate questions about the judgment or asking companies to correct unreasonable judgments. A judgment framework would not eliminate debate, nor should it attempt to do so. Rather, it organizes analysis and focuses preparers and others on areas to be addressed thereby improving the quality of the judgment and likelihood that auditors [60] and regulators will accept the judgment. Conversely, not following the framework would not imply that the judgment is unreasonable.

This framework reflects the fact that GAAP does not always reflect the economic substance of a transaction and that it may be difficult to determine how the accounting would meet the needs of investors. In addition, this framework would be applicable to accounting matters only to the extent that judgments were required in the choice or application of accounting principles, in estimating the amount to record, or in evaluating the sufficiency of the evidence.

In applying the components of the framework, it would be expected that the amount of documentation, disclosure, input from professional experts,[61] and level of effort in making a professional judgment would vary based on the complexity, nature (routine versus non-routine) and materiality of a transaction or issue requiring judgment.

Components of a Framework

Critical and Good Faith Thought Process—Professional judgment should be based on a critical and reasoned evaluation made in good faith, prior to the exercise of the judgment, of an identified issue, including the nature and scope of the issue based on:

1. An analysis of the transaction, including the substance and business purpose of the transaction.

2. The material facts reasonably available at the time that the financial statements are issued.

3. A thorough review and analysis of relevant literature, including the relevant underlying principles.

4. Alternative views or estimates, including pros and cons for reasonable alternatives.

5. The rationale for the choice selected, including reasons for the alternative or estimate selected and linkage of the rationale to investors' information needs and the judgments of competent external parties.

6. Linkage of the alternative or estimate selected to the substance and business purpose of the transaction or issue being evaluated.

7. Known diversity in practice regarding the alternatives or estimates.[62]

8. The consistency of application of alternatives or estimates to similar transactions.

9. The appropriateness and reliability of the assumptions and data used.

The critical thought process should include input from personnel with an appropriate level of professional expertise and should include a sufficient amount of time and effort to properly consider the judgment.

Material issues or transactions that were analyzed pursuant to the application of the framework should be disclosed in accordance with existing disclosure requirements. This disclosure should be transparent so that the investor understands the transaction and assumptions that were critical to the judgment. When evaluating professional judgment, auditors, and/or regulators should take into account the disclosure relevant to the judgment.

Documentation—The alternatives considered and the conclusions reached should be documented contemporaneously. The lack of contemporaneous documentation may not mean that a judgment was incorrect, but would complicate an explanation of the nature and propriety of a judgment made at the time of the release of the financial statements.

IV. Future Considerations

We intend to examine the area of regulation and compliance for issues that create avoidable complexity in financial reporting. Some of the areas that we intend to focus on include: (1) The interaction between companies and their auditors, the SEC, and the PCAOB, (2) the interaction between audit firms and the SEC and PCAOB, and (3) the levels of enforcement and regulation of standards in other developed markets around the world.

[60] It should be noted that, while auditors should be using the framework to evaluate a client's judgments and should respect reasonable judgments, they still have a requirement to follow PCAOB auditing standards, which would include expressing an opinion regarding whether the client's financial statements are fairly presented, in all material respects, in accordance with GAAP. Therefore, this framework would not require auditors to issue an unqualified audit opinion when they disagree with a judgment.

[61] In many cases, input from professional experts would include consultation with a preparer's independent auditors.

[62] If there is not diversity in practice, it would be significantly harder to select a different alternative.

Chapter 4: Delivering Financial Information

I. Introduction

We have been evaluating the information needs of investors, methods by which financial information is provided to investors, and means to improve delivery of financial information to all market constituencies. In evaluating the information needs of investors, we have recognized that the information needs of different types of investors are not always the same. We have agreed that information must be delivered in a manner that is efficient, reliable, and cost-effective for each of the relevant investor groups and will not significantly increase burdens on reporting companies.

We have determined that we will focus our efforts on financial information provided by reporting companies in their periodic and current reports under the Securities Exchange Act of 1934 (''Exchange Act'') and other ongoing disclosures provided by reporting companies to investors and the market.[63] We believe that we can make some useful proposals to enhance ongoing reporting that will enable investors to better understand reporting companies.

Based on the above, we have analyzed two ways to improve the delivery of financial information to investors and the market. These are:

- Tagging of financial information (XBRL).
- Improving corporate website use.

We also intend to look at the following in the future:

- Use of executive summaries as an integral part of Exchange Act periodic reports.
- Disclosures of key performance indicators (KPIs) and other metrics to enhance business reporting.
- Improved quarterly press release disclosures and timing.
- Continued need for improvements in the management discussion and analysis (MD&A) and other public company financial disclosures.

[63] We have determined that we will not address information delivery in registered offerings under the Securities Act of 1933 for two primary reasons. First, the SEC already has addressed information delivery in registered securities offerings when it adopted new communication rules in 2005 for registered offerings by issuers other than registered investment companies. Second, we view information delivery relating to ongoing company reporting by public companies as the area needing greater focus.

II. Tagging of Financial Information (XBRL)

II.A. Background

Description of XBRL

XBRL is an international information format standard designed to help investors and analysts find, understand, and compare financial and non-financial information by making this information machine-readable. It enables companies to better control how their financial or non-financial information is presented and disseminated and reduce reporting costs by integrating their operating data with their financial reporting disclosure. XBRL is a computer language which uses standardized XML (eXtensible Markup Language) technology and permits the automation of what are now largely manual steps for access, validation, analysis, and reporting of disclosure. For example, an investor or analyst who wants to compare the sales of all pharmaceutical companies will be able to use software applications to take the XBRL-tagged information, extract the sales numbers and download them directly to a spreadsheet.

XBRL uses standardized definitions of terms, like a dictionary. The standardized terms are then arranged in a logical structure called a taxonomy. A GAAP financial statement itself, in that its underlying details are summarized in the line items of a balance sheet or income statement, is a kind of taxonomy. There are taxonomies for different kinds of businesses. For example, the banking industry sector taxonomy differs from that of a software industry sector company.

Status of XBRL-Tagged Financial Statements in SEC Reports

The SEC has adopted a voluntary pilot program for the use of XBRL in which participants submit voluntarily supplemental tagged financial information using the XBRL format as exhibits to specified EDGAR filings.[64] Voluntary pilot participants may use existing standard XBRL taxonomies. Over four dozen companies are participating in the pilot program and have agreed to voluntarily submit their annual, quarterly and other reports with interactive data for a period of one year. The SEC recently expanded the voluntary filing program to include mutual funds which will file using a risk and return taxonomy developed by the Investment Company Institute.

On December 5, 2007, XBRL-US published a draft XBRL U.S. GAAP Taxonomy and draft preparer's guide for public testing and comment. The XBRL U.S. GAAP Taxonomy includes tags for a company's financial statements and notes. Public review currently is scheduled to end April 5, 2008, and XBRL-US has stated that it anticipates that the final XBRL U.S. GAAP Taxonomy and preparer guidance will be issued in spring 2008. After the final XBRL U.S. GAAP Taxonomy and preparer guidance is issued, the SEC EDGAR system must be modified to accept submissions tagged using the XBRL U.S. GAAP Taxonomy.

The SEC has stated that it will use the initial financial statements prepared using the new XBRL U.S. GAAP Taxonomy to help it further update its EDGAR system so that it will be able to ''seamlessly accept and render the filings.'' We understand that currently, the SEC's EDGAR system does not yet accept and render financial statements with XBRL tags based on the newly-developed XBRL U.S. GAAP Taxonomy.

In addition, we understand that the software industry has been engaged in developing tagging and rendering (turning the XBRL-tagged information into a human readable format) software for XBRL-tagged financial statements. Companies generally use two methods to tag their financial statements using XBRL. The first method, called a ''bolt-on'' approach, involves developing the XBRL reports after the filed financial statements are developed—a process known as ''mapping.'' Companies also may use XBRL as part of an integrated approach to financial reporting. In an integrated approach, companies incorporate XBRL into their internal company financial systems which allows financial reports to be created from the XBRL-tagged financial systems, without first preparing such financial statements in ''human readable format.'' XBRL-tagging using a ''bolt-on'' approach may involve somewhat more effort than using an integrated approach. Currently, there is software that allows companies to XBRL-tag their financial statements using the ''bolt-on'' approach.[65] At this time it is unknown how many companies have begun integrating XBRL-tagging into their internal financial reporting systems and, therefore, it is not clear when a significant number of companies would

[64] The SEC's voluntary XBRL rules specify the form, content, and format of XBRL submissions, description of XBRL data, timing of XBRL submissions, and use of Taxonomies. For example, the rules require the tagged data to be described either as ''unaudited'' or, for quarterly financial statements, ''unreviewed.''

[65] Using the ''bolt-on'' method, companies can prepare their financial statements (including notes) in a number of formats, such as Adobe (pdf), Word, and HTML.

move from a ''bolt-on'' to an integrated approach to XBRL-tagging of their financial statements.

Time and Costs Involved in XBRL-Tagging

We understand that while the XBRL U.S. GAAP Taxonomy has a significant number of individual tags or elements, it contains all of the terms or concepts commonly used in financial statements prepared in accordance with GAAP. We understand that reporting companies would use only a limited number of tags or elements. For example, one large voluntary filer uses approximately 192 tags (it tags its notes as blocks rather than at a granular level) to tag its Form 10–Q. We understand that there may be the need for customized ''extensions'' if the XBRL U.S. GAAP Taxonomy does not include a tag for the particular item in the company's financial statements. Because the XBRL U.S. GAAP Taxonomy currently out for public comment tracks GAAP, we believe that there likely will be less need for customized extension elements. One of the purposes of the comment period on the XBRL U.S. GAAP Taxonomy and preparer guidance is to identify additional tags or elements that should be added to the XBRL U.S. GAAP Taxonomy, reducing the need for customized extensions. The draft preparer guidance out for public comment also will be evaluated by preparers, investors, and others to determine whether it provides adequate guidance for determining when an extension should be used by preparers.

The type of information that is tagged also is relevant to understanding XBRL-tagged financial statements. Companies participating in the voluntary program have been tagging the face of their financial statements using existing taxonomies and software. As to the notes to the financial statements, additional effort may be involved. While the notes to the financial statements may easily be tagged as a block of text, unlike preparation of notes to the financial statements in a paper-based format, tagging the individual information in each note will involve additional tags and, therefore, more work than block-tagging the text.

Certain preparers participating in the SEC's voluntary program have indicated that the initial number of hours it took to tag the face of their financial statements using existing standard taxonomies (not the new XBRL U.S. GAAP Taxonomy) and a ''bolt-on'' approach ranged from 80–100 hours and that the number of hours dropped significantly for subsequent reports (due to the lack of a need to replicate the tagging process for most items).[66] For preparers also tagging the notes to their financial statements using a ''block'' tag, the number of hours increased slightly. The costs to tag the face of the financial statements using standardized software were not significant. Additional time and cost was spent by at least one preparer to validate the tags that were used. In these cases, there was no auditor involvement in the process.

Smaller Public Company Reactions to XBRL-Tagging

Smaller public company representatives recognize the benefits that XBRL offers their companies over the long-term, but are concerned about initial implementation costs, which could be alleviated with the development of improved tagging and verification software. The representatives strongly support a phase-in approach in which such smaller public companies would be included at the end, once larger public companies had worked through any significant implementation issues, including use of company resources involved in tagging and verification of XBRL tags.

Potential Benefits of XBRL

We see a number of potential benefits of XBRL for reporting companies and investors of financial and non-financial information. First, XBRL-tagging could benefit reporting companies by permitting improved communications with analysts and investors. Released corporate data could be instantaneously and immediately usable by analysts in their models without the need for them to wait for third party aggregators or staff to input the data into their own format. There would be a reduction in search costs. Further, such reduced search costs could potentially increase coverage of companies, especially mid-size and smaller companies, by sell-side and buy-side analysts, and at both major brokerage and independent research firms. XBRL-tagging also would likely improve the quality of data[67] and the ability of a company to control the presentation of its financial information. The elimination or reduction of the manual input would likely reduce error rates in reporting and inputting of corporate data by aggregators.

Second, XBRL has the potential to improve the integration of company operating and reporting data. Using XBRL, operating data can be accessed in the internal enterprise applications where it is regularly stored, and thus will be used for financial reporting purposes without the necessity of downloading to paper or manual search. The same electronically accessible data can be used for other purposes beyond those of financial statements, including tax, industrial filings, audit, benchmarking, performance reporting, internal management, and sustainability. We believe that the full economic benefits of XBRL will most likely come when companies incorporate XBRL into their internal reporting, instead of using it as a ''bolt-on'' after their financial reports are prepared.

Finally, XBRL-tagged financial statements can provide a number of benefits to investors, including both retail investors and the ''model builder/research analyst.'' Investors can benefit from, among other things, a reduced cost of locating and inputting data into analytical frameworks, elimination of manual input thereby reducing the likelihood of input error by an investor or data aggregator, reduced investor dependence on proprietary and inconsistent data sources, increased likelihood of more investors utilizing primary data sources, and reduced cost of and improved company comparisons. The XBRL-tagged financial statements should enable investors and experienced analysts at research organizations to spend more time analyzing data than data gathering.

We recognize, however, that notwithstanding the potential benefits, many company officers may not understand how XBRL works or what improvements it could bring to both their financial reporting and their costs of reporting. In addition, there currently is limited acceptance of XBRL due, in part, to companies needing greater certainty that XBRL will be adopted before they will expend the necessary resources to understand it and its benefits. Companies may have other concerns about potential start-up costs in adopting XBRL, including purchase of software and personnel resources for data input and training. Further, analysts and software developers generally are unaware or uninformed about XBRL.

[66] For example, one S&P 500 company participating in the voluntary pilot spent 80 hours learning the tagging tool, understanding SEC requirements, creating extensions for tags, and creating a process for ongoing tagging and future submissions.

[67] Although XBRL is frequently called ''interactive data,'' the use of the term ''data'' should not be deemed to imply numerical data alone. XBRL also is useful for the tagging of narrative information.

Implementation of XBRL-Tagging of Financial Statements

We believe that the SEC should, over the long-term, require all public reporting companies (preparing their financial statements using GAAP) to tag the financial statements (including footnotes) they are required to file with the SEC as part of their Exchange Act reports using XBRL. We believe that an implementation roadmap from the SEC is needed to encourage the involved parties to move beyond a wait-and-see approach and commit resources toward the necessary development of software. That software would tag financial information and enable the viewing and reading of the XBRL-tagged information, the use of XBRL-tagged data by investors such as analysts and investors, and the integration of XBRL by companies. We believe that full implementation of mandated XBRL-tagged financial statements will require a phase-in over a period of time, as discussed below, to enable preparers and investors to understand XBRL by preparers and investors, to permit successful use of the new XBRL U.S. GAAP Taxonomy, and to enable the further development of tagging and rendering software. We believe that such a phase-in should be sensitive to the concerns of smaller public companies regarding mandated XBRL-tagged financial statements.

We believe that mandatory implementation of XBRL will involve a number of steps leading to the ultimate goal of requiring public reporting companies to tag their financial statements using XBRL.

Full mandatory implementation may not be possible until all the following preconditions are met:

- Taxonomy development.
  - Testing of the XBRL U.S. GAAP Taxonomy is completed. The testing process for the new XBRL U.S. GAAP Taxonomy, which is to determine whether disclosures are complete and relevant in the current market environment, is now underway.
  - The final XBRL U.S. GAAP Taxonomy and preparer guide are released following public review and comment.
  - Voluntary filers have successfully used the XBRL U.S. GAAP Taxonomy and preparer guide for a period of time.
    - —Status: On December 5, 2007, XBRL published the draft of XBRL U.S. GAAP Taxonomy and draft preparer guide for public testing and comment. The XBRL U.S. GAAP Taxonomy includes tags for a company's financial statements and footnotes. Public review currently is scheduled to end April 5, 2008, and it is anticipated that the final XBRL U.S. GAAP Taxonomy and preparer guide will be issued in spring 2008.
- Ability of SEC EDGAR to ''seamlessly'' accept XBRL submissions using the new XBRL U.S. GAAP Taxonomy and other XBRL-tagged data and provide an accurate rendered version of all such tagged information.
  - Status: The SEC has stated that it will use the initial financial statements prepared using the new XBRL U.S. GAAP Taxonomy to help it update EDGAR so that it will be able to ''seamlessly accept and render the filings.'' Currently, the SEC's EDGAR system does not accept financial statements with XBRL tags based on the newly-developed XBRL U.S. GAAP Taxonomy.

We believe that, to achieve the desired acceptance of XBRL, after the XBRL U.S. GAAP Taxonomy precondition is satisfied, on an interim basis XBRL-tagged financial statements should be required to be implemented on a phase-in basis as follows:

- The largest 500 domestic public reporting companies based on unaffiliated market capitalization (public float) should be required to furnish to the SEC, as is the case in the voluntary program today, a document prepared separately from the reporting companies' financial statements that are filed as part of their periodic Exchange Act reports. This document would contain the following:
  - XBRL-tagged face of the financial statements.[68]
  - Block-tagged footnotes to the financial statements.[69]
- Domestic large accelerated filers (as defined in SEC rules, which would include the initial 500 domestic public reporting companies) should be added to the category of companies, beginning one year after the start of the first phase, required to furnish XBRL-tagged financial statements to the SEC.

We believe that a phase-in would provide businesses, financial planners, software developers, and investors with the impetus to move forward in building systems based on XBRL. For example, in connection with the mandatory implementation of XBRL, we are aware that, if tagging were mandated for companies, they may use a ''bolt-on'' solution in-house or use a service provider in the early stages before moving to a broader integrated interactive data approach. This ''bolt-on'' approach, for many, could be used as a means to begin to climb the learning curve in a cheap, easily managed manner. In this regard, we believe that companies should have the capacity to compare XBRL-tagged and rendered financial statements to avoid errors and the SEC should take steps to assist in that regard. We believe that the SEC should encourage or commission the development of free software to compare rendered and filed statements.

During the phase-in period, the SEC and PCAOB should seek input from companies, investors, and other market participants as to the experience of such persons in preparing and using XBRL-tagged financial statements using the XBRL U.S. GAAP Taxonomy, and related costs. The SEC should consider conducting or commissioning a study of the rate of errors by companies in using the appropriate XBRL tags in comparison to the financial statement items, which should be done only after filers use the final uniform Taxonomy and preparer guidance to tag their financial statements.

As mentioned above, under the phase-in approach, the XBRL-tagged financial statements would still be considered furnished to and not filed with the SEC. As part of the mandatory implementation, we believe that, as is the case in the voluntary program, the SEC should make clear what liability provisions the XBRL-tagged financial statements would be subject to under the federal securities laws.

Finally, at the end of the phase-in period described above, and as promptly as practicable after all the preconditions to full implementation discussed above are met, the SEC should evaluate the results from the phase-in period to determine whether and when to move from furnishing to the SEC to the official filing of XBRL-tagged financial statements with the SEC by domestic large accelerated filers, as well as whether and when to include all other reporting companies, as part of a company's Exchange Act periodic reports.

II.B. Developed Proposals

We would like to make recommendations that increase the certainty that XBRL will be a significant part of the reporting landscape so that preparers, investors, auditors, software developers and regulators make the needed investment in XBRL.

Based on the above considerations, we have developed the following proposal:

[68] To allow this first phase, the SEC EDGAR system must permit submissions using the new XBRL U.S. GAAP Taxonomy.

[69] We understand that tagging beyond the face of the financial statements and block-tagging of footnotes, such as granular tagging of footnotes and non-financial data, may require significant effort and would involve a significant number of tags.

Developed Proposal 4.1: The SEC should, over the long-term, mandate the filing of XBRL-tagged financial statements after the satisfaction of certain preconditions relating to: (1) Successful XBRL U.S. GAAP Taxonomy testing, (2) capacity of reporting companies to file XBRL-tagged financial statements using the new XBRL U.S. GAAP Taxonomy on the SEC's EDGAR system, and (3) the ability of the EDGAR system to provide an accurately rendered version of all such tagged information. The SEC should phase-in XBRL-tagged financial statements as follows:

- The largest 500 domestic public reporting companies based on unaffiliated market capitalization (public float) should be required to furnish to the SEC, as is the case in the voluntary program today, a document prepared separately from the reporting companies' financial statements that are filed as part of their periodic Exchange Act reports. This document would contain the following:
  - XBRL-tagged face of the financial statements.[70]
  - Block-tagged footnotes to the financial statements.[71]
- Domestic large accelerated filers (as defined in SEC rules, which would include the initial 500 domestic public reporting companies) should be added to the category of companies, beginning one year after the start of the first phase, required to furnish XBRL-tagged financial statements to the SEC.
- Once the preconditions noted above have been satisfied and the second phase-in period has been implemented, the SEC should evaluate whether and when to move from furnishing to the SEC to the official filing of XBRL-tagged financial statements with the SEC for the domestic large accelerated filers, as well as the inclusion of all other reporting companies, as part of a company's Exchange Act periodic reports.[72]

II.C. Assurance

An important issue related to tagging public company financial statements using XBRL involves whether assurance should be provided by a third party. We understand that among the primary benefits of providing independent assurance of XBRL documents is that financial statement investors could quickly build confidence in interactive data and increase their use of such data. One primary reason for not obtaining such independent assurance of XBRL documents is the concern that the cost and time incurred to obtain such assurance may significantly outweigh the benefits to preparers and investors.

As to assurance, we understand that questions arise as to whether assurance should be provided as to matters such as:

1. The appropriate use of the proper XBRL U.S. GAAP Taxonomy and accurate tagging of financial statements.
2. The reasonableness of any company extensions to the XBRL U.S. GAAP Taxonomy.
3. The compliance of the XBRL-tagged document (also called the ''instance document'') with SEC content and format requirements.
4. The separate performance of validation checks over footings and inter-checks (for example, whether inventory is reported more than once throughout the document determine if amounts reported are consistent) of the XBRL instance document.
5. Whether the information in the XBRL instance document is the same as the information in the official filed financial statements (applicable under a ''bolt-on'' state).

We note that there are ways in which companies may, inadvertently or deliberately, create XBRL reports in a manner that will potentially mislead investors. Accordingly, one of our members believes that independent assurance of XBRL documents prepared by management should be provided, as described in items (1) and (5) above (at a minimum), provided that such assurance does not result in a significant increase in costs. This member noted that accounting knowledge and professional judgment would be required in providing that assurance, but believed that the assurance process is relatively simple, should not take a significant amount of time because many steps can be automated, and, therefore, should not be an expensive or time-consuming activity.

The concept of obtaining assurance on the correct tags and matching the XBRL rendered documents to the filed statements is predicated on the belief that the incremental monetary and human resource costs to provide the assurance will be very small. Reviewing the tags the first time will involve significant effort, but subsequent reviews may be limited to new or changed tags. Moreover, the costs and benefits of assurance reviews may differ depending on whether companies are using the ''bolt-on'' rather than the integrated tagging approach. Therefore, our other members believe that it is appropriate to study the assurance process during the phase-in period to assess the actual costs and benefits of assurance that might be provided on the XBRL-tagged financial statements.

The type, timing, and extent of assurance, if any, on a company's XBRL-tagged financial statements and other tagged information required to be furnished to the SEC should take into account the needs of investors, and other market participants, along with the costs to reporting companies. Until a group of reporting companies has been required to furnish to the SEC XBRL-tagged financial statements and notes using the new XBRL U.S. GAAP Taxonomy for a period of time that will allow investors and other market participants to evaluate the reliability of such XBRL-tagged financial statements and notes, it is premature to make concrete suggestions regarding assurance.

Accordingly, our developed proposal does not include any assurance proposal. During the interim phase-in period discussed above, the SEC and PCAOB should seek input from companies, investors, and other market participants as to the type, timing, and extent of desired or needed assurance, if any. This input should include the experience of such persons in preparing and using XBRL-tagged financial statements using the newly-developed XBRL U.S. GAAP Taxonomy, and related costs. Additionally, after public companies are required to tag their financial statements using XBRL, whether in accordance with our proposals or otherwise, the SEC should consider initiating a voluntary pilot program in which companies obtain assurance on their XBRL-tagged financial statements (whether using a ''bolt-on'' or integrated approach) in order to evaluate fully potential costs and benefits associated with such effort.

III. Improved Corporate Web site Use

Background

We have been examining the integral role that technology and corporate Web sites play in informing the markets and investors about important corporate information and developments, including Web site disclosure presentations that are under development by software vendors. A valuable element of many of such Web site presentations is that they present the most important general information about a company on the opening page,

[70] To allow this first phase, the SEC EDGAR system must permit submissions using the new XBRL U.S. GAAP Taxonomy.

[71] We understand that tagging beyond the face of the financial statements and block-tagging of footnotes, such as granular tagging of footnotes and non-financial data, may require significant effort and would involve a significant number of tags.

[72] A dissenting vote on developed proposal 4.1 was cast by Peter Wallison.

with embedded links that enable the reader to drill down to more detail by clicking on the links. In this way, viewers can follow a path into, and thereby obtain increasingly greater details about the financial statements, a company's strategy and products, its management and corporate governance, and its many other areas in which investors and others may have an interest.

Improving the use of corporate Web sites can enable shareholders and investors to gather information about a company that is at a level they believe is satisfactory for their purposes, without requiring them to wade through large amounts of written material that may provide a level of detail beyond their particular needs.

Corporate Web sites offer reporting companies a cost-effective, efficient method to provide information to investors and the market. Encouraging reporting companies to increase their use of their Web sites, including developing a tiered approach to deliver such corporate information on their Web sites, would benefit investors of all types, retail and institutional. Enhanced corporate Web site usage could decrease the complexity of information presentation and would enhance its accessibility. In addition, through coordination by industry participants, uniform best practices on uses of corporate Web sites could be developed.

The SEC has issued a series of interpretive releases and rules addressing the use of electronic media to deliver or transmit information under the federal securities laws. The SEC issued its last comprehensive interpretive release on the use of electronic media, including corporate Web sites, in 2000. Since 2000, significant technological advances have increased both the market's demand for more timely corporate disclosure and the ability of investors to capture, process, and disseminate this information. Recognizing this, the SEC has adopted a large number of rules that mandate, permit, or require disclosure of the use of corporate Web sites to provide important corporate information and developments.

We have been informed, however, that there are continuing concerns about the treatment of Web site disclosures under the federal securities laws that some have argued may be impeding greater use of corporate Web sites. These concerns include liability for information presented in a summary format, the treatment of hyperlinked information from within or outside a company's Web site, the disclosure of non-GAAP measures and required reconciliations to GAAP, and the need for clarification of the public availability of information disclosed on a reporting company Web site. Consequently, we believe that the SEC should issue a new comprehensive interpretive release regarding the use of corporate Web sites for disclosures of corporate information. We believe that SEC guidance would encourage further creative use of corporate Web sites by reporting companies to provide information, including Web site disclosure formats following industry developed best practice guidelines.

Developed Proposal

Based on the above, we have developed the following proposal:

Developed Proposal 4.2: The SEC should issue a new comprehensive interpretive release regarding the use of corporate Web sites for disclosures of corporate information, which addresses issues such as liability for information presented in a summary format, treatment of hyperlinked information from within or outside a company's Web site, treatment of non-GAAP disclosures and GAAP reconciliations, and clarification of the public availability of information disclosed on a reporting company's Web site.

Industry participants should coordinate among themselves to develop uniform best practices on uses of corporate Web sites for delivering corporate information to investors and the market.

IV. Future Considerations

Use of Executive Summaries in Exchange Act Periodic Reports

We have been exploring a requirement to include an executive summary in reporting company annual and quarterly Exchange Act reports (Forms 10–K and 10–Q). We understand that a summary report prepared on a stand-alone basis would not necessarily provide investors with information they need in a desired format. However, an executive summary included in the forepart of an Exchange Act periodic report may provide investors with an important roadmap to the company's disclosures located in the body of such a report. The executive summary in the Exchange Act periodic report would provide summary information, in plain English, in a narrative and perhaps tabular format of the most important information about a reporting company's business, financial condition, and operations. As with the MD&A, the executive summary would use a layered approach that would present information in a manner that emphasizes the most important information about the reporting company and would include cross-references to the location of the fuller discussion in the annual report.

The goal of the executive summary would be to help investors fundamentally understand a company's businesses and activities through a relatively short, plain English presentation. An executive summary in a periodic report may be most useful if it included high-level summaries across a broad range of key components of the annual or quarterly report, rather than detailed discussion of a limited number of variables. The executive summary approach may be an efficient way to provide all investors, including retail investors, with a concise overview of a company, its business, and its financial condition. For the more sophisticated investor, an executive summary may be helpful in presenting the company's unique story, which the sophisticated investor could consider as it engages in a more detailed analysis of the company, its business and financial condition.

The executive summary in a periodic report should be brief, and it might fruitfully build on the overview that the SEC has identified should be in the forepart of the MD&A disclosure. The MD&A overview is expected to ''include the most important matters on which a company's executives focus in evaluating the financial condition and operating performance and provide context.'' [73] The executive summary should build on the MD&A overview disclosure and include the following:

1. A summary of a company's current financial statements.
2. A digest of the company's GAAP and non-GAAP KPIs.
3. A summary of key aspects of company performance.
4. A summary of business outlook.
5. A brief description of the company's business, sales and marketing.
6. Page number references to more detailed information contained in the document.

The executive summary would be required to be included in the forepart of a reporting company's annual or quarterly report filed with the SEC or, if a reporting company files its annual report on an integrated basis (the glossy annual report is provided as a wraparound to the filed annual report), the executive summary instead could be

[73] SEC, Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Release No. 33–8350 (December 19, 2003).

included in the forepart of the glossy annual report. If the executive summary was included in the glossy annual report, it would not be considered filed with the SEC.

We will continue to evaluate the concept of requiring an executive summary in a public company's Exchange Act periodic reports such as the annual report on Form 10–K and the quarterly report on Form 10–Q.

Disclosures of KPIs and Other Metrics To Enhance Business Reporting

Enhanced business reporting and KPIs are disclosures about the aspects of a company's business that are the source of its value. The Enhanced Business Reporting Consortium,[74] has stated that the value drivers for a business ''can be measured numerically through KPIs or may be qualitative factors such as business opportunities, risks, strategies and plans—all of which permit assessment of the quality, sustainability and variability of its cash flows and earnings.'' KPIs include supplemental non-GAAP financial reporting disclosures that proponents have stated can improve disclosures by public companies. KPIs are leading indicators of financial results and intangible assets that are not encompassed on a company's balance sheet. Proponents of the use of KPIs note that they are important because they inform judgments about a company's future cash flows—and form the basis for a company's stock price. Managers and boards of directors of companies are said to use KPIs to monitor performance of companies and of management. Market participants and the SEC have identified KPIs as important supplements to GAAP-defined financial measures.

The important issues for us to examine are what types of KPIs should be made available, in what format and at what time, and whether they are clearly and consistently defined over time. Currently, companies are disclosing some company-specific KPIs in their periodic reports filed with the SEC or in other public statements. Other people in the market are working on developing industry-specific KPIs in order to improve comparability of companies on an industry basis. We will explore ways to encourage companies to disclose company and industry-specific KPIs. In addition, we will examine who should develop the disclosure standards for defining and measuring KPIs to assure consistency among companies and through time, and whether XBRL should be extended by industry sector to include KPIs and information on intangible assets. Further, we will examine the interplay between the use of non-GAAP measures and KPIs. We also will examine ways in which consistent KPIs can be developed through industry coordination.

Improved Quarterly Press Release Disclosures and Timing

The quarterly press release, being the first corporate communication about the result of the quarter just ended, is viewed as an important corporate communication. This communication often receives more attention than the formal Form 10–Q submission which often occurs a week or two later.

We intend to review the earnings press release for its consistency, understandability and its timeliness. We will consider the consistent provision of income statement, balance sheet and cash flow tables in the quarterly release. We also intend to consider the positioning and prominence of GAAP and non-GAAP figures, GAAP reconciliation, the consistent placement of topics, and clear communication of any changes to accounting methods or key assumptions. Ultimately, we view the goal for an earnings release as a consistent, reliable communication form that all investors can easily navigate.

In addition, we will evaluate the advisability of requiring the issuance of the earnings releases on the same day that the periodic report (e.g., Form 10–Q) is filed, in contrast to the current practice in which the earnings release often is issued before the periodic report is filed. In this regard, we will review a survey of CFA Institute members on a similar proposal, as well as the comments received by the SEC when this idea was put forth in prior SEC rule proposals. We will consider, among other things: (1) The savings in time spent cross-referencing two separate but fairly identical reports separated by a very short period of time, and (2) the elimination of the concern that the two reports may not perfectly match.

We do not intend to deliberate the potential elimination of the issuance of quarterly earnings results. The elimination of quarterly reports would deprive investors of important sources of information about a company's performance. However, we may discuss public projections of next quarter's earnings by company officials, since some believe that this practice is an important underlying source of reporting complexity and other accounting problems. Moreover, as mentioned above, we will focus on efforts to encourage corporate reporting of KPIs and other measures of sustainable business progress over longer periods.

Continued Need for Improvements in the MD&A and Other Public Company Financial Disclosures

Every public company is required to include a MD&A section in its annual and quarterly reports filed with the SEC. The three principal objectives of the MD&A are to:

- Provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management
- Enhance the overall financial disclosure and provide the context within which financial information should be analyzed
- Provide information about the quality of, and potential variability of, a company's earnings and cash flow so that investors can ascertain the likelihood that past performance is indicative of future performance.

The SEC has made clear that the quality of the MD&A in public company periodic reports is not as good as it should be. In 2003, the SEC concluded, based in part on the Fortune 500 report issued by Corp Fin, that additional guidance was useful in the following areas:

- The overall presentation of the MD&A
- The focus and content of the MD&A (including materiality, analysis, key performance measures and known material trends and uncertainties)
- Disclosure regarding liquidity and capital resources
- Disclosure regarding critical accounting estimates.

The SEC has stated that the MD&A should not be a recitation of financial statements in narrative form or a series of technical responses to the MD&A requirements.

We understand that investors and other market participants believe that while there has been some improvement in the MD&A disclosures since publication of the SEC's interpretive release in 2003, significant improvement is still needed both in terms of additional disclosures and elimination of what the SEC termed ''unnecessary detail or duplicative or uninformative disclosure that obscures material information.''

[74] The Enhanced Business Reporting Consortium was founded by the AICPA, Grant Thornton LLP, Microsoft Corporation, and PricewaterhouseCoopers in 2005 upon the recommendation of the AICPA Special Committee on Enhanced Business Reporting. The EBRC is an independent, market-driven non-profit collaboration focused on improving the quality, integrity and transparency of information used for decision-making in a cost-effective, time efficient manner.

Under the Sarbanes-Oxley Act of 2002, the SEC is generally required to review every public company's filings at least every three years. In that regard, we believe that through the review process, the SEC will gain important insight into whether there has been improvement in the MD&A disclosures and the types of ongoing concerns regarding such disclosures. We will be evaluating whether the SEC should periodically issue a report on common types of comments issued on the MD&A and other financial disclosures, similar to the Fortune 500 report, to provide additional guidance on improving the MD&A in accordance with the SEC's most recent interpretive guidance.[75]

Appendices

Index of Appendices

A—Separate Statement of Mr. Wallison
B—Examples of Substantive Complexity
C—Committee Members, Official Observers, and Staff

Appendix A

Separate Statement of Mr. Wallison

Introduction

In its meeting on January 11, 2008, the Committee endorsed the use of XBRL for financial reports with this statement: ''The Committee believes that the SEC should eventually require all public companies (preparing their financial statements using U.S. GAAP) to tag the financial statements (including footnotes) they are required to file with the SEC as part of their Exchange Act reports using XBRL. The Committee believes such a mandate is necessary in order to encourage the commitment of resources toward the necessary software development for tagging, viewing and reading of XBRL tagged information * * * ''.[76]

Yet, despite the value the Committee saw in mandating the use of XBRL by reporting companies, the Committee adopted an extended phase-in that will delay the widespread use of XBRL for financial reporting well into the next decade. I dissented from the Committee's vote—and am filing this separate statement—because I believe the Committee's proposed timetable is (i) based on an erroneous assessment of the potential costs of auditor assurance, (ii) applies restrictions on reporting that will be harmful to XBRL and to users, and (iii) unnecessarily delays the date on which XBRL will be available to investors and analysts.

In the Committee's timetable, the first phase begins with the 500 largest reporting companies. These companies would be required to ''file'' their regular audited financial statements, as they do today, and at the same time to ''furnish'' a supplement consisting of the XBRL tags that were applied to the filed statements (for purposes of this memorandum, I will refer to this supplemental XBRL material as the ''XBRL financial statements''). In the Committee's recommendation, the XBRL financial statements would include both the facing financials and block-tagged footnotes (block-tagging means that one XBRL tag is applied to the entire footnote, instead of applying individual tags to each of the individual disclosures within the footnote).

The first phase would not begin until certain technical preconditions have been resolved, the most significant of which is the upgrading of the SEC's website to receive XBRL filings. John White, the director of the SEC's Division of Corporation Finance, told the Committee that he did not think the first phase would begin until the fall of 2008. One year after the first phase begins, domestic large accelerated filers (perhaps 1500 additional companies) would be required to ''file'' their regulator audited financial statements, and ''furnish'' a set of XBRL financial statements. Some time after the second phase has begun, the SEC is to decide ''whether and when to move from furnishing to the official filing of XBRL financial statements for the domestic large accelerated filers, as well as the inclusion of all other reporting companies.''

The Delay

Assuming that the first phase begins in the fall of this year, it seems unlikely that the companies involved will be required to begin with their 10–K reports, which for the most part are due to be filed no later than March 31, 2009. So in reality, the first phase 500 companies will be filing reports and furnishing XBRL financial statements for the quarters ended in 2009 and the 10–K due in March 2010. The second phase will begin late in 2009 (one year after the beginning of the first phase) and will include the financial statements that are due (for most companies) in the first three quarters of 2010 and the 10–K due at the end of the first quarter of 2011. We are already three years from today, and only 2000 or so companies will have been required to prepare XBRL financial statements.

Only after the second phase has begun in late 2009 or early 2010 will the SEC (in the Committee's recommendation) begin to consider whether to require any companies to file (rather than furnish) their XBRL-tagged financial statements. Since the second phase companies will (in the Committee's recommendation) be permitted to furnish rather than file their XBRL financial statements, that must mean they won't be required to file their XBRL financial statements until after their 10–Ks are filed in March 2011. That means no company, large or small, will be required to file a 10–K with XBRL financial statements until March of 2012. That's four years from now, and quite a generous phase-in, considering we are talking about only 2000 or so of the largest and most sophisticated companies in the U.S. When the remaining 13,000 reporting companies will be required to file XBRL financial statements under this ''mandatory'' phase-in is anybody's guess.

The distinction between furnishing and filing is important. Under the Securities Exchange Act of 1934, companies are absolutely liable for false or misleading material filed with the SEC. However, in the case of material that is merely furnished to the SEC, liability only attaches if it can be shown that the material was intentionally false or misleading. Accordingly, the Committee seems to have adopted the idea of furnishing rather than filing XBRL financial statements because of its concern about the possible cost of auditor assurance. It seems to have reasoned that, if XBRL financial statements were furnished rather than filed, the reduced liability would permit companies to dispense with auditor assurance entirely, and thus to avoid these potential costs. However, as I will discuss below, the concern about assurance costs is misplaced and ultimately self-defeating. Not only was there no need to require the furnishing of XBRL financial statements, but allowing XBRL financial statements to be furnished rather than filed will severely impair the value of XBRL for investors and analysts and is an important source of what will be an enormous and unnecessary delay in the adoption of XBRL in the United States.

Will auditor assurance as to the accuracy of XBRL-tagged financial statements be costly?

As noted above, the Committee's phase-in recommendation, and its distinction between filing and furnishing XBRL financial statements, were apparently motivated by concern that auditor assurance as to the accuracy

[75] We note that the SEC's comment letters on a reporting company's filings are made publicly available on the SEC Web site after completion of the SEC's review of such filings. We also note that third parties prepare reports on the MD&A disclosures.

[76] Draft report, p. 81

of the XBRL tagging will be costly. Some committee members, without any supporting evidence, referred to the process of auditor assurance as potentially as costly as Section 404 of Sarbanes-Oxley—erroneous statements that were picked up in some media reports of the meeting. However, as I will discuss below, concerns about the cost of assurance are unfounded and should not have been a factor in the Committee's deliberations.

Today, most companies that tag their financial statements use the so-called bolt-on method. It is the simplest, although not potentially the least costly, approach to tagging financial statements. In the bolt-on method, financial statements are prepared and audited in the usual way. When the audit is completed, the financial statements are ''mapped'' to the XBRL taxonomy. This means simply that the various items in the company's financial statement are tagged with the appropriate XBRL tag. The tagging can be done largely automatically, with existing software that reads the financial statement and applies the appropriate tag, or manually through a drag and drop method that also uses available open source (zero cost) software.

Once the items in the financial statements have been tagged, the question arises whether the tags have been correctly selected and applied. It is at this point that the question of assurance becomes significant. It is also important to note that there is no relationship between the audit of the financial statements and the assurance process on the application of the XBRL tags we are discussing here. The audit of the financial statements has been completed when the bolt-on process begins. The assurance process for the XBRL tags does not make the audit in any way more complicated or costly. The only remaining question is whether the tagging, after the audit, has been done properly. For purposes of this memorandum, the key question is what it would cost for the company's auditor, having completed the audit, to determine that the company properly applied the XBRL tags after the audit's completion.

There are only three significant questions that must be answered for the auditors to assure themselves—and to provide assurance to others—as to the accuracy of the tagging:

- Did the company choose the correct XBRL taxonomy (there are several different XBRL taxonomies, because the financial statements of banks, for example, are different from the financial statements of operating companies);
- Did the company properly tag each disclosure in its financial statements? (For example, is the ''revenue'' item in the financial statements properly mapped to the correct ''revenue'' tag in XBRL?)
- Did the company add extensions to the tags that were not appropriate in light of the company's business? (Adding extensions to the tags already included in the XBRL taxonomy, although permissible, could make it difficult to compare one company's financial statements with another's.) [77]

To put this in some perspective, one S&P 50 technology company told Subcommittee 4 that its 10 Q report, including the financial statements, block-tagged footnotes, and the MD&A, required only 192 tags. So the assurance process, had it been done for that company by its auditors, would have required that the auditors answer the three questions above for only 192 tags. In the end, the company performed its own assurance, which required only 10 hours of work by one lower level accountant.

Despite the seeming simplicity of the three principal questions, and the relatively small number of tags likely to be involved, is it possible that auditors would have to go through complex steps in order to provide assurance as to the tagging? The answer is no. There is a simple way for assurance to be done, and no reason why a company's auditors would not follow it.

Today, most companies prepare their financial statements in Excel, Word, or some other desktop publishing software; those companies that are furnishing or will furnish XBRL financial statements will use the bolt-on method to add the XBRL tags. Once the tagging has been completed, all these desktop publishing applications can be used to print out a set of financial statements, and when printed out these statements should be an exact replica of the audited human-readable statements. The two financial statements can then be compared either manually, through a visual comparison, or through an automated comparative analysis. If they match, the XBRL tagging must have been accurate—otherwise the XBRL financial statements could not produce an exact replica of the audited human-readable statements. If there are discrepancies, errors in the tagging will be immediately apparent.

Any suggestion that this simple process will or could involve costs remotely like section 404 of Sarbanes-Oxley is thus completely fanciful. A better description of the costs involved in auditor assurance would be one word: trivial.

Is assurance by auditors necessary?

Certainly. There are two reasons. First, without a third-party review, companies will get careless in the rush to complete their XBRL financial reports and file with the SEC. No matter how simple the tagging process, mistakes will be made. Mistakes are especially likely if the tagged financial statements are furnished rather than filed. In that case, companies will believe that they don't have to be particularly careful with the mapping to the XBRL taxonomy, since there will be little likelihood of liability for mere negligence. If, as some have suggested, the SEC will offer some kind of safe harbor for XBRL-tagged financials that are furnished rather than filed, this problem will be compounded; companies will have little incentive to take the time to get the tagging right, and many incentives to get the tagging wrong if they are hoping to avoid unfavorable comparisons with their peers. Under these circumstances, errors in the tagging—and incorrect information in the XBRL financial statements—will not be an infrequent occurrence; the result will be to raise questions about the value and usefulness of XBRL. In this way, a potentially valuable resource for investors, which could have been introduced without flaws, will be damaged and diminished. And all this because of an unfounded fear that auditor assurance will be costly.

Second, and perhaps even more important, in the absence of any consistent rules for tagging, imposed either by regulation or reporting standards and monitored by auditors, many companies may add extensions to their tags that will make it difficult or impossible to compare their financial results from period to period or with others in their industry. The XBRL taxonomy is a set of standardized categories for typical financial reports. The designers have made efforts to include all the tags that would be necessary to achieve some degree of comparability between companies in the same business. However, companies, on their own, can add extensions to the standard tags in the XBRL taxonomy. In some cases, these extensions may more accurately describe a company's specific unique disclosures (e.g., business

[77] In the brief discussion at the Committee meeting on January 11, one member suggested that more financial information was included in XBRL material associated with a financial statement than in the financial statement itself. This is not correct. XBRL does not contain any more financial data than the company chooses to disclose in its financial statements.

segments), but they can also make comparability more difficult.

In the development of XBRL, it was assumed that the tagging process would be reviewed by the company's auditors—not only to assure that the tagging was done properly, but also to impose some period-to-period consistency on the process by which companies choose their tags or add extensions to the standard tags in the XBRL taxonomy. The Committee's proposal to allow XBRL financial statements to be furnished without assurance will invite a chaotic outcome, in which it will be possible for companies to add unnecessary or inappropriate extensions to the XBRL tags. This will impair comparability, one of the principal purposes of XBRL, and substantially reduce XBRL's value to investors and analysts.

Is the furnished vs filed distinction sustainable?

No. The Committee's draft report conceives of the audited human-readable financial statements and the XBRL financial statements as two separate documents. This is certainly true as the bolt-on method is used today. The result is two documents, with the XBRL materials furnished, while the human readable (audited) financial statements are filed. However, if companies follow the Committee's suggestion, they will have to forego the use of a major advance in the formatting of filed documents that will be available to companies around the world in only a few months. This new document format is known as Microformat, and should be available by this coming May. When it is available, it will be usable through the bolt-on method as well as other more efficient and less costly approaches. The technical specifications that will make the Microformat standard possible will be published soon by XBRL International—the umbrella group for the development and worldwide promulgation of XBRL—and this will enable software manufacturers to prepare updated plug-ins, so that existing report-writer and desktop publishing applications will be able to create Microformat documents. Using the XBRL Microformat standard, it will be possible to both print out a human-readable financial statement, and download an XBRL financial statement into a model, from a single XBRL Microformat document.

In this case, of course, there can't be a separate filing of the XBRL and human-readable financial statements; nor can the human readable portion be filed while the XBRL portion is furnished; they will both be included in the same document and rely on the same data. If that data contains an error, both the human readable portion and the XBRL disclosures will reflect that error, because both are derived from the same underlying information. In other words, it will make no sense to apply different liability standards to the human-readable document and to the XBRL tagged disclosures, because both the human-readable audited financial statement and the XBRL financial statement will come out of the same data source.

Under these circumstances, one of two things will happen: either the Committee's distinction between furnishing and filing will be ignored by companies that decide to use the Microformat document, or—more likely—the distinction between filing and furnishing that the Committee (and perhaps the SEC) has offered will induce U.S. companies to forego the Microformat option and continue to use older and less efficient technology for their financial reporting. Accordingly, the Committee's hope that a mandatory timetable for filing financial statements in XBRL format will bring about the adoption of new technology will have been thwarted by the Committee's own (unnecessary) requirements. In addition, the huge efficiency benefits that would come from the creation of a single Microformat document, which can produce both a human-readable statement and be downloaded into a model, will be lost.

Conclusion

Auditor assurance as to the accuracy of tagging is a simple process, and cannot under any imaginable circumstances be costly for companies—large or small—that are required to file XBRL financial statements. There are many ways that assurance can be accomplished through efficient automatic means, but one way that even non-technical people can understand is that the XBRL financial statements can be used to print out a set of human-readable financial statements, which can then be compared visually with the audited statements. If they match, the tagging must have been done correctly. Accordingly, there is no need to distinguish between furnishing and filing XBRL financial statements, and no need for more than a limited SEC inquiry to confirm that the costs are trivial. After that, the SEC can determine how and at what pace it should require companies to file their financial statements in XBRL format.

In my view, therefore, the Committee should eliminate both the distinction between filing and furnishing XBRL financial statements, and the entire phase-in plan contained in its draft report of January 11. Instead, it should—for the reasons stated in the January 11 draft—endorse a requirement that all companies file their financial statements in XBRL Microformat, and leave it to the SEC to determine on what timetable this should occur.

Appendix B

Examples of Substantive Complexity

1. Industry-Specific Guidance

1. Below is a list of examples of industry-specific guidance in GAAP. Note that this list does not reflect all industry-specific guidance or all industries subject to its own guidance.

Industry	Sources
Broadcasting Industry	SFAS No. 63, 139; EITF 87–10; SOP 00–2.
Banking and Thrift Industries	APB Opinion 23; SFAS No. 72, 91, 104, 109, 114, 115, 147; Technical Bulletin 85–1; FSP 85–24–1; SOPs 90–3, 03–3; EITFs 97–3, 93–1, 92–5, 89–3, 88–25, 88–19, 87–22, 86–21, 85–44, 85–42, 85–41, 85–31, 85–24, 85–8, 84–20, 84–9, 84–4, D-Topics D–78, D–57, D–47, D–39, SEC Regulation S–X—Article 9, SEC Industry Guide; AICPA Auditing and Accounting Guide.
Cable Television Industry	SFAS No. 51.
Computer Software to be Sold, Leased, or Otherwise Marketed.	SFAS No. 2, 86.
Contractor Accounting: Construction-Type Contracts & Government Contracts.	ARB 43, Chapter 11, ARB 45, SFAS No. 111; SOP 81–1.
Development Stage Enterprises	Opinion 18; SFAS No. 7, 95, 154; Interpretation 7; SOP 98–5; AICPA Auditing and Accounting Guides.
Finance Companies	SFAS No. 91, 111, 115; SOP 01–6; AICPA Auditing and Accounting Guide.

Industry	Sources
Franchising: Accounting by Franchisors	SFAS No. 45, 141.
Insurance Industry	SFAS No. 5, 60, 91, 97, 109, 113, 114, 115, 120, 124, 133, 135, 140, 144, 149, 156; Interpretation 40; FSP FAS 97–1; AICPA Auditing and Accounting Guides; EITFs 99–4, 93–6, 92–9; D-Topics D–54, D–35. D–34, SEC Regulation S–X—Article 7, SEC Industry guide.
Investment Companies	SFAS No. 102; FSP AAG INV–1; SOPs 94–4–1, 93–1, 93–4, 95–2, 00–3, 01–1; AICPA Auditing and Accounting Guide; D-Topics D–76 D–74, D–11, SEC Regulation S–X—Article 6.
Mortgage Banking Activities	SFAS No. 65, 91, 114, 115, 124, 125, 133, 134, 140, 149, 156; Technical Bulletin 87–3; SOP 97–1, 03–3; EITF 95–5, 90–21, 87–34, 85–13, 84–19, D-Topics D–10, D–4, D–2.
Motion Picture Industry	SFAS No. 139, SOP 00–2.
Oil and Gas Producing Activities	SFAS No. 19, 25, 69, 95, 109, 131, 143, 144, 145, 153; Interpretation 33, 36, FSP FAS 19–1, 141/142–1, 142–2; AICPA Auditing and Accounting Guide; SEC Industry Guide, SEC Reg S–X Rule 4–10, SAB Topic 12, FRR Section 406; EITFs 04–6, 04–4, 04–3, 04–2, 90–22.
Pension Funds: Accounting and Reporting by Defined Benefit Pension Plans.	SFAS No. 35, 75, 102, 110, 135, 149; SOPs 92–6, 94–4, 94–6, 95–1, 99–2, 99–3, 01–2.
Real Estate: Sales & Accounting for Costs and Initial Rental Operations of Real Estate Projects.	SFAS No. 13, 34, 66, 67, 91, 98, 114, 140, 144, 152; Interpretation 43; SOPs 75–2, 78–9, 92–1, 97–1, 04–2; AICPA Auditing and Accounting Guide; EITF 06–8, 05–3, 98–8, 97–11, 95–7, 95–6, 94–2, 94–1, 91–10, 91–2, 90–20, 89–14, 88–24, 88–12, 87–9, 86–7, 86–6, 85–27, 84–17, SEC Regulation S–X—Rule 3–14, SEC SAB Topic 5N, 5W.
Record and Music Industry	SFAS No. 50.
Regulated Operations	SFAS No. 71, 87, 90, 92, 98, 101, 106, 109, 135, 142, 144, Interpretation 40; Technical Bulletin 87–2; EITFs 97–4, 92–7; D Topics D–21, D–5; SAB Topic 10.
Title Plant	SFAS No. 61, 144.

2. Industry-specific exceptions in GAAP, such as the scope exception for registered investment companies and life insurance entities in FIN 46R, Consolidation of Variable Interest Entities and for U.S. savings and loan associations, other ''qualified'' thrift lenders, and stock life insurance companies in SFAS No. 109, Accounting for Income Taxes.

3. Industry practice such as accounting for certain types of inventory at fair value.

2. Alternative Accounting Policies

Examples of alternative accounting policies are as follows:

• SFAS No. 87, Employer's Accounting for Pensions and SFAS No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, which permits alternatives for amortizing delayed recognition amounts and for measuring return on plan assets.

• SFAS No. 95, Statement of Cash Flows, which permits alternative presentations of the form and content of the statement.

• SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities (specifically Q&A 35 of the SFAS 115 Implementation Guide), which indicates that companies are not precluded from classifying securities as trading, even if they have no intention of selling them in the near-term.

• SFAS No. 130, Reporting Comprehensive Income, permits a choice in presenting comprehensive income. An entity may present other comprehensive income below the total for net income in a single statement, in a separate statement that begins with net income, or in a statement of changes in equity.

• SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, which permits, but does not require, the use of hedge accounting, which, in certain circumstances, may mitigate earnings volatility from marking derivative instruments to market.

• SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, which permits, but does not require, the measurement of certain financial assets and financial liabilities at fair value.

• EITF 88–1, Determination of Vested Benefit Obligation for a Defined Benefit Plan, which permits vested benefit obligations to be determined as the actuarial present value of the vested benefits to which the employee is entitled if the employee separates immediately or the actuarial present value of the vested benefits to which the employee is currently entitled but based on the employee's expected date of separation or retirement.

• EITF 06–3, How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross Versus Net Presentation), which permits that certain taxes, such as sales, use, and value added taxes, may be presented either on a gross or net basis.

• EITF Topic D–98, Classification and Measurement of Redeemable Securities, which permits a choice of methods of accreting to the redemption value.

• FIN 48, Accounting for Uncertainty in Income Taxes, which permits an entity to classify interest and penalties as either interest or taxes.

• FSP AUG AIR–1, Accounting for Planned Major Maintenance Activities, which prohibits the accrue in advance method, but allows for continued use of one of three other alternatives: direct expense, built-in overhaul, or deferral methods.

• Oil & gas accounting: The two accounting methods followed by oil and gas producers are the successful efforts method and the full cost method. Successful efforts accounting essentially provides for capitalizing only those costs directly related to proved properties; the costs associated with exploratory dry holes are expensed as incurred. Full cost accounting generally provides for capitalizing (within a cost center) all costs incurred in exploring for, acquiring, and developing oil and gas reserves-regardless of whether or not the results of specific costs are successful.

• SAB Topic 5H, Accounting for Sales of Stock by a Subsidiary, which permits gains/losses on sales of stock by a subsidiary to be recognized in income or equity.

3. Bright Lines

Examples of bright lines, rules of thumb, and pass/fail models include the following:

A. Bright Lines

• Lease Accounting

Current lease accounting is based on a principle: when a lease transfers substantially all of the benefits and risks of ownership of the property, it should be accounted for as an asset and a corresponding liability by the lessee and the asset is derecognized by the lessor (capital lease); otherwise, rental expense is recognized as amounts become payable (operating lease). However, to apply this principle, SFAS No. 13, Accounting for Leases, provides the following bright lines for classifying leases as capital or operating. Meeting any one of these criteria results in capital lease treatment.

○ The lease transfers ownership of the property to the lessee by the end of the lease term.

○ The lease contains a bargain purchase option.

○ The lease term is equal to 75 percent or more of the estimated economic life of the leased property.

○ The present value at the beginning of the lease term of the minimum lease payments, excluding certain items, equals or exceeds 90 percent of the excess of the fair value of the leased property.

• Consolidation

For those entities that are not subject to the FIN 46R model, ''the usual condition for a controlling financial interest is ownership of a majority voting interest, and therefore, as a general rule, ownership by one company * * * of over 50% of the outstanding voting shares of another company is a condition pointing toward consolidation.'' [78] Further, there is a presumption that an investment of 20%–50% requires equity method accounting. In addition, the equity method is required for investments in limited partnerships unless the interest ''is so minor that the limited partner may have virtually no influence over partnership operating and financial policies'' (SoP 78–9, Accounting for Investments in Real Estate Ventures). In this case, practice has used a 3%–5% bright line to apply the ''more than minor'' provision. This practice has been acknowledged by the SEC staff in EITF Topic No. D–46, Accounting for Limited Partnership Investments.

• Revenue Recognition

Bright lines may also be found in revenue recognition literature. One example is SFAS No. 66, Accounting for Sales of Real Estate, which provides bright lines for determining the buyer's minimum initial investment requirements for real estate sales.

• Business Combinations

When an SEC registrant undergoes a change in control, the company must reflect the new basis of accounting arising from its acquisition in its stand-alone financial statements (i.e., apply purchase accounting to its own stand-alone financial statements) if the company becomes substantially wholly-owned. ''Substantially wholly-owned'' is defined such that this push down accounting is prohibited if less than 80% of the company is acquired, permitted if 80% to 95% of the company is acquired, and required if 95% or more of the company is acquired.

In addition, SFAS No. 141, Business Combinations, requires that the purchase price allocation period in a business combination usually not exceed one year from the consummation date.[79]

• Pension and Other Post-Retirement Employment Benefit Accounting

SFAS No. 87, Employers' Accounting for Pensions, and SFAS No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, permit the use of smoothing mechanisms that delay the recognition of the effects of changes in actuarial assumptions and differences between actual results and actuarial assumptions. However, these standards contain a bright line as to when the delayed recognition amounts should be recognized.

• Hedge Accounting

SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, requires that derivative instruments be recognized at fair value, with changes in fair value recognized in income. However, in an effort to mitigate earnings volatility, SFAS No. 133 permits the use of hedge accounting when a derivative is highly effective in achieving offsetting changes in fair value or cash flows attributable to the risk being hedged. GAAP, however, does not define ''highly effective.'' Instead, practice has defined ''highly effective'' as an offset ratio of 80% to 125%.

• Classification

Bright lines are also present in classification requirements. For example, SFAS No. 95, Statement of Cash Flows, clarifies the definition of ''cash equivalents'' by stating that ''generally, only investments with original maturities of three months or less qualify under that definition'' (paragraph 8). Despite use of the word ''generally,'' this bright line is often interpreted stringently.

In addition, SEC Regulation S–X includes bright lines for separate presentation of amounts that would otherwise be included in lines such as revenue, other current assets and liabilities, and other assets and liabilities.

• Disclosure

Bright lines also exist with respect to the determination of related parties for the purposes of disclosing related party transactions and the identification of segments for the purposes of determining which operating segments require separate presentation.

Further, SEC Regulation S–X includes a number of bright lines regarding requirements to present stand-alone acquiree financial statements, stand-alone equity method investee financial statements, and pro forma financial information, among others. These bright-lines are based on the results of certain significance tests, or calculations, defined in Regulation S–X. These significance tests compare the acquiree or investee to the registrant in the areas of assets, investments, and income.

B. Rules of Thumb

• Consolidation Accounting

The fall of Enron in late 2001 refocused attention on the effect of bright lines as they relate to consolidation accounting. Enron, and others, took advantage of bright lines related to the consolidation of special purpose entities (SPEs) to avoid reporting assets and liabilities, to defer reporting losses, and/or report gains. At the time, the consolidation of SPEs hinged on an analogy to guidance that required lessees to consolidate SPE lessors that lacked a substantive investment at risk from an unrelated party. ''Substantive'' was defined as 3%, at a minimum, with the caveat that a greater investment may be necessary in certain facts and circumstances. Despite this caveat, which would suggest the need for judgment, the presence of the 3% bright line gave rise to numerous structured transactions to achieve a specific accounting purpose.

In December 2003, the FASB issued FIN 46R, Consolidation of Variable Interest Entities, which superseded the

[78] ARB No. 51, Consolidated Financial Statements, paragraph 2.

[79] We note SFAS No. 141, Business Combinations, has been superseded by a new FASB standard, SFAS No. 141 (revised 2007), Business Combinations, which similarly states in paragraph 51, ''* * * the measurement period shall not exceed one year from the acquisition date.''

3% rule. FIN 46R requires consolidation in certain circumstances by the party that holds the majority of the risks and rewards of an entity, rather than equity ownership and voting rights. This model has led some to assert that FIN 46R is a principles-based standard. However, even FIN 46R contains a rule of thumb—a presumption that if equity investment at risk is less than 10% of the entity's total assets, the entity is a variable interest entity subject to the FIN 46R model, with similar caveats that require additional analysis, judgment and consideration.

• Contingencies

SFAS No. 5, Accounting for Contingencies, provides an example of rules of thumb in interpretations of GAAP. SFAS No. 5 establishes recognition and disclosure requirements based on the likelihood—remote, possible, probable—that a liability has been incurred. Although GAAP does not define these terms, audit firms have developed rules of thumb for these terms.

C. Pass/Fail Tests

• SFAS No. 48, Revenue Recognition When Right of Return Exists, requires that where a right of return exists, revenue be recognized at the time of sale only if certain criteria, such as the amount of future returns can be reasonably estimated. Otherwise, revenue recognition is deferred until the right expires or the criteria are subsequently met.

• SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities—if critical terms do not match or if documentation does not comply with the rules, then companies are not eligible to apply hedge accounting.

• SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities contains requirements, all of which must be satisfied, to achieve sale accounting for a transfer of financial assets. Otherwise, the transfer is treated as a secured borrowing with a pledge of collateral.

• EITF 00–19, Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock, identifies a number of criteria that must be met in order for an instrument to be classified as an equity instrument. Failure to meet any of these criteria results in classification as a liability, which is marked to market through income. The criteria do not provide for probability assessments or judgments based on the preponderance of evidence.

• SoP 97–2, Software Revenue Recognition, related interpretations, and audit firm guidance contain the following pass/fail tests:

○ If vendor specific objective evidence (VSOE) does not exist for all of the undelivered elements of a software sales arrangement, the recognition of all revenue from the arrangement must be deferred until sufficient evidence exists, or until all elements have been delivered, unless certain exceptions are met.

○ Extended payment terms usually result in a deferral of revenue. Specifically, when extended payment terms are present, a presumption exists that the vendor's fee is not fixed or determinable, due to the possibility that the vendor may provide a refund or concession to a customer. While there are factors to overcome this presumption, interpretive guidance sets the hurdle to overcome this presumption extremely high, generally resulting in the deferral of revenue until payment is due.

Appendix C

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Federal Register

Thursday,
February 28, 2008

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 and CFR Parts 1, 2, 3, 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 10]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–24; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of 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) 2005–24. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–24 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–24

Item	Subject	FAR case	Analyst
I	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission.	2005–011	Woodson.
II	Numbered Notes for Synopses	2006–016	Woodson.
III	Trade Agreements—New Thresholds (Interim)	2007–016	Murphy.
IV	New Designated Countries—Dominican Republic, Bulgaria, and Romania	2006–028	Murphy.
V	FAR Part 30—CAS Administration	2005–027	Loeb.
VI	Common Security Configurations	2007–004	Davis.

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 2005–24 amends the FAR as specified below:

Item I—Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission (FAR Case 2005–011)

This final FAR rule addresses the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces. This final FAR rule clarifies that contractor personnel are only authorized to use deadly force in self-defense or in the performance of security functions, when use of such force reasonably appears necessary to execute their security mission. The purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency operation or otherwise risky environment.

Item II—Numbered Notes for Synopses (FAR Case 2006–016)

This final rule amends the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (Notes) in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication. The prescriptions for Numbered Notes were deleted from the FAR in a former FAR case and transitioned from the Commerce Business Daily to FedBizOpps actions. This transition resulted in other synopses-related changes that were not captured in the associated FAR language revision. Additionally, the transition to the electronic FedBizOpps publication for solicitation and other announcements rendered these Notes obsolete or outdated.

Item III—Trade Agreements—New Thresholds (FAR Case 2007–016) (Interim)

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania (FAR Case 2006–028)

This final rule converts, without change, the interim rule published in the **Federal Register** at 72 FR 46357, August 17, 2007. No comments were received in response to the interim rule. The effective date of the rule was August 17, 2007. The interim rule allowed contracting officers to purchase the goods and services of the Dominican Republic without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The threshold for applicability of the Dominican Republic-Central America-United States Free Trade Agreement is $67,826 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and $7,443,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). The interim rule also added Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries wherever it appears.

Item V—FAR Part 30—CAS Administration (FAR Case 2005–027)

This final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS). Among other changes, the final rule streamlines

the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices.

Item VI—Common Security Configurations (FAR Case 2007–004)

This final rule amends the Federal Acquisition Regulation to require agencies to include common security configurations in new information technology acquisitions, as appropriate. The revision reduces risks associated with security threats and vulnerabilities and will ensure public confidence in the confidentiality, integrity, and availability of Government information. This final rule requires agency contracting officers to consult with the requiring official to ensure the proper standards are incorporated in their requirements.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–24 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 2005–24 is effective February 28, 2008, except for Items I, II, V, and VI which are effective March 31, 2008.

Dated: February 14, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: February 19, 2008.

David A. Drabkin,

Acting Chief Acquisition Officer & Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: February 13, 2008.

James A. Balinskas,

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 12, 25, and 52

[FAC 2005–24; FAR Case 2005–011; Item I; Docket 2008–0001; Sequence 1]

RIN 9000–AK42

Federal Acquisition Regulation; FAR Case 2005–011, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission

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) in order to address the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces.

DATES: Effective Date: March 31, 2008.

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 2005–24, FAR case 2005–011.

SUPPLEMENTARY INFORMATION:

A. Background

This rule creates a new FAR Subpart 25.3 to address issues relating to contracts performed outside the United States, including new section 25.301, Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States. The rule also adds a new clause entitled ''Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.'' This clause will not apply to contractor personnel authorized to accompany the U.S. Armed Forces because they are covered by the Defense Federal Acquisition Regulations Supplement (DFARS) 225.7402 and the clause at 252.225–7040.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 40681, July 18, 2006, under the case title ''Contractor Personnel in a Theater of Operations or at a Diplomatic or Consular Mission.'' The public comment period ended on September 18, 2006. Because the FAR proposed rule and the DFARS interim rule under DFARS Case 2005–D013 are similar in many respects, the Councils reviewed the comments on both rules together, except for those issues that applied only to the Department of Defense. The Councils received 6 comments on the FAR rule and 10 comments on the DFARS rule.

The most widespread concern of respondents centered on the paragraph in the clause that sets forth the law of war principles regarding use of deadly force by contractors. There was strong objection to the perception that the U.S. Government is now hiring contractors as mercenaries. These comments on the use of deadly force have been divided into two categories: The right to self-defense, and private security contractors.

1. Right to Self-Defense

a. Distinction Between Self-Defense and Combat Operations (Relates to FAR 52.225–19(B)(3)(I))

Comment: One respondent states that there is an inherently vague line between what constitutes ''defense'' and ''attack'' which is plainly crossed when the terms are applied in asymmetric warfare. It is clear, they say, that contractors employing self-defense measures would have to undertake a wide array of combat activities to assure their safety. They refer to these contracts as ''Self Defense Contracts.''

Response: The FAR language recognizes that individuals have an inherent right to self-defense. The language does not require self-defense, just authorizes it when necessary. It does not authorize preemptive measures.

b. Whether the Right of Self-Defense Should Be Modified to ''Personal'' Self-Defense?

Comment: One respondent recommends insertion of the word ''personal'' before ''self-defense'' in the DFARS rule, stating that this will ''clarify that civilians accompanying the force are authorized to use deadly force only in defense of themselves, rather than the broader concept of unit self-defense or preemptive self-defense.''

Response: The Councils concluded that this is not a problem in the FAR,

because the contractors subject to the FAR rule are not authorized to accompany the force, and ''unit self-defense'' and ''pre-emptive self-defense'' are not civilian concepts.

c. Whether the Right of Self-Defense Should Be Extended to Defense Against Common Criminals?

Comment: One respondent states that, ''since this rule will apply in innumerable asymmetrical environments'', the phrase ''against enemy armed forces'', should be deleted, asserting that the right of self-defense should ''extend beyond enemy armed forces since such defensive actions may be needed as protection against common criminals.''

Response: The Councils concur with this recommendation that the phrase ''against enemy armed forces'' should be deleted from paragraph 52.225–19(b)(3)(i) of the FAR rule, since there are legitimate situations which may also require a reasonable exercise of self-defense against other than enemy armed forces, e.g., defense against common criminals, terrorists, etc. When facing an attacker, it will often be impossible for the contractor to tell whether the attacker is technically an ''enemy armed force'' and probably irrelevant to the decision whether to use deadly force (although it may not be irrelevant to the subsequent consequences, which are outside the control of the contractor and the regulation).

The Councils have also added a reference to the requirements regarding use of force as specified in paragraph 52.225–19(i)(3) of the clause, to remind the contractor of the other limitations on the use of force.

2. Role of Private Security Contractors (52.225–19(B)(3)(Ii))

a. Whether a Separate Category for Private Security Contractors Is Necessary?

Comment: One respondent states that there is no need for private security contractor as a separate category if private security contractors (like other contractors) can only use deadly force in self-defense.

Response: While the right to self-defense applies to all contractors, the rule recognizes that private security contractors have been given a mission to protect other assets/persons and so it is important that the rule reflect the broader authority of private security contractors in regard to use of deadly force, consistent with the terms and conditions of the contract.

b. Hiring Private Security Contractors as Mercenaries Violates Constitution, Law, Regulations, Policy, and American Core Values

Comment: Many respondents had similar comments to the effect that, by allowing contractors to assume combat roles, the rule allows mercenaries in violation of the Constitution and laws of the United States, core American values, and insulting our soldiers.

- One law specifically identified was 5 U.S.C. § 3108, ''Employment of detective agencies; restrictions.'' (The so-called Anti-Pinkerton Act.)
- Also some see this as violating DoD Manpower Mix Criteria and the Federal Activities Inventory Reform (FAIR) Act of 1998, which preclude contracting out core inherently governmental functions, especially combat functions.

Response: While not disputing the many prohibitions against the use of mercenaries, private security contractors are not mercenaries. Private security contractors are not part of the armed forces. The Government does not contract out combat functions. The United States Government has the authority to hire security guards worldwide. The protection of property and persons is not an inherently governmental function (see FAR 7.503(d)(19)).

In Brian X. Scott, Comp. Gen. Dec. B–298370 (Aug. 18, 2006), the Comptroller General of the United States concluded that solicitations for security services in and around Iraq violated neither the Anti-Pinkerton Act, nor DoD policies regarding contractor personnel because the services required are not ''quasi-military armed forces'' activities. The Comptroller General also relied on the language of the interim DFARS rule which prohibits contractor personnel from participating in direct combat activities, as well as the provisions of DoDI 3020.41, which makes it the responsibility of the combatant commander to ensure that private security contract mission statements do not authorize the performance of any inherently Governmental military function. The Comptroller General concluded that ''* * * the services sought under the solicitations appear to comport with the DoD policies and regulations which state that security contractors are not allowed to conduct direct combat activities or offensive operations.''

c. Whether the Standard for Use of Deadly Force Should Be Modified to One of ''Reasonableness''

Comment: Paragraph 52.225–19(b)(3)(ii) of the FAR clause uses the language ''only when necessary'' as the standard when describing the use of deadly force by security contractors. One respondent notes that a ''reasonably appears necessary'' standard is used by the Department of Defense when its personnel perform security functions (see DoDD 5210.56, Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties, at E2.1.2.3.1). The respondent states that ''While everyone would agree that ''unnecessary'' deadly force is to be avoided, the difference between ''unnecessary'' and ''only when necessary'' remains wide and fails to recognize the ''reasonably appears necessary'' standard that is critical to split-second discretionary decisions, particularly in a war zone.''

Response: The Councils concur with the suggested revision to the wording of paragraph 52.225–19(b)(3)(ii). Since this is the standard applied by the DoD for DoD personnel engaged in law enforcement and security duties, then it is reasonable to apply that standard to private security personnel.

d. Whether Protected Assets/Persons for Private Security Contractors Should Be Limited to Non-Military Objectives

Comment: One respondent says the rule should be clarified to limit private security contractor personnel to protecting assets/persons that are non-military objectives. This omission from the Interim Rule seems to conflict with the Army Field Manual No. 3–100.21, that prohibits the use of contractors in a force protection role. One respondent is also concerned about how to craft statements of work for private security contractors that do not assign to contractors inherently governmental functions.

Response: It is not possible to tell in advance of an actual conflict what may become a military objective. Almost anything worth protecting could become a military target in wartime. As already stated in paragraph A.2.b. of this notice, the Government is not contracting out combat functions. The United States Government has the authority to hire security guards worldwide. The protection of property and persons is not an inherently Governmental function (see FAR 7.503(d)(19)).

e. Use of the Term ''Mission Statement''

Comments: Paragraph 52.225–19(b)(3)(ii) of the FAR clause authorizes private security contractor personnel to ''use deadly force only when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract.'' Several respondents felt that

the use of the term ''mission statement'' in that sentence caused confusion and requested clarification of its meaning. Several respondents believed that definition of ''mission statement'' is needed, due to the possibility of different interpretations. Not all contracts for security services will contain a ''mission statement,'' at least using that terminology. Statements of work may contain sections entitled ''objectives,'' ''purpose,'' or ''scope of work,'' which may or may not contain the equivalent of a mission statement. The need to deploy security personnel quickly could ''result in a 'mission statement' (or its equivalent) that may not be as precise as desired and, therefore, ill-suited to serve as part of a standard for when deadly force is authorized.''

One respondent was also concerned about the need for clear provisions establishing who may prepare a mission statement and the Combatant Commander's role in the process. The respondent further noted that the ''Background'' section of the FAR rule contained the following supplemental information concerning the Combatant Commander's role: ''It is the responsibility of the Combatant Commander to ensure that private security contract mission statements do not authorize the performance of any inherently governmental military functions, such as preemptive attacks, or any other types of attacks.'' However, the respondent stressed that, with civilian agencies that have ''non-DoD'' contracts, ''the Combatant Commander will have no involvement and the rule does not provide any mechanism for the non-defense agencies to obtain that determination.''

Respondents also requested clarification whether or not subcontractors would be considered private security contractors, or whether that the term ''private security contractor'' was limited to contractors that have ''a contract directly with the Government''. One respondent commented that ''there is no guidance as to who would qualify as ''private security contractor personnel'', creating uncertainty regarding whether private security companies retained by a prime contractor would be covered if the prime contractor drafted a mission statement for its private security subcontractor.''

Response: The Councils agree that the use of the phrase ''consistent with the mission statement contained in their contract'', in paragraph 52.225–19(b)(3)(ii) of the FAR clause might cause some confusion. The Councils have replaced this phrase with ''consistent with the terms and conditions of the contract.'' ''Terms and conditions'' covers possible placement anywhere in the contract.

For contractors supporting a diplomatic or consular mission, it will be the chief of mission who authorizes the use of weapons. When authorizing the use of weapons, the chief of mission will review and approve the use to which the weapons will be put.

The Councils do not consider that any clarification with regard to subcontractors is necessary. When a clause flows down to subcontractors, the terms are changed appropriately to reflect the relationship of the parties. There is nothing in the proposed rule that indicates that private security contractors cannot be subcontractors.

f. Authority of Combatant Commander/Chief of Mission to ''Create Missions''

Comment: One respondent asserts that the proposed FAR rule delegates extensive authority to combatant commanders to direct contractor actions under both support and security contracts. They contend that granting such ''nearly unlimited'' authority to combatant commanders to ''create missions'' is inconsistent with laws and regulations which convey such authority to contracting officers and serves to undermine their authority.

Response: The combatant commander/chief of mission are not authorized to ''create missions'' for private security contractors. The contractors must perform in accordance with the terms and conditions of the contract. The authority of the combatant commander/chief of mission arises through the fact that they must approve when any contractors request authority to carry weapons, and the combatant commander/chief of mission must evaluate whether the planned use of such weapons is appropriate.

g. Approval of Private Security Contractors

Comment: One respondent questioned whether there will be a vetting process and list of approved Private Security Contractors for contractors or their subcontractors to acquire services from? They also wanted to know about any requirements/rules when a contractor subcontracts with a local or third-country firm as private security contractor.

Response: With regard to vetting for private security contractors, FAR 25.301–2 provides that contractors are responsible for providing their own security support. Additionally, 52.225–19(c) echoes 25.301–2 and 52.225–19(e)(2) requires the contractor to insure that all applicable specified security and backgrounds checks are completed before contractor personnel begin performance in the designated operational area or with a diplomatic or consular mission.

The Contractor assumes full responsibility for the selection and performance of its subcontractors. However, the Government may reserve the right to approve subcontracts.

h. Definition of ''Private Security Contractor''

Comment: Several respondents requested a definition of Private Security Contractor.

Response: The Councils considered that a private security contractor is a contractor that has been hired to provide security, either by the Government, or as a subcontractor. In some circumstances a contractor, whose primary function is not security, will directly hire a few personnel to provide security, rather than subcontracting to a private security contractor. The authority for use of deadly force ultimately rests with the individuals who are providing the security, whether as direct hires or as employees of a subcontractor. Therefore, the Councils have revised the language in paragraph 52.225–19(b)(3)(ii) of the clause from ''Private security contractors * * *'' to read ''Contractor personnel performing security functions * * *''

3. Consequences of Inappropriate Use of Force (52.225–19(b)(3)(iii))

a. Loss of ''Law of War'' Protection From Direct Attack

Comment: Paragraph (b)(3)(iii) in the proposed rule stated that ''Civilians lose their law of war protection from direct attack if and for such time as they take a direct part in the hostilities.'' This statement raised many questions as to what the terms mean. One respondent considered this to be a correct statement under the international law of war, but that it may call into questions our foundation for the Global War on Terrorism and targeting ''unlawful combatants'' when they are not taking a direct part in hostilities.

Response: The Councils decided to delete this paragraph. Paragraph (b)(3)(i) sets forth the right to self-defense. Paragraph (b)(3)(ii) sets forth a limited right for some contractor personnel to protect assets/persons. Adding paragraph (b)(3)(iii) does not provide any useful information to contractors on what they are authorized to do. Discussion of the theories of law of war should be handled in law of war

training prior to deployment rather than in the clause.

b. Consequences Other Than ''Law of War'' Consequences

Comment: Several respondents state that as the interim DFARS rule is currently drafted, the notice to contractors relating to the personal and legal impact of directly participating in hostilities is incomplete. They requested inclusion of language from the DoDI 3020.41 relating to possible criminal and civil liability for inappropriate use of force.

Response: Although the comment specifically related to the DFARS rule, and inclusion of the language from the DoDI is not appropriate, the Councils have added to paragraph 52.225–19(b)(3)(i) of the clause a cautionary reference to paragraph 52.225–19(i)(3) of the clause, regarding use of weapons.

4. Contractors Are Not Active Duty (52.225–19(b)(4))

Comment: One respondent was concerned about paragraph (b)(4) in the clause. This paragraph says, ''Service performed by contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 Note.'' The respondent points out that the Note under Section 106 in Title 38 of the annotated U.S. Code explains that the Secretary of Defense is to determine what constitutes ''active duty or service'' under this statute for Women's Air Forces Service Pilots who were attached to the Army Air Corps during World War II and persons in similarly situated groups who rendered services in a capacity considered civilian employment or contractual service. The respondent asserts the determination can only be made retrospectively.

Response: The clause correctly states the terms of service for Defense and non-Defense contractors. Contractors should hold no expectation under this clause that their service will qualify as ''active duty or service.'' The Note under 38 U.S.C. 106 requires determinations for any applicant group be based on (1) regulations prescribed by the Secretary, and (2) a full review of the historical records and any other evidence pertaining to the service of any such group. In promulgating the DFARS, the Department of Defense issued a regulation prescribed by the Secretary. This Defense regulation establishes the historical record that shall be used in future review of the historical evidence surrounding a contractor's service under this clause. Defense policy is that contractors operating under this clause shall not be attached to the armed forces in a way similar to the Women's Air Forces Service Pilots of World War II. Contractors today are not being called upon to obligate themselves in the service of the country in the same way as the Women's Air Forces Service Pilots or any of the other groups listed in Section 106. The FAR follows the Defense regulation in this regard, since ''active duty or service'' is a matter uniquely determined by the Secretary of Defense.

5. Weapons (25.301–3 and 52.225–19(i))

a. Nature of the Authorized Weapons

Comment: One respondent claims there is no reasonable limitation on the nature of the ''weapons'' that a contractor is to handle, whether as a ''Self Defense Contractor'' or a Private Security Contractor. The range could include anything from small arms to major weapons systems.

Response: There are too many different situations for individual agencies to be able to prescribe specific weapons for each circumstance. However, it is unlikely a contractor would attempt to bring a major weapon system on the battlefield, or that the combatant commander/chief of mission would approve/authorize such weapons.

b. Combatant Commander/Chief of Mission—Rules on the Use of Force

Comment: One respondent believes there is no reasonable means by which a combatant commander/chief of mission can generate rules regarding the use of force by contractors. They further claim that the rules have to be related to doctrine, dogma, rules of engagement, etc. and these are formulated well above the combatant commander. Since the rules may be different, they assert contractor personnel would be subject to a range of serious risks and liabilities.

Response: It is the authority of a combatant commander to perform those functions of command over assigned forces involving: Organizing and employing commands and forces; assigning tasks; designating objectives; and giving authoritative direction over all aspects of military operations, joint training, and logistics necessary to accomplish the missions assigned. Operational control is inherent in combatant command (command authority) and therefore, provides full authority to organize and employ commands and forces as the combatant commander considers necessary to accomplish assigned missions. The combatant commander also establishes rules of engagement in the designated operational area, and does take into consideration many influences such as doctrine. The combatant commander will also seek advice from experts in areas such as legal and security, prior to making such decisions. Since the rules regarding contractor authorization to carry firearms will vary according to the phase of the conflict, there would be no person other than the combatant commander more informed or able to make the decision on whether a contractor can carry weapons and the rules for use of such weapons.

It is the authority of the chief of mission to establish the rules for use of weapons by contractors supporting a diplomatic or consular mission.

c. Law of Armed Conflict (LOAC) Issues

Comment: One respondent states the notion that the Government assumes no responsibility whatsoever for the use of weapons on a battlefield by a contractor authorized and required to use such weapons as the practical effect of the contract requirements, makes no sense and is certain to cause contractual Law of Armed Conflict issues and other problems.

Response: There have been no issues on the Law of Armed Conflict for contractors carrying weapons because in the current conflicts there are no enemy armed forces that are lawful combatants and no enemy government to provide them prisoner of war status and protections if captured.

The Councils also note that at the beginning of the current conflicts contractors were not allowed to carry weapons at all. During the post-major operations phase, civilian contractors that have been brought in for a variety of security operations are authorized (and required) to provide their own weapons. The obvious safety/security connected with carrying a weapon far outweigh any theoretical issues.

d. Liability for Use of Weapons

Comment: Several respondents express concern that the Government (52.225–19(i)) authorizes (and sometimes requires) contractor personnel to carry weapons but that it places sole liability for the use of weapons on contractors and contractor personnel, ''even if the contractor was acting in strict accordance with the contract statement of work or under specific instructions from the contracting officer, the Chief of Mission, or the Combatant Commander.''

One respondent considers this statement regarding contractor liability for use of weapons to be inconsistent with prior regulatory history, citing the statement that ''the risk associated with inherently Governmental functions will

remain with the Government.'' (70 FR 23792, May 5, 2005.)

Response: While a contractor may be authorized to carry and use weapons, the contractor remains responsible for the performance and conduct of its personnel. A contractor has discretion in seeking authority for any of its employees to carry and use a weapon. Each contractor is responsible for ensuring its personnel who are authorized to carry weapons are adequately trained to carry and use them safely, adhere to the rules on the use of force, comply with law, agreements, and are not barred from possession of a firearm. Inappropriate use of force could subject a contractor, its subcontractor, or employees to prosecution or civil liability under the laws of the United States and the host nation. The Government cannot indemnify a contractor and its personnel against claims for damages or injury or grant immunity from prosecution associated with the use of weapons.

With regard to the statement regarding inherently governmental functions, this rule does not authorize contractors to carry out any inherently governmental functions.

6. Risk/Liability to Third Parties/ Indemnification (52.225–19(b)(2))

Comment: Many respondents expressed concern that the proposed FAR rule shifts to contractors all risks associated with performing the contract and may lead courts to deny contractors certain defenses in tort litigation. The respondents cited decisions by state and federal courts arising out of injuries or deaths to third parties, including military members and civilians. Generally, the courts absolved contractors of liability to third parties where the Government carried ultimate responsibility for the operation.

Some respondents are concerned that the acceptance of risk may preclude grants of indemnification and that the rule could adversely affect indemnification that would otherwise be available. FAR clause 52.228–7 provides limited indemnification, but provides that contractors shall not be reimbursed for liabilities for which the contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract.

One respondent states that the provisions stating that the contractor accepts certain risks and liabilities could also be the basis to deny pre- or post-award request for indemnification under Public Law 85–804. One respondent also cited a decision by a Defense Department Contract Appeals Board in which the Board declined a contractor's request for indemnification under Public Law 85–804 because, according to the Board, contractors should not be able to ''deliberately enter into contractual arrangements with full knowledge that a risk is involved'' and yet propose unrealistically low prices on the hopes they may later gain indemnification. Therefore, the rule could adversely affect indemnification that would otherwise be available.

The respondents recommend that the United States should either identify, quantify, and accept all the risk or should insert language that would immunize contractors from tort liability. Specifically, several respondents recommend adding a sentence saying, ''Notwithstanding any other clause in this contract, nothing in this clause should be interpreted to affect any defense or immunity that may be available to the contractor in connection with third-party claims, or to enlarge or diminish any indemnification a contractor may have under this contract or as may be available under the law.''

There was also concern that by accepting all risks of performance, contractors would not be able to obtain workers compensation insurance or reimbursement under the Defense Base Act.

One respondent suggests that the final rule should be revised to modify the contractor's acceptance of risk as follows: ''Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.''

Response: The Councils believe the rule adequately allocates risks, allows for equitable adjustments, and permits contractors to defend against potential third party claims. Contractors are in the best position to plan and perform their duties in ways that avoid injuring third parties. Contractors are equally or more responsible to research host nation laws and proposed operating environments and to negotiate and price the terms of each contract effectively. Accordingly, the clause retains the current rule of law holding contractors accountable for the negligent or willful actions of their employees, officers and subcontractors. This is consistent with existing laws and rules, including FAR clause 52.228–7, Insurance-Liability to Third Parties, and FAR Part 50, Extraordinary Contractual Actions (Indemnification), as well as the court and board decisions cited in the comments.

The current law regarding the Government Contractor Defense (e.g., the line of cases following *Boyle* v. *United Technologies*, 487 U.S. 500, 108 S. Ct. 2510 (1988)) extends to manufacturers immunity when the Government prepares or approves relatively precise design or production specifications after making sovereign decisions balancing known risks against Government budgets and other factors in control of the Government. This rule covers service contracts, not manufacturing, and it makes no changes to existing rules regarding liability. The public policy rationale behind *Boyle* does not apply when a performance-based statement of work is used in a services contract because the Government does not, in fact, exercise specific control over the actions and decisions of the contractor, its employees or subcontractors. Asking a contractor to ensure its employees comply with host nation law and other authorities does not amount to the precise control that would be requisite to shift away from a contractor accountability for its own actions.

Contractors will still be able to defend themselves when injuries to third parties are caused by the actions or decisions of the Government, its officers and employees. To the extent that contractors are currently seeking to avoid accountability to third parties for their own actions by raising defenses based on the sovereignty of the United States, this clause should not send a signal that would invite courts to shift the risk of loss to innocent injured parties. The recommended language would open the door to attempts to shift to innocent victims all the burden of their injuries and would encourage contractors to avoid proper precautions needed to prevent injury to others. The language in the clause is intended to encourage contractors to properly assess the risks involved and take proper precautions.

However, to preclude the misunderstanding that asking the contractor to ''accept all risks'' is an attempt to ''shift to the contractor all risk of performance without regard to specific provisions in the contract,'' the Councils have accepted the suggestion to modify the requirement with the lead-in phrase: ''Except as otherwise provided in the contract,''.

7. Terms Defined (2.1 and 52.225–19(a))

a. Theater of Operations

Comment: One respondent states that the term ''theater of operations'' is unwarranted by any legitimate purposes suggested by the interim rule.'' This is a term which if defined at all, should rest in the hands of the President or the Secretary of Defense.''

Response: There was a legitimate purpose for the use of this term because it defined the geographic area in which the clause was applicable. The combatant commander has the authority to define a ''theater of operations'' within the geographic area for which the combatant commander is responsible. However, after discussion with military experts and review of the Joint Publication 3–0 Chapter 5, the Councils have determined that the term ''theater of operations'' is too restrictive, that the appropriate term is ''designated operational area,'' which includes theater of operations, but also would include such descriptors as theater of war, joint operations area, amphibious objective area, joint special operations area, and area of operations. The Councils have added a definition of ''designated operational area'' at FAR Part 2 and in the clause, and replaced the term ''theater of operations'' throughout the text and clause.

b. Contingency Operations and Humanitarian or Peacekeeping Operations

Comment: One respondent is concerned that the rule defines the terms ''contingency operation'' and ''humanitarian or peacekeeping operation'' in military terms and does not address the civilian ''humanitarian, contingency, disaster assistance, and developmental assistance'' authorities that govern the United States Agency for International Development (USAID) and other civilian agency international programs.

Response: The definitions of ''contingency operations'' and ''humanitarian or peacekeeping operations'' are defined in military terms, as defined at 10 U.S.C. 101(a)(13) and 10 U.S.C. 2302(8) and 41 U.S.C. 259(d), because the purpose of this rule and clause as set forth in the scope at 25.301–1(a) is intended to be applied during military operations. To make it more clear that the rule is not referring to the type of contingency, humanitarian, or peacekeeping operations in which USAID is involved, the term ''military'' has been included in the definition of ''designated operational area.''

c. Other Military Operations

Comment: Several respondents note that the term ''other military operations'' is very broadly defined. One respondent states that it is ''either over expansive, or unnecessary, because it is so inclusive as to suggest nearly any type of military engagement likely to be carried out in the first half of the current century.''

Response: The Councils concur that this definition was very broad, because it was intended to cover every type of military operation. However, the Councils have deleted this definition, because the Councils have agreed to limit application of this rule and clause to ''other military operations'' only when so designated by the Combatant Commander. Since the clause will only be applied to other military operations when designated by the Combatant Commander, it is unnecessary to define the term in the text and clause.

d. At a Diplomatic or Consular Mission

Comment: One respondent states that the term ''at a diplomatic or consular mission'' connotes the physical location of the embassy or consulate, which seems more limited than the FAR definition contemplates. A more descriptive phrase for the geographical location where the FAR clause should apply would be helpful. One respondent also objects to the statutory reference in the definition.

Response: The Councils have changed the final rule to make the wording clearer, with less emphasis on location and more emphasis on the performance under the contract. The Councils have also deleted the statutory reference. Contracting officers know when they are subject to the direction of a Chief of Mission.

e. Chief of Mission

Comment: One respondent does not object to the definition of ''Chief of Mission.'' However, the respondent requests a reasonable and consistent means for identifying the individual who occupies the position. Another respondent requests that the contract clause should include a blank to be completed to identify the chief of mission. This respondent also requests explanation of the distinction between an ambassador at an embassy and a chief of mission at a diplomatic or consular mission.

Response: The Chief of Mission can be identified through the Department of State. The Councils do not consider it advisable to put that information in the contract because it changes frequently. Although the ambassador may be the chief of mission, many diplomatic missions do not have an ambassador. As stated in the definition, the Chief of Mission is whoever is in charge of a diplomatic mission, as designated by the Secretary of State.

f. Location of Definitions

Comment: One respondent stated that all of the definitions should be included in either FAR 2.101 or 25.302–2 and in the clause, or provided only in the clause. ''At a diplomatic or consular mission'' and ''theater of operations'' are defined in the clause but not at 25.302 (now 25.301).

Response: In the proposed rule, ''at a diplomatic or consular mission'' and ''theater of operations'' are defined in FAR 2.101 rather than at 25.301, because the terms are used in more than one part of the FAR. In the final rule, the definition of ''designated operational area'' has been substituted for the definition of ''theater of operations'' and the definition of ''supporting a diplomatic or consular mission'' has replaced the definition of ''at a diplomatic or consular mission''. In addition, the definitions of ''chief of missions'' and ''combatant commander'' have also been moved to Part 2, because those terms are used in the definitions of ''designated operational area'' and ''supporting a diplomatic or consular mission,'' respectively.

8. Terms Not Defined

a. Enemy Armed Forces

Comment: One respondent objects to the lack of definition of the term ''enemy armed forces,'' stating that this term is critical to the contractor in determining and pricing its obligations under a solicitation or resulting contract.

Response: The FAR rule has been revised to delete use of the term ''enemy armed forces.''

b. ''Law of War,'' ''Law of War Protections,'' and ''Take Direct Part in Hostilities''

Comment: One respondent states that there are several terms of art that are undefined in the FAR rule that likely cannot be defined satisfactorily in the FAR. The respondent states that understanding the concepts underlying these terms is crucial to preparing statements of work for and administering contracts that will send contractor employees into hostile environments. Therefore, the FAR text should include some discussion of them and the need for contracting personnel to seek advice when dealing with these terms. Such terms include ''law of war,'' ''law of war protections,'' and ''take a direct part in hostilities;'' the latter is perhaps the most important phrase for private security contractors and those drafting the statements of work or mission statements. The difficulty of understanding the concept ''take a direct part in hostilities'' is illustrated by the fact that the International Team of the Red Cross has held three conferences for the purpose of defining

this term without consensus and that the DoDI 3020.41 provides explicit instructions about the need for legal counsel's advice to sufficiently address the many aspects of direct participation in hostilities.

Response: It is beyond the scope of the FAR rule to include definitions of ''law of war,'' ''law of war protections,'' and ''take direct part in hostilities.'' The respondent acknowledged that the terms cannot be satisfactorily defined in the FAR. These terms have been removed from the final FAR rule. The Department of Defense is developing ''law of war'' training that will be available to contractor personnel.

c. ''Security Support,'' ''Security Mission,'' ''Mandatory Evacuation,'' and ''Non-Mandatory Evacuation''

Comment: One respondent states that the DoD interim rule uses these terms that are not defined. These terms are also used in the FAR rule. The respondent considers that these terms are critical to the contractor in determining and pricing its obligations under a solicitation and resulting contract.

Response: Aside from the fact that the terms ''security support'' and ''security mission'' are used in their plain English meaning, whatever the contractor needs to know about them is set forth in the solicitation and contract. The terms and conditions of the contract define the mission and also specify if any security support will be provided.

Since the Government will not provide security support except as specified in the contract, the abstract meaning of the term ''security support'' is irrelevant in determining and pricing the contractor's obligations under the contract. With regard to mandatory evacuation and non-mandatory evacuation, it is unnecessary to define these terms in the clause. Aside from the plain English meaning of the terms, an evacuation order will be identified as mandatory or non-mandatory. The contractor will be told what it needs to know in the case such an order is issued.

d. ''Contractor''

Comment: One respondent proposes that ''contractor'' needs to be defined in the FAR rule. The respondent states that the current definition ''contractor personnel are civilians'' does not address the broad range of implementing partners and types of contractors used by the foreign assistance community.

Response: The Councils consider that regardless of the type of contractors used by the foreign assistance community they are still civilians. Therefore, it does not enhance the clarity of this rule to attempt such a definition. If an individual agency finds a need for such a definition to address their particular circumstances, it can be included in their individual agency FAR supplements.

Further, the FAR only applies to contracts as defined in FAR Part 2, not to the entire broad range of partners, ventures, and other types of contractors that may be used by the foreign assistance community.

e. Definitions Reflecting Civilian Agency Authorities for Disaster, Humanitarian, Transitions, and Development Assistance

Comment: One respondent states that while the current and proposed definitions are suitable to military operations, the section requires additional definitions reflecting civilian agency authorities for disaster, humanitarian, transitions, and development assistance as set out in Foreign Assistance legislation and in implementing regulations.

Response: The Councils did not define these terms, such as ''disaster,'' ''humanitarian,'' ''transitions,'' etc., since the focus of the rule is on the status of contractor personnel in a designated operational area or supporting a diplomatic or consular mission. Therefore, it is more appropriate to address the particulars of civilian agency authority for disaster and humanitarian efforts in the individual agency FAR supplements.

f. Area of Performance

Comment: One respondent states that the term ''area of performance'' in the FAR rule is not defined; without a definition, an area of performance could mean anywhere a contractor performs—both overseas and in the U.S.—creating ambiguity. When used in the proposed FAR rule, it would appear that ''area of performance'' can be deleted or the term ''theater of operations or diplomatic or consular mission'' can be substituted if done with care.

Response: The term ''area of performance'' has a broad meaning within the proposed FAR rule, which is discernable from the plain English meaning of the terms. The term ''area of performance'' is used in the FAR rule to avoid unnecessarily cumbersome repetition of the phrases ''designated operational area'' and ''supporting a diplomatic or consular mission'' and to be more specific in such cases when the ''designated operational area'' or ''supporting a diplomatic or consular mission'' might encompass a broader area within which the laws and regulations might vary from place to place. However, in paragraph 52.225–19(d), Compliance with laws and regulations, the term ''area of performance'' was considered duplicative and has been removed.

The uses of the term ''area of performance'' in paragraphs 52.225–19(f), (j), and (o) of the clause are not ambiguous. First, the title of the clause itself and paragraph 52.225–19(b) define the applicability of the clause to contractor personnel employed outside the United States in a designated operational area or supporting a diplomatic or consular mission. The usage in paragraphs 52.225–19(d) and (f) reiterates the restriction of the meaning to an area within the designated operational area or supporting a diplomatic or consular mission. The statement on paragraph 52.225–19(j) would be true wherever performance occurs, and the usage in paragraph 52.225–19(o) with regard to who is responsible for mortuary affairs upon death of a contractor in the area of performance is unambiguously not referring to death in the United States.

9. Consistent Terminology

a. Performance Outside the United States

Comment: One respondent states that the prescription at 25.000(a)(2) provides that Part 25 applies to ''performance of contractor personnel outside the United States.'' The scope of the proposed prescription at 25.302–1 (now 25.301–1) applies to ''contracts requiring contractor personnel to perform outside the United States.'' By contrast, 25.302–5 (now 25.301–4) directs contracting officers to insert the clause ''when contract performance requires that contractor personnel be available to perform outside the United States'' while the clause at 52.225–19(b) directs that the clause applies ''when contractor personnel are employed outside the United States.'' The respondent considers that these four provisions must be uniform and consistent. The respondent recommends that all four provisions be revised to state that they apply only when ''contractor personnel are to be deployed outside the United States to perform a covered contract.''

Response: The Councils concur that the language of the proposed rule could be more consistent. However, the language for the scope of the Part and title of the Subpart is supposed to be broader than the specific language in the text and clause.

- The Councils have changed the language in FAR 25.000, Scope of the

part to ''Contracts performed outside the United States.'' The term ''acquiring'' at 25.000(a)(1) was also changed to ''acquisition'' for parallel construction.

• The title of FAR subpart 25.3 has been revised to read ''Contracts Performed Outside the United States.''

• The clause prescription and paragraph 52.225–19(b) of the clause have been modified to more closely conform to 25.301–1(a) (renumbered):

§ 25.301–1(a)—''This section applies to contracts requiring contractor personnel to perform outside the United States * * *''.

§ 25.301–4—''Insert the clause * * * in solicitations and contracts that will require contractor personnel to perform outside the United States * * *''.

§ 52.225–19(b)—''This clause applies when contractor personnel are required to perform outside the United States.''

b. When Designated by the Chief of Mission

Comment: One respondent also notes that the prescription at 25.302–1(b) (now 25.301–1(b)) states it applies ''when designated'' by the Chief of the Mission while the clause at 52.225–19(b)(1)(ii) states that it applies ''when specified'' by the Chief of Mission. While not significant differences, the respondent believes the two applications should be identical.

Response: This issue is now moot, because the language in question has been replaced by different criteria for applicability of the clause when used for performance with a diplomatic or consular mission.

10. Scope of Application

a. Commercial Items

Comment: One respondent is concerned that the proposed language at FAR 12.301 requires application of the new clause across-the-board to commercial items. This respondent recommends that the clause should only apply if the acquisition of commercial items is for performance of contractor personnel outside the United States in a covered theater of operations.

Response: The Councils concur that the clause should only apply if the acquisition of commercial items is for performance of contractor personnel outside the United States in a designated operational area or supporting a diplomatic or consular mission. However, the respondent has misinterpreted the requirement at FAR 12.301. FAR 12.301 states that the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, is to be inserted as prescribed at 25.302–4. That takes the contracting officer back to the clause prescription that applies the specific limitations on use of the clause. No change to the proposed rule is required.

b. Military Operations and Exercises

Comment: One respondent is concerned about the application of this rule to a wide range of military operations and exercises that do not require special treatment. The proposed rule prescribes use of the clause when contractor personnel will be required to perform outside the United States in a theater of operations during ''other military operations,'' or military exercises designated by the combatant commander. One respondent recommends that the final FAR rule should include criteria for when the combatant commander should invoke the authority to require use of the clause.

Response: The Councils agree that ''designated by the Combatant Commander'' should apply to ''other military operations'' as well as military exercises. Other military operations is so broadly defined that it does include situations in which use of the clause would probably be unnecessary. The Councils do not consider it appropriate for the acquisition regulations to prescribe to the combatant commanders the criteria for designating the required use of the clause. The combatant commanders are in the best position to determine whether the circumstances in a particular designated operational area warrant its use. The Councils also added clarification that any of the types of military operations included in the scope of this rule may include stability operations.

c. Paragraph 25.301–1(a) of the Scope Applies to Military Operations

Comment: One respondent wants it made clear that 25.302–1(a) (now 25.301–1(a)) only applies to military operations.

Response: The Councils resolved this concern by replacing the term ''theater of operations'' with the term ''designated operational area,'' which includes the term ''military'' in the definition.

d. Relation to the DFARS Rule

Comment: One respondent recommends modifying the scope of the FAR rule to state that it covers contractor personnel not covered by the DFARS clause. The regulation should also address task and delivery orders when the umbrella contract might be issued by a civilian agency, e.g., GSA, but the task order is issued by a DoD agency authorizing personnel to ''accompany the force.''

Response: These are issues that must be addressed by DoD, not the FAR. The FAR generally only includes regulations that affect more than one agency, and leaves it to individual agencies to address their unique issues in agency supplements.

e. Applicability to Contractors Supporting a Diplomatic or Consular Mission

Comment: One respondent was concerned about the meaning of ''when designated by the chief of mission.'' Further, a respondent objected that no criteria were provided for this exercise of discretion by the chief of mission.

Another respondent also considered it unclear how the fact that ''the contract is administered by federal agency personnel subject to the direction of a chief of mission'' signifies that the conditions in that location may require the use of the proposed FAR clause.

Response: The Councils do not agree that the meaning of ''when designated by a chief of mission'' is unclear. However, the Councils have agreed that the clause should be used for contracts supporting a diplomatic or consular mission that has been designated by the Secretary of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*), or at the discretion of the contracting officer.

With regard to the respondent's concern about the significance of whether a contract is administered by Federal agency personnel subject to the direction of a chief of mission, that has to do with whether the contract to be performed is supporting a diplomatic or consular mission, not with the decision as to whether the clause is applicable.

f. Designation of Specific Geographic Area

Comment: One respondent questions whether the combatant commander or chief of mission should designate a specific geographic area for applicability of the clause.

Response: The Councils agree that the changes to the scope of the FAR clause sufficiently define the area of applicability. An area designated by the Secretary of State as a danger pay post is quite specific, and the designated operational area is also a specific geographic area, defined by the combatant commander or the subordinate joint force commander for the conduct or support of specified military operations.

g. Applicability to Personal Service Contractors

Comment: One Government respondent comments that some civilian agencies have the authority to hire personal services contractors to assist with programs outside the United States. These workers are considered to be part of the workforce. They request that the final FAR rule should not apply to personal services contractors.

Response: The Councils have agreed to modify the scope at 25.301–1(c) to exclude personal services contractors, unless otherwise provided in agency procedures. A similar exclusion has been added to the clause prescription at 25.301–4.

h. Outside the Authority of the Chief of Mission

Comment: One respondent requests that the FAR rule should clarify when the FAR clause is to be included if the contract is otherwise outside the authority of the chief of mission. The respondent states that many USAID and other agency contracts state that the contractors performing these contracts are ''outside of the authority'' of the chief of mission. In Afghanistan today, contractors ''under the authority of the chief of mission'' are required to live in the Embassy compound and are prohibited from traveling within the country.

Response: Contractors are not under the authority of the Chief of Mission except as provided by the contract. The fact that currently in Afghanistan contractors under the authority of the Chief of Mission may be required to live in the embassy compound is particular to the immediate circumstances in that country. In most cases, contractors under the authority of the chief of mission are not required to live in the embassy and are not prohibited from travel in the country.

11. Logistical and Security Support (25.301–2 and 52.225–19(c))

a. Lack of Force Protection Represents Change in Policy

Comment: Several respondents consider that shifting the responsibility for force protection to the contractor when a hostile force is operating in the area is a major policy change that the FAR rule does not explain. The respondents claim that security for contractor personnel supporting U.S. missions in an area wrought with conflict with armed enemy forces should normally be a DoD responsibility. One respondent considers that this is the ''penultimate paragraph'' in the transfer of responsibility for force protection from the military to contractors, and that it is ill-considered. Another respondent contends that, in locations ''where the military controls the theater of operations,'' the combatant commander should always have a security plan that covers contractors on the battlefield, whether those contractors accompany the U.S. Armed Forces or not.

Response: In most areas of the world, it is the responsibility of the host nation to provide protection for civilians working in their country. Even for contractors authorized to accompany the force, the responsibility for force protection resides with the contractor unless otherwise specified in the contract (DoD Joint Publication 4–0, Chapter V). The writers of the regulations cannot commit the U.S. Armed Forces to provide protection to contractor personnel performing in areas of conflict, particularly those contractors not accompanying the U.S. Armed Forces, because there is no authorization to do so.

b. Timing of Disclosure

Comment: While one respondent acknowledges that most contractors who do not accompany the U.S. Forces understand that they are primarily responsible for their own logistics and security, the respondent notes that timing of the disclosure of agency support could impact an offeror's proposal costs, and recommends that, at a minimum, agencies be required to include support information, not just in the contract, but also in the solicitation. Another respondent also requests that the final rule should clarify whether a security plan, if any, will be developed prior to the release of the solicitation.

Response: The Councils agree with respondents' comment that the timing of the disclosure of agency's decision to provide or not provide support could have an impact on the offerors' proposal/bid costs. In order to enhance the reasonableness and accuracy of bid and proposal costs, it is in the Government's interest to provide support information available at the time of solicitation. The Councils have revised the text at 25.301–2(b) to require the contracting officer to specify in the solicitation, if possible, the exact support to be provided.

c. Changes in Government-Provided Support

Comment: One respondent comments that any changes to Government-provided security support should expressly require an equitable adjustment to the contract.

Response: The Councils do not concur with the respondent's statement that changes to Government-provided security should expressly require an equitable adjustment to the contract. The need for equitable adjustments will be evaluated in accordance with existing FAR changes clauses.

d. Agency Cannot Know if Adequate Support Is Available

Comment: One respondent comments that one of the conditions precedent to Government support is a determination by the Government that ''adequate support cannot be obtained by the contractor from other sources.'' The respondent asserts that whether or not competitors can obtain adequate support from other sources ''is outside of an agency's knowledge,'' further noting that this kind of knowledge involved ''marketplace issues that vary significantly by the size and experience of the contractor.''

Response: The Councils do not concur with the assertion that the Government would not be able to determine whether the contractor was able to obtain adequate support from other sources. The Government official would not be making decisions in a vacuum, but would perform necessary market research and consult with the contractor as necessary. In addition, the Councils also added that the agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that such Government support is available and is needed.

e. Reasonable Cost

Comment: One respondent states that there is a difference between the FAR and DFARS standards for support, and asserts that paragraph (c)(1)(i)(B) of the DFARS clause includes a consideration of reasonableness, which the proposed FAR rule does not, specifically: ''Effective security services are unavailable at a reasonable cost.''

Response: The Councils concur that the FAR text should also include a consideration of reasonable cost. The Councils have modified the wording of paragraph 25.301–2(a)(2) by adding the words ''at a reasonable cost.''

f. Security Costs Should Be a Cost Reimbursement Line Item

Comment: One respondent states that security costs should be a cost reimbursement line item, even in a fixed-price contract, or provide equitable adjustment to reflect material changes in the threat environment.

Response: According to FAR 16.103, selecting the appropriate contract type

is generally a matter of negotiation and requires the exercise of sound judgment. The contractor's responsibility for the performance costs and the profit/fee incentives offered are tailored to the uncertainties involved in contract performance. While the Councils acknowledge that there may be a high degree of uncertainty in the costs for security, the determination of how to handle that uncertainty is a matter of negotiation, rather than regulation.

12. Compliance With Laws, Regulations, and Directives (52.225–19(d))

Paragraph (d) of the proposed rule clause required the contractor to comply with, and ensure that its deployed personnel are familiar and will comply with, all applicable laws, rules and regulations, including those of the ''host country,'' all treaties and international agreements, all U.S. regulations, and all orders, directives and instructions issued by the Chief of Mission or Combatant Commander relating to mission accomplishments.

a. Lack of Access to Necessary Information on Laws, Regulations, and Directives

Comment: One respondent states that rarely will contractors, let alone offerors, have access to any (and certainly not all) relevant orders, directives, instructions, policies and procedures of the Chief of Mission or the Combatant Commander, even in those ''narrow'' functional areas specified in the clause. The respondent also states that frequently a contractor is asked to deploy to countries or areas of the world on short notice without extended advance notice and without meaningful access to information on relevant foreign and local laws.

Response: Paragraph 52.225–19(d) of the clause is a requirement of the existing obligation for contractor personnel to comply with the laws and regulations applicable to the contract. Contractors have access to all of these laws and regulations and are required to comply with them. Country studies are available online at *http://www.state.gov.* Such available online resources indicate that a contractor may ascertain on its own the laws and regulations necessary to comply with paragraph 52.225–19(d). In addition, the contractor supporting contingency operations should have access to any orders, directives, instructions, policies, and procedures of the Chief of Mission or Combatant Commander that have an effect or impact contract performance in the designated operational area.

b. Varying Need for Extensive Information

Comment: One respondent states that deployed employees may have no need for certain types of information that are unrelated to their specific work assignment.

Response: The clause only requires knowledge of applicable laws. If the laws or regulations are not applicable to a particular employee, then the information should be tailored as appropriate.

c. Inconsistency Between U.S. Laws and Host or Third Country National Laws and Between Orders of the Combatant Commander/Chief of Mission

Comment: One respondent recommends that the clause address how U.S. contractors are to resolve conflicts between compliance with U.S. law and any inconsistent law of host or third country national laws. The respondent also recommends that the clause address how U.S. contractors are to resolve conflicts between the Chief of Mission and the Combatant Commander. Another respondent notes that there is a lack of guidance on how to resolve conflicts between a directive or order given by the Chief of Mission and the Combatant Commander. The respondent believes that the roles of the Chief of Mission and Combatant Commander should be defined in the rule.

Another respondent also states that the roles of the Combatant Commander and Chief of Mission are intermingled in the FAR clause and not adequately distinguished. They note that both the Combatant Commander and the Chief of Mission have authority to require compliance with directives, evacuation orders, and the use of force in using weapons. The respondent believes that because the Combatant Commander and the Chief of Mission's authority will overlap, the rule should describe expected coordination between the two and should establish an order of precedence.

Response: The Councils do not concur that the clause should address how U.S. contractors are to resolve conflicts between compliance with U.S. law and any inconsistent law of host or third country national laws or conflicts between the Chief of Mission and the Combatant Commander. The resolution of such conflicts are required to be analyzed on a case-by-case basis, and, therefore, are beyond the scope and intent of the regulations.

Orders of the Combatant Commander and the Chief of Mission ordinarily should not conflict since each of these individuals is assigned to lead a different type of mission—one diplomatic or humanitarian and the other a military operation within the designated operational area. The respective roles of the Combatant Commanders and Chief of Mission are not defined further for purposes of the FAR clause in order to allow their roles to be defined on a case-by-case basis for each specific mission because each mission will have to address different requirements and in-country conditions. The roles of the Combatant Commander and Chief of Mission are defined at the activity level, and cannot be further defined in the regulation.

Furthermore, paragraph 52.225–19(d) is a reminder of the existing obligation to comply with the applicable laws, regulations, and international agreements specified therein. It is the contractor's responsibility to make the best possible interpretation and determination when deciding which law or regulation takes precedence in the event of a conflict.

d. Too Much Authority to Combatant Commander/Chief of Mission to Become Involved in the Contracting Process

Comment: One respondent states that it recognizes that the Chief of Mission has general oversight authority of operations under its control. However, the respondent believes that the proposed rule would significantly expand that authority and permit the Chief of Mission to insert himself in the contracting process. The respondent is particularly concerned that under paragraph 52.225–19(d)(4) of the clause, the Chief of Mission's or Combatant Commander's authority is so broadly worded that it would allow the Combatant Commander or Chief of Mission to become unduly involved in the contracting process, and to direct contractor activities of U.S. agencies. The respondent states that paragraph 52.225–19(d) could be interpreted as empowering ambassadors and Chiefs of Mission to issue instructions for individual contracts on a wide spectrum of matters. This authority should be rephrased to limit ''orders, directives, and instructions'' that apply to all United States nationality contractors in country and then only with respect to security and safety matters. The ''relations and interactions with local nationals,'' language is too broad and should be deleted.

Response: Paragraph 52.225–19(d)(4) of the clause is a reminder of the existing obligation for contractor personnel to comply with laws and regulations applicable to the contract. It does not provide new authority for

Combatant Commanders/Chiefs of Mission to direct the contracting activities of other U.S. Government agencies.

The Councils do not agree that the phrase should be limited to orders, directives and instructions that apply to all United States nationality contractors in country as the respondent suggests. There may be foreign companies that are awarded contracts to support U.S. Armed Forces deployed abroad for specific requirements. To narrow the scope of the application of the rule in the manner the respondent suggests would preclude such companies from being covered. Additionally, orders of the Combatant Commander extend beyond just security and safety matters. Health and force protection are additional issues that the scope of the orders may also encompass.

However, the Councils have reworded paragraph 52.225–19(d)(4) of the FAR clause to limit it to force protection, security, health, and safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander. The phrases regarding ''mission accomplishment'' and ''relations and interaction with local nationals'' have been deleted from the FAR clause as being less applicable to contractors that are not authorized to accompany the U.S. Armed Forces. The paragraph also now reiterates that only the contracting officer is authorized to modify the terms and conditions of the contract.

13. Preliminary Personnel Requirements (52.225–19(e))

a. Already Have Comparable Agency Requirements

Comment: One respondent notes that the agency they represent already has requirements that satisfy those in (e)(2)(i)–(vii), with the exception of personal security training and registration with the Embassy.

Response: If the agency already has requirements that satisfy most of those in (e)(2)(i)–(vii), they will meet the clause requirement that specific information be set forth elsewhere in the contract by ensuring that this language is included in the contract.

b. Background Checks Acceptable

Comment: One respondent recommends that the language of subparagraph (e)(2)(i) be changed to read ''All required security and background checks are completed and acceptable,'' because the language, as written, omits the notion of ''acceptability''.

Response: The Councils concur with the recommended change to subparagraph (e)(2)(i).

c. Immunizations

Comment: One respondent recommends that the contractor be required to comply with the requirements of (e)(2)(ii) ''to the best of their knowledge'' rather than requiring that they be aware of all such requirements, since they may not have ready access to all of the vaccines, documents and medical and physical requirements that may be applicable to a specific deployment.

Response: The Councils believe that the contractor should be aware of all of the security and background checks and vaccinations, since the Government is required to provide specific information in the contract regarding these requirements.

Comment: The respondent also comments that the FAR clause in subparagraph (e)(2)(ii) places on the contractor the cost of immunizations. The respondent questions why there is a difference in the FAR policy versus the DoD policy, since DoD provides the relevant immunizations to contractor personnel.

Response: Individual agencies have policies relating to the provision of required vaccinations for contractor personnel, and those individual policies must be reflected elsewhere in the contract where they conflict with the clause. For example, the Department of State's policy is not to provide contractor employees with routine or travel immunizations. Contractors must factor this cost into their proposals when responding to solicitations where the requirement applies. Should there be any exceptions to this policy, it will be specifically outlined in the statement of work or elsewhere in the contract, as required by paragraph (e)(1) of the clause.

d. Foreign Visas

Comment: One respondent states that contactors should not have to obtain foreign government approval through entrance or exit visas before implementing a contract.

Response: The Councils note that they do not have the authority to waive the visa requirements of foreign governments. Where a contractor is experiencing problems obtaining any necessary visas, it should advise the contracting officer so that the Government can take action to assist, if possible.

e. Isolated Personnel Training

Comment: One respondent requests that the phrase ''isolated personnel training'' be explained.

Response: ''Isolated personnel training'' refers to training for military or civilian personnel who may be separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery. The Councils have added an explanation of isolated personnel training as requested.

f. Further Explanation of Requirement To Register With U.S. Embassy or Consulate ((e)(2)(vii))

Comment: One respondent observes that only subparagraphs 52.225–19(e)(2)(i)–(vi) are required to be included in the statement of work or elsewhere in the contract, and recommends that subparagraph (vii) also be included for further explanation.

Response: Subparagraph (e)(2)(vii), registration with the Embassy, stands on its own and does not require any further implementation or explanation.

g. Geneva Conventions Identification Card

Comment: One respondent questions why the FAR language does not provide for a Geneva Convention identification card for contractor employees, as the DFARS clause provides. The respondent contends that civilian agencies may award contracts that could be in support of U.S. Armed Forces, which would trigger the requirement for Geneva Convention identification cards. The respondent points to the language in (e)(3)(i) that applies the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) to contracts awarded by civilian agencies in support of DoD's mission, and states that since MEJA applies to contractor personnel ''accompanying the force'', by extension, so should the Geneva Convention identification card requirements.

Response: The requirements for application of the Geneva Conventions and the Military Extraterritorial Jurisdiction Act (MEJA) are different. With respect to the Geneva Conventions identification card, according to DoDI 1000.1, Identity Cards Required by Geneva Conventions, Geneva Conventions Identity Cards (DD Form 489) are issued only to contractors who are accompanying the U.S. Armed Forces in regions of combat and who are liable to capture and detention by the enemy as prisoners of war. MEJA applies to all contractors employed by DoD or any other Federal agency or provisional authority, to the extent such

employment relates to supporting the mission of DoD overseas. These contractors are not necessarily ''authorized to accompany the force'' as that term is used in the DFARS clause and the Geneva Conventions. The term ''accompanying the Armed Forces outside the United States'' in MEJA extends to dependents of contractors employed by the Armed Forces outside the United States, whereas the Geneva Conventions card does not. Dependents would not be present with the Armed Forces during an armed conflict. The Councils cannot think of any circumstances where civilian agencies would award contracts under which contractor personnel are authorized to accompany U.S. military forces during an armed international conflict. That is the direct responsibility of DoD.

14. Processing and Departure Points (52.225–19(f))

a. Economic Burden

Comment: One respondent commented that the clause requirement in paragraph (f), for departure and reception centers, would impose economic burdens on contractors. The respondent suggested that processing requirements ''only be applicable to situations when contractors are entering a specific ''theater of operations.''

Response: The clause was written in a way intended to provide flexibility to agencies. Furthermore, the Councils do not concur with the assertion that the requirement for departure and reception centers would impose economic burdens on contractors. Processing through an established departure center and reception center could provide the necessary information and training to contractor personnel at less expense than if the contractor has to provide it. With regard to subparagraph (f)(3), the Councils agreed to insert the word ''as'' in front of ''designated'' in (f)(3), in order to maintain the same flexibility as appears in (f)(1) and (f)(2).

b. FAR Requirement for Joint Reception Centers

Comment: One respondent states that the DFARS requires contractor employees to process through a Joint Reception Center, which will brief contractor personnel on theater specific policies and procedures. The respondent states that the FAR should have the same requirement as in the DFARS.

Response: The Councils concur that this would be a good idea, but civilian agencies do not necessarily have access to reception centers. Therefore, the language was left more flexible, to be as designated by the Contracting Officer.

15. Personnel Data List (52.225–19(g))

a. Privacy Act

Comment: One respondent poses the question of whether the Privacy Act will apply to the implementation of a Personnel Data List database.

Response: The Privacy Act (5 U.S.C. 552a) does apply to any system of records established by the Government. Paragraph (e)(4) of the Privacy Act requires that an agency publish in the Federal Register, upon establishment or revision, a notice of the existence and character of the system of records. To the extent that an agency is entering the contractor data into a Government system of records, each agency must ensure compliance with the Privacy Act.

b. Agency Has Data Clause

Comment: The respondent also comments that the agency that they represent has an existing personnel data clause for tracking their contractor personnel.

Response: The Councils have added the words ''unless personnel data requirements are otherwise specified in the contract,'' so that agencies can continue to implement their own data systems, until a Governmentwide agreement is reached on a central database.

c. Collect General Location

Comment: One respondent questions why the FAR clause does not specify that the list will collect information on general location in the theater of operations.

Response: The FAR rule leaves it to the discretion of the civilian agencies what data to collect at this time.

16. Contractor Personnel (52.225–19(h))

Comment: One respondent comments that the authority in this paragraph is rather sweeping, although analogous to existing language in USAID rules. However, it appears to delegate down to the contracting officer authority that is currently exercised under USAID regulations by the chief of mission or mission director.

Response: For the contractor, the contracting officer is the point of contact with the Government. The contracting officer is unlikely to take these actions independent of the chief of missions and is subject to the control of agency regulations. The Councils have also deleted the phrase ''jeopardize or interfere with mission accomplishment'' from the FAR rule because it is more a military than a civilian concept. In addition, the Councils have changed the word ''clause'' to ''contract'', because personnel can be removed for violation of any of the requirements of the contract, not just this clause.

17. Military Clothing (52.225–19(k))

Comment: One respondent recommends that if contractor personnel are authorized to wear military uniforms, they should be required to carry the written authorization with them at all times, as required in the DFARS. The omission may place an additional hazard on contractor personnel, because such authorization would provide further evidence that they are not military personnel.

Response: There is no Governmentwide policy requiring or providing standard letters of authorization for contractor personnel that are not authorized to accompany the U.S. Armed Forces. Therefore, the FAR does not require carrying of written authorization. However, carrying such authorization would be a good idea, and the contractor can require its personnel to carry such authorization with them.

18. Changes (52.225–19(p))

Comments: One respondent does not believe that ''so sweeping an expansion'' to the Changes clause is justified; the standard Changes clause is limited for important reasons, one of which is to insure that Government contracts remain within clearly defined scopes. Similarly, another respondent objects that such expansion of 52.225–19(p) to include change in the place of performance could be interpreted to require a contractor to move from Iraq to Kuwait or from East Timor to Lebanon. Although the respondent strongly supports the requirement that changes are subject to the changes clause, and therefore provides for equitable adjustment when appropriate, the respondent also suggests that an equitable adjustment should be explicitly required.

Response: The Councils do not consider the expansion of the Changes clause to be a sweeping change, since it is patterned after the standard ''Changes'' clause for construction contracts, which includes changes in site performance. However, since this Changes clause is not limited to use in construction contracts, a more generic terminology, i.e., ''place of performance'' is more appropriate to use here than ''site.'' FAR 52.225–19(p) requires that any change orders issued under that paragraph are subject to the provisions of the Changes clause of the contract. Whichever Changes clause is included in the contract, it requires that any changes be within scope of the

contract, and provides for equitable adjustment when appropriate. Therefore, it is not necessary to restate those principles here.

19. Subcontract Flowdown (52.225–19(q))

a. Obligation and Role of the Parties (Government/Contractor)

Comment: Several respondents suggest that the Government should more clearly state what parts of the clause are to be flowed down and whether for each provision, the contractor is to act in the Government's stead.

Response: The language contained in this clause is not any different than the language contained in other acquisition clauses that require certain clauses to be flowed down to subcontractors. The clause authorizes flow down to subcontracts, when subcontract personnel meet the criteria for applicability. The language ''shall incorporate the substance of this clause'' is meant to allow latitude in correctly stating the relationship of the parties. The Government does not have privity of contract with subcontractors.

b. Flow Down of Support

Comment: One respondent states that the clause at 52.225–19(q) requires the prime contractor to incorporate the substance of the clause, including this paragraph, in all subcontracts that require subcontractor employees to perform outside the U.S. in stated operations. While the respondent does not object to the policy, they are concerned about the ability of the prime contractor to flow down provisions to subcontractors that have the effect of committing the Government to undertake affirmative support of each subcontractor (including third country national firms) retained to provide support.

Response: Since the FAR clause does not promise any support to contractors, the flow down does not commit the Government to undertake affirmative support of subcontractors.

c. Flow Down to Private Security Contractors

Comment: One respondent is concerned that flowing down the clause to private security contractors means that a prime contractor can authorize a subcontractor to use deadly force.

Response: Although the prime contractor flows down the clause, the use of deadly force is always subject to the authority of the chief of mission/combatant commander, who authorizes the possession of weapons and the rules for their use.

20. Defense Base Act

a. Expansion of Functions

Comment: One respondent states that ''self defense contracts'' and private security contracts continue, as a matter of law, to include compliance with the Defense Base Act. The respondent states that, with this expansion in the rule of the functions to be performed by contractor personnel, it becomes unclear that coverage will be available to contractors.

Response: There is no expansion of the functions to be performed by contractor personnel related to the FAR rule that the respondent envisions.

Furthermore, the courts have determined that the Defense Base Act (DBA) applies to any overseas contract that has a nexus to either a national defense activity or a facility construction or improvement project. There is no current legal ruling applying the DBA to private security contracts with non-DoD agencies or for work other than facility construction or improvement projects to be performed outside the United States. However, almost any contract with a U.S. Government agency for work outside the United States will likely require Defense Base Act coverage, if the contract is deemed necessary by national security. Contracting officers will have to determine whether any particular contract should include the FAR 52.228–3, Workers' Compensation Insurance (DBA) clause in service contracts to be performed (either entirely or in part) outside of the United States as well as in supply contracts that also require the performance of employee services overseas. DBA coverage exists as long as contract performance falls within the scope of the statutory requirements. The proposed rule does not change or preclude DBA coverage.

If the respondent was concerned about unavailability of DBA coverage because of high cost, or unwillingness of insurance providers to make available when high risk is involved, many agencies such as the Department of State and USAID have negotiated arrangements with insurance companies to make insurance available to their contractors. Further, expenses incurred relating to war hazards, the biggest risk, will be reimbursed to the insurance companies.

b. Accepting All Risks

Comment: Another respondent was concerned that by accepting all risks of performance, contractors would not be able to obtain workers compensation insurance or reimbursement under the Defense Base Act. The respondent thinks that the statement of accepting all risks could be interpreted to mean that the Government is trying to restrict, supersede, or alter contract or government rights under the Defense Base Act.

Response: The statement regarding risk was intended to restate the general rule that the contractor is responsible for fulfilling its contract obligations, even in dangerous and austere conditions. It was not intended to conflict with other provisions of the contract. The Councils have added the requested phrase, ''Except as provided elsewhere in the contract.''

21. Acquisition Plan

Comment: The rule adds a proposal to 7.105(b)(13) and (19) requiring the contracting office to determine contractor or agency support and special requirements of contracts to be performed in a theater or operations or at a diplomatic or consular mission. The respondent supports the proposal and suggests that the rule also require coordination with affected Combatant Commander and Chief of the Mission.

Response: FAR 7.104(a) provides that acquisition planning begin as soon as the agency need is identified, and requires that the acquisition planner form a team consisting of all those who will be responsible for significant aspects of the acquisition. The section identifies the contracting, fiscal, and legal, and technical personnel, for example, as members of the team. Given the critical nature of acquisitions associated with contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States, the Councils agree to revise FAR 7.104 to require the planner to coordinate the requirements of such acquisition plans with combatant commanders or chiefs of mission, as appropriate.

22. Regulatory Flexibility Act

Comment: One respondent asserts that it is entirely possible that the rule would render much of the Stability Operations contracting, now primarily accomplished by large, experienced and well-financed international construction and engineering companies, the province of many small businesses. The respondent questions the consideration that went into the determination that small business would not be affected by the rule.

Response: The purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency environment.

By establishing a standardized clause spelling out uniform rules, the rule effectively reduces the burden on small business. Additionally, the availability of Government departure centers in the United States will make it easier for small business to meet all the pre-departure requirements. The Councils believe that the rule will be helpful to small businesses and minimize any perceived burdens small businesses may encounter in the performance of contract to which the rule applies.

The respondent does not provide justification for the statement that Stability Operation contracting will shift from large businesses to small businesses, or that it will cause harm to small business if it were to occur.

Comment: One respondent disagrees with the statement that the rule will not impose economic burdens on contractors, citing the requirement to process through a departure center, use specific transportation modes and process through a reception center will have a tremendous impact on cost. The respondent goes on to provide examples of impacts contractors suffered undergoing required background checks for personnel in Bosnia and chemical, biological and nuclear training requirements in Iraq. The respondent suggests that processing requirements only be applicable to situations when contractors are entering a specific ''theater of operations.''

Response: Processing through the departure center or using a specific point of departure and transportation mode is at the direction of the contracting officer, as is processing through a reception center upon arrival. The Councils do not concur with the assertion that the requirement for departure and reception centers would impose economic burdens on contractors. The rule is written in general terms and provides great flexibility.

The Councils did not receive any responses from small businesses indicating that this rule would impose burdens on them.

23. Information Collection Requirements

Comment: One respondent contends that rule would impose substantial information collection requirements on the contracting communities; suggesting that transmogrification of battlefield contractors into combatants portends huge increases in their information collection and management responsibilities that are anything but usual and customary and are well outside the ''normal course of business.''

Response: The Councils do not agree with the respondent's contention. The rule does not provide for the transmogrification of battlefield contractors into combatants or require huge increases in their collection and management responsibilities. Although the rule requires contractors to establish and maintain a current list of contractor personnel in the area of performance with a designated Government official, such information should be a part of the contractor's personnel database and routinely maintained by the contractor. Therefore, the Councils did not change the Paperwork Reduction Act statement.

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 purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency environment. By establishing a standardized clause spelling out uniform rules, the rule effectively reduces the burden on small business. Additionally, the availability of Government departure centers in the United States will make it easier for small business to meet all the pre-departure requirements. The Councils believe that the rule will be helpful to small businesses and minimize any perceived burdens small businesses may encounter in the performance of the contract to which the rule applies.

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.* Although the final clause requires contractors to maintain a current list of all employees in the area of operations in support of the military force, the Councils believe that these requirements are usual and customary and do not exceed what a contractor would maintain in the normal course of business.

List of Subjects in 48 CFR Parts 2, 7, 12, 25, and 52

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 7, 12, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 12, 25, 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 definitions ''Chief of mission'', ''Combatant commander'', ''Designated operational area'', and ''Supporting a diplomatic or consular mission'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96–465) to be temporarily in charge of such a mission or office.

* * * * *

Combatant commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

* * * * *

Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

* * * * *

Supporting a diplomatic or consular mission means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.104 by revising paragraph (a) to read as follows:

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area or supporting a diplomatic or consular mission, the planner shall also consider inclusion of the combatant commander or chief of mission, as appropriate. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

* * * * *

■ 4. Amend section 7.105 by—

■ a. Revising paragraph (b)(13)(i);

■ b. Removing from paragraph (b)(19)(vi) the word ''and'';

■ c. Redesignating paragraph (b)(19)(vii) as paragraph (b)(19)(viii); and

■ d. Adding a new paragraph (b)(19)(vii) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(13) *Logistics consideration.* Describe—(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3), support for contracts to be performed in a designated operational area or supporting a diplomatic or consular mission (see 25.301–3); and distribution of commercial items;

* * * * *

(19) * * *

(vii) Special requirements for contracts to be performed in a designated operational area or supporting a diplomatic or consular mission; and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 5. Amend section 12.301 by revising paragraph (d) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301–4.

* * * * *

PART 25—FOREIGN ACQUISITION

■ 6. Revise section 25.000 to read as follows:

25.000 Scope of part.

(a) This part provides policies and procedures for—

(1) Acquisition of foreign supplies, services, and construction materials; and

(2) Contracts performed outside the United States.

(b) It implements the Buy American Act, trade agreements, and other laws and regulations.

25.002 [Amended]

■ 7. Amend the table in section 25.002 in the third row titled 25.3 as follows:

■ a. In the second column by removing ''[Reserved]'' and adding ''Contracts Performed Outside the United States'' in its place;

■ b. In the fourth and sixth columns removing ''—'' and adding ''X'' in its place; and

■ c. In the eighth column adding ''X''.

■ 8. Add Subpart 25.3 to read as follows:

Subpart 25.3—Contracts Performed Outside the United States

Sec.

25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.
25.301–1 Scope.
25.301–2 Government support.
25.301–3 Weapons.
25.301–4 Contract clause.

Subpart 25.3—Contracts Performed Outside the United States

25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

25.301–1 Scope.

(a) This section applies to contracts requiring contractor personnel to perform outside the United States—

(1) In a designated operational area during—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations or military exercises, when designated by the combatant commander; or

(2) When supporting a diplomatic or consular mission—

(i) That has been designated by the Department of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*); or

(ii) That the contracting officer determines is a post at which application of the clause at FAR 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

(b) Any of the types of operations listed in paragraph (a)(1) of this section may include stability operations such as—

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

(c) This section does not apply to personal services contracts (see FAR 37.104), unless specified otherwise in agency procedures.

25.301–2 Government support.

(a) Generally, contractors are responsible for providing their own logistical and security support, including logistical and security support for their employees. The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(b) The contracting officer shall specify in the contract, and in the solicitation if possible, the exact support to be provided, and whether this

support is provided on a reimbursable basis, citing the authority for the reimbursement.

25.301–3 Weapons.

The contracting officer shall follow agency procedures and the weapons policy established by the combatant commander or the chief of mission when authorizing contractor personnel to carry weapons (see paragraph (i) of the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States).

25.301–4 Contract clause.

Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, in solicitations and contracts, other than personal service contracts with individuals, that will require contractor personnel to perform outside the United States—

(a) In a designated operational area during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander; or

(b) When supporting a diplomatic or consular mission—

(1) That has been designated by the Department of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*); or

(2) That the contracting officer determines is a post at which application of the clause FAR 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, is appropriate.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Add section 52.225–19 to read as follows:

52.225–19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.

As prescribed in 25.301–4, insert the following clause:

Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States (Mar 2008)

(a) *Definitions.* As used in this clause—

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Pub. L. 96–465) to be temporarily in charge of such a mission or office.

Combatant commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

Supporting a diplomatic or consular mission means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a chief of mission.

(b) *General.* (1) This clause applies when Contractor personnel are required to perform outside the United States—

(i) In a designated operational area during—

(A) Contingency operations;

(B) Humanitarian or peacekeeping operations; or

(C) Other military operations; or military exercises, when designated by the Combatant Commander; or

(ii) When supporting a diplomatic or consular mission—

(A) That has been designated by the Department of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*); or

(B) That the Contracting Officer has indicated is subject to this clause.

(2) Contract performance may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, and in accordance with paragraph (i)(3) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when use of such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in the contract or with their job description and terms of employment.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* Unless specified elsewhere in the contract, the Contractor is responsible for all logistical and security support required for Contractor personnel engaged in this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel in the designated operational area or supporting the diplomatic or consular mission are familiar with and comply with, all applicable—

(1) United States, host country, and third country national laws;

(2) Treaties and international agreements;

(3) United States regulations, directives, instructions, policies, and procedures; and

(4) Force protection, security, health, or safety orders, directives, and instructions issued by the Chief of Mission or the Combatant Commander; however, only the Contracting Officer is authorized to modify the terms and conditions of the contract.

(e) *Preliminary personnel requirements.* (1) Specific requirements for paragraphs (e)(2)(i) through (e)(2)(vi) of this clause will be set forth in the statement of work, or elsewhere in the contract.

(2) Before Contractor personnel depart from the United States or a third country, and before Contractor personnel residing in the host country begin contract performance in the designated operational area or supporting the diplomatic or consular mission, the Contractor shall ensure the following:

(i) All required security and background checks are complete and acceptable.

(ii) All personnel are medically and physically fit and have received all required vaccinations.

(iii) All personnel have all necessary passports, visas, entry permits, and other documents required for Contractor personnel to enter and exit the foreign country, including those required for in-transit countries.

(iv) All personnel have received—

(A) A country clearance or special area clearance, if required by the chief of mission; and

(B) Theater clearance, if required by the Combatant Commander.

(v) All personnel have received personal security training. The training must at a minimum—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract. Isolated personnel are military or civilian personnel separated from their unit or organization in an environment requiring them to survive, evade, or escape while awaiting rescue or recovery.

(vii) All personnel who are U.S. citizens are registered with the U.S. Embassy or Consulate with jurisdiction over the area of operations on-line at *http://www.travel.state.gov*.

(3) The Contractor shall notify all personnel who are not a host country national or ordinarily resident in the host country that—

(i) If this contract is with the Department of Defense, or the contract relates to supporting the mission of the Department of Defense outside the United States, such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the

United States (see the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 *et seq.*);

(ii) Pursuant to the War Crimes Act, 18 U.S.C. 2441, Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States; and

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of United States diplomatic, consular, military or other United States Government missions outside the United States (18 U.S.C. 7(9)).

(f) *Processing and departure points.* The Contractor shall require its personnel who are arriving from outside the area of performance to perform in the designated operational area or supporting the diplomatic or consular mission to—

(1) Process through the departure center designated in the contract or complete another process as directed by the Contracting Officer;

(2) Use a specific point of departure and transportation mode as directed by the Contracting Officer; and

(3) Process through a reception center as designated by the Contracting Officer upon arrival at the place of performance.

(g) *Personnel data.* (1) Unless personnel data requirements are otherwise specified in the contract, the Contractor shall establish and maintain with the designated Government official a current list of all Contractor personnel in the areas of performance. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate system to use for this effort.

(2) The Contractor shall ensure that all employees on this list have a current record of emergency data, for notification of next of kin, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.* (1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The _____ [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc,*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.* (1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.* (1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.* (1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee—

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2)(i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with 10 U.S.C. 1486, the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

(1) In a designated operational area during—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission—

(i) That has been designated by the Department of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*); or

(ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)

[FR Doc. E8–3364 Filed 2–27–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 10, 12, and 25

[FAC 2005–24; FAR Case 2006–016; Item II; Docket 2008–0001; Sequence 2]

RIN 9000–AK70

Federal Acquisition Regulation; FAR Case 2006–016, Numbered Notes for Synopses

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 update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (hereafter referred to as ''Notes'').

DATES: *Effective Date:* March 31, 2008

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 2005–24, FAR case 2006–016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 10964, March 12, 2007, requesting comments on amending the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Notes in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication. The comment period closed May 11, 2007. Four sources submitted comments on the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided below:

Comment A: One commenter noted that the Notes were helpful when the buyer fails to provide the required information in the body of the synopsis and stated there should be more drop-down boxes to replace the Notes in order to get more standardized synopses.

Response: Drop-down menus are provided only for those information elements that are mandatory, regardless of the synopsis action and procurement requirement (e.g., classification code, country code, and set-aside code) and that are conducive to incorporation in such menus. Incorporating all potential information that might be relevant to a synopsis into the form of drop-down menus would make the FedBizOpps design lengthy, cumbersome and costly to implement and maintain. The Councils believe that information formerly contained in the Numbered Notes that is valuable to potential offerors should be included in full text in the body of the synopsis where it can be fully explained as it pertains to the proposed acquisition.

Comment B: Another commenter recommended additional language in FAR 5.207 or additional drop-down boxes in FedBizOpps for six specific former Notes:

(1) Note 8: Recommended a drop-down box and language in FAR 5.207 addressing access to data designated as Militarily Critical Technical Data.

Response: Information similar to that contained in this Note is valuable to potential bidders and offerors and should be placed in the body of the synopsis. Buying offices that knew previously to include this Note will know now to include instructions regarding this certification. There is no reference to militarily critical technical data in the FAR as this requirement is unique to DoD procurement; therefore, language in FAR 5.207 or a drop down menu in FedBizOpps is not deemed appropriate.

(2) Note 12: The commenter noted the proposed rule language to be added to FAR 52.207(c)(13) addressing Trade Agreement requirements, but also recommended including the suggested notices as choices in drop-down boxes in FedBizOpps.

Response: The proposed FAR 52.207(c)(13) revision provides exact language appropriate for inclusion in the body of the synopsis. Use of a drop-down menu is not deemed appropriate.

(3) Note 13: The commenter agreed with deletion of the Note, but recommended adding language to FAR 5.207 to require the synopsis to address any restrictions on competition.

Response: This Note referred to restrictions on competition in accordance with FAR 6.302–3; however, FAR 5.202(a)(10) provides for an exception to publishing a synopsis in that case. Further, restrictions on competition for other reasons are already covered at 5.207(c)(14).

(4) Note 22: The commenter recommended including the language from the current Note as a drop-down box selection in FedBizOpps.

Response: This Note refers to single/sole source intentions pursuant to FAR 6.302. Rather than relying on a drop down menu with a generic statement and no further explanation, the Councils believe that detailed rationale for the lack of competition should be placed in the body of the synopsis, as currently required by 5.207(c)(14).

(5) Note 23: The commenter recommended including the language from the current Note (updated as necessary) as a drop-down box selection in FedBizOpps.

Response: Information contained in this Note pertains to qualification requirements and should be placed in the body of the synopsis, where tailored language can explain the type of qualification requirement. Use of a drop-down menu is not deemed appropriate.

(6) Note 24: The commenter recommended including the language from the current Note as a drop-down box selection in FedBizOpps.

Response: This Note is an extensive discussion of Brooks Act requirements regarding architect-engineer offerors. FAR 36.603(b) provides guidance to contracting officers on qualification data submission requirements, and based upon value to potential offerors, appropriate tailored information should be placed in the body of the synopsis. Use of a drop-down menu is not deemed appropriate.

In summary, the purpose of the synopsis is to provide sufficient information for prospective respondents to determine their interest and capability regarding the pending solicitation. Therefore, information contained in the Notes has value to the synopsis. However, since there is no longer a need to restrict the content of a synopsis, the updated substance of these Notes should, at the discretion of the organization and as applicable to the solicitation, be placed in full text in the synopsis. No change to the proposed rule is required to satisfy this comment.

Comment C: One commenter questioned why we had retained the prohibition at 5.207(g) regarding posting cancellations of synopses or solicitations on FedBizOpps. The commenter suggested that the original reasons for this prohibition had possibly gone away with the transition from the hard copy Commerce Business Daily (CBD) to the electronic FedBizOpps and indicated that many contracting officers

were already violating this prohibition and posting cancellations there.

Response: The Councils agree. Research into the original rationale for this prohibition indicates it was part of the overall attempt by the Department of Commerce to limit the number and length of announcements on the CBD, due to space limitations and the cost of each announcement. The CBD format and cost are no longer obstacles, and the Department of Commerce indicates it would not be opposed to a change in this area. To make it easier for potential bidders and offerors to know that a solicitation has been canceled and, thereby, to save the cost and time that would go into useless offers without such knowledge, the Councils have agreed to new language at FAR 5.207(f) making it permissive for contracting officers to post cancellations on FedBizOpps.

Comment D: A final commenter indicated that there is confusion as to what is being sought from industry in Note 22, where the Note states ''Interested parties may identify their interest and capability to respond to the requirement or submit proposals'' in response to a sole source synopsis. He noted that, at the point in time when the synopsis is published, there is no solicitation available, and therefore, using the standard FAR definition, a proposal cannot be submitted. He suggested clarifying in the final rule that a submission identifying interest and capability to submit a proposal would be adequate.

Response: The Councils agree. In researching pertinent FAR sections, we noted that 5.207(c)(15) suggested inserting a statement in the synopsis that all responsible sources may submit '' * * * a bid, proposal, or quotation which shall be considered by the agency.'' Further, 6.302–1(d)(2) currently states only that '' * * * the notices required by 5.201 shall have been published and any bids and proposals must have been considered.'' These references have been revised to be consistent and to allow ''capability statements'' to be added to the list of responses from industry.

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 it makes no significant change to the policy for the synopses of proposed contract actions.

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 5, 6, 10, 12, and 25

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, 10, 12, and 25 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 6, 10, 12, and 25 continue 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 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.203 by revising the last sentence of the introductory text of paragraph (a) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) * * * The notice must be published at least 15 days before issuance of a solicitation, or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.302, except that, for acquisitions of commercial items, the contracting officer may—

* * * * *

■ 3. Amend section 5.205 by revising the fifth sentence following the paragraph heading of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Advanced notices must be entitled ''Research and Development Sources Sought'' and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. * * *

* * * * *

■ 4. Amend section 5.207 by—

■ a. Removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(19) as (a)(4) through (a)(18) respectively;

■ b. Revising the newly redesignated paragraph (a)(9);

■ c. Revising paragraphs (c)(13), (c)(14), (c)(15), and (d);

■ d. Removing paragraph (e), and redesignating paragraphs (f) and (g) as (e) and (f), respectively; and

■ e. Revising the newly redesignated paragraph (f).

The revised text reads as follows:

5.207 Preparation and transmittal of synopses.

(a) * * *

(9) Closing Response Date.

* * * * *

(c) * * *

(13)(i) If the solicitation will include the FAR clause at 52.225–3, Buy American Act-Free Trade Agreements-Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to Free Trade Agreements.''

(ii) If the solicitation will include the FAR clause at 52.225–5, Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.''

(iii) If the solicitation will include the FAR clause at 52.225–11, Buy American Act-Construction Materials under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: ''One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.''

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.

(15)(i) Except when using the sole source authority at 6.302–1, insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(ii) When using the sole source authority at 6.302–1, insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.

* * * * *

(d) *Set-asides.* When the proposed acquisition provides for a total or partial small business program set-aside, or when the proposed acquisition provides

for a local area set-aside (see Subpart 26.2), the contracting officer shall identify the type of set-aside in the synopsis and in the solicitation.

* * * * *

(f) *Notice of solicitation cancellation.* Contracting officers may publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE.

PART 6—COMPETITION REQUIREMENTS

■ 5. Amend section 6.302–1 by revising paragraph (d)(2) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(d) * * *

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

PART 10—MARKET RESEARCH

10.002 [Amended]

■ 6. Amend section 10.002 in paragraph (d)(2) by removing ''(see 5.207(e))''.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.603 [Amended]

■ 7. Amend section 12.603 by removing paragraph (c)(2) (xv), and redesignating paragraphs (c)(2)(xvi) and (c)(2) (xvii) as paragraphs (c)(2)(xv) and (c)(2)(xvi), respectively.

PART 25—FOREIGN ACQUISITION

■ 8. Amend section 25.408 by revising paragraph (a)(2) to read as follows:

25.408 Procedures.

(a) * * *

(2) Comply with the requirements of 5.207, Preparation and transmittal of synopses;

* * * * *

[FR Doc. E8–3379 Filed 2–27–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–24; FAR Case 2007–016; Item III]
[Docket 2008–0001; Sequence 3]

RIN 9000–AK89

Federal Acquisition Regulation; FAR Case 2007–016, Trade Agreements—New Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to issue an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative (USTR).

DATES: *Effective Date:* February 28, 2008.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before April 28, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–24, FAR case 2007–016, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2007–016'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2007–016. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2007–016'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–24, FAR case 2007–016, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov.* Please include your name and company name (if any) inside the document.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2005–24, FAR Case 2007–016.

SUPPLEMENTARY INFORMATION:

A. Background

Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The USTR, in the **Federal Register**, at 72 FR 71166, December 14, 2007 and 72 FR 73904, December 28, 2007, specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA FTAs	$194,000	$194,000	$7,443,000
Australia FTA	67,826	67,826	7,443,000
Bahrain FTA	194,000	194,000	8,817,449
CAFTA–DR (El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua)	67,826	67,826	7,443,000
Chile FTA	67,826	67,826	7,443,000
Morocco FTA	194,000	194,000	7,443,000
NAFTA:			
—Canada	25,000	67,826	8,817,449
—Mexico	67,826	67,826	8,817,449
Singapore FTA	67,826	67,826	7,443,000
Israeli Trade Act	50,000		

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

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, we have not performed an Initial Regulatory Flexibility Analysis. We invite comments from small business concerns and other interested parties on this issue. The Councils will also consider comments from small entities concerning the affected FAR subparts 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties should submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2007–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply, because the interim rule affects the prescriptions for use of the certifications at 52.225–4 (OMB Control 9000–0130), 52.225–6 (OMB Control 9000–0025), and the clauses at 52.225–9 and 52.225–11 (OMB Control 9000–0141), which contain information collection requirements approved under the specified OMB control numbers by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration, that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This interim rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the USTR. This action is necessary because the new thresholds are scheduled to go into effect January 1, 2008. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, 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 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by:

■ a. Removing from paragraph (b)(3) ''$64,786'' and adding ''$67,826'' in its place; and

■ b. Removing from paragraph (b)(4) ''$193,000'' and adding ''$194,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 3. Amend section 25.202 in paragraph (c) by removing ''$7,407,000'' and adding ''$7,443,000'' in its place.

■ 4. Amend section 25.402 by revising the table that follows paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade Agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA FTAs	$194,000	$194,000	$7,443,000
Australia FTA	67,826	67,826	7,443,000
Bahrain FTA	194,000	194,000	8,817,449
CAFTA–DR (El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua)	67,826	67,826	7,443,000
Chile FTA	194,000	194,000	7,443,000
Morocco FTA	25,000	67,826	8,817,449
NAFTA:			
—Canada	67,826	67,826	8,817,449
—Mexico	67,826	67,826	7,443,000
Singapore FTA	50,000		
Israeli Trade Act.			

25.1101 [Amended]

■ 5. Amend section 25.1101 by:

■ a. Removing from paragraph (b)(1)(i)(A) ''$193,000'' and adding ''$194,000'' in its place;

■ b. Removing from paragraphs (b)(1)(iii) and (b)(2)(iii) ''$64,786'' and adding ''$67,826'' in its place; and

■ c. Removing from paragraphs (c)(1) and (d) ''$193,000'' and adding ''$194,000'' in its place.

25.1102 [Amended]

■ 6. Amend section 25.1102 by:

■ a. Removing from paragraphs (a) and (c) ''$7,407,000'' and adding ''$7,443,000'' in its place; and

■ b. Removing from paragraphs (c)(3) and (d)(3) ''$7,407,000'' and ''$8,422,165'' and adding ''7,443,000'' and ''$8,817,449'', respectively, in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(17) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (FEB 2008)

* * * * *

(b) * * *

(17) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).

* * * * *

■ 8. Amend section 52.213–4 by revising the date of the clause and the first sentence in paragraph (b)(1)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (FEB 2008)

* * * * *

(b) * * *

(1) * * *

(i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).

* * * * *

■ 9. Amend section 52.222–19 by:

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(3) ''$64,786'' and adding ''$67,826'' in its place; and

■ c. Removing from paragraph (a)(4) ''$193,000'' and adding ''$194,000'' in its place.

The revised text reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (FEB 2008)

* * * * *

[FR Doc. E8–3390 Filed 2–27–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25 and 52

[FAC 2005–24; FAR Case 2006–028; Item IV; Docket 2008–0001; Sequence 4]

RIN 9000–AK77

Federal Acquisition Regulation; FAR Case 2006–028, New Designated Countries—Dominican Republic, Bulgaria, and Romania

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 to adopt the interim rule published in the **Federal Register** at 72 FR 46357, August 17, 2007, as a final rule without change. This final rule amends the Federal Acquisition Regulation (FAR) to implement the Dominican Republic-Central America-United States Free Trade Agreement with respect to the Dominican Republic.

DATES: *Effective Date:* February 28, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–24, FAR case 2006–028.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule with request for comments in the **Federal Register** at 72 FR 46357, August 17, 2007. The comment period closed October 16, 2007. No public comments were received in response to the interim rule.

The interim rule amended FAR part 25 and the corresponding clauses in FAR part 52 to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) with respect to the Dominican Republic. Congress approved this trade agreement in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53). This trade agreement waives the applicability of the Buy American Act for some foreign supplies and construction materials from the Dominican Republic and specifies procurement procedures designed to ensure fairness in the acquisition of supplies and services.

The Dominican Republic has the same thresholds as the other CAFTA–DR countries ($67,826 for supply and service contracts, $7,443,000 for construction contracts).

The interim rule also added Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries wherever it appears, whether as a separate definition, part of the definition of designated countries, or as part of the list of countries exempt from the prohibition of acquisition of products produced by forced or indentured child labor (FAR parts 22.1503, 25.003, 52.222–19, 52.225–5, and 52.225–11).

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. Although the rule opens up Government procurement to the goods and services of Bulgaria, the Dominican Republic, and Romania, the Councils do not anticipate any significant economic impact on U.S. small businesses. No comments were received from small business concerns. Therefore, a Final Regulatory Flexibility Analysis was not performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0025, 9000–0130, 9000–0136, and 9000–0141 respectively. The final rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 22, 25, and 52 which was published at 72 FR 46357, August 17, 2007, is adopted as a final rule without change.

[FR Doc. E8–3386 Filed 2–27–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–24; FAR Case 2005–027; Item V; Docket 2006–0020; Sequence 9]

RIN 9000–AK60

Federal Acquisition Regulation; FAR Case 2005–027, FAR Part 30–CAS Administration

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 implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS).

DATES: Effective Date: March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–24, FAR case 2005–027.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 71 FR 58338, October 3, 2006 to make administrative corrections to FAR Part 30, ''CAS Administration,'' subsequent to the issuance of the final rule (FAR case 1999–025) at 70 FR 11743, March 9, 2005. Among other changes, the Council's March 9, 2005 final rule streamlined the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices. The Councils received public comments in response to the proposed rule. The Councils' responses to the public comments received in response to the proposed rule follow.

The Use of Auditors and Other Technical Advisors

Comment: One commenter recommended elimination of the words ''as appropriate'' from FAR 30.601(c) since it would be imprudent for the CFAO not to request and consider the expert advice of the contract auditor in performing CAS administration. The commenter also recommended that the phrase be eliminated from FAR 1.602–2(c) for consistency.

Response: Nonconcur. The Councils agree that it is generally prudent for the CFAO to consider the advice of auditors and other specialists in performing contract administration responsibilities. However, the Councils believe the CFAO is in the best position to determine the need for technical assistance on a particular issue, as well as the nature of the technical assistance required. Accordingly, it may not be necessary for the CFAO to obtain audit or technical advice in all cases in order to effectively and responsibly perform his/her duties. In those cases, requiring the CFAO to obtain such advice would infringe on the CFAO's authority and may unnecessarily delay the administration of contracts. Any revision to FAR 1.602–2(c) would be beyond the purview of this case.

Cost Impacts of CAS Noncompliances That Affect Both Cost Estimates and Cost Accumulations

Comment: One commenter recommended that contractors be required to submit separate cost impacts when a single noncompliance affects both cost estimates and cost accumulations (one for the impact on cost estimating and another for the cost impact on cost accumulations). The commenter also recommended that those separate cost impacts be administered separately, rather than considered as a whole. The commenter opined that while ''it might be convenient for the contractor to combine the cost impacts, it could make it difficult for the Government to analyze the noncompliance(s) and to determine whether the cost impacts are material or not.''

Response: Nonconcur. The Councils believe that the recommendation would not comply with paragraph (a)(5) of the clause at 48 CFR 9903.201–4(a) and 48 CFR 9903.201–6 which require the Government to recover the increased costs in the aggregate of a noncompliance. These provisions are intended to ensure the Government's full recovery of any increased costs in the aggregate while also prohibiting the recovery of more than the increased costs in the aggregate. The recommendation would require the calculation and recovery of the impact on cost estimates separately and apart from the calculation and recovery of the impact on cost accumulations, when both are the result of a single noncompliance. The Councils believe that the separate consideration of the impacts on cost estimating and on cost accumulations may result in the Government's recovery of an amount which is either more or less than the cost impact in the aggregate of a particular noncompliance.

As it is currently written, FAR 30.605(h) provides a systematic approach to the calculation of the increased or decreased costs in the aggregate of a noncompliance that affects both cost estimates and cost accumulations. Pursuant to FAR 30.605(h)(6), the cost impact of the cost estimating noncompliance (calculated in accordance with FAR 30.605(h)(3)) is combined with the cost impact of the cost accumulation noncompliance (calculated in accordance with FAR 30.605(h)(4)) and the impact on profit and fee (calculated in accordance with FAR 30.605(h)(5)), in order to arrive at the cost impact in the aggregate of a noncompliance that affects both cost estimates and cost accumulations. The Councils believe that this approach to determining the cost impact of a noncompliance affecting both cost estimates and cost accumulations complies with the CAS Board's Rules and Regulations.

Combining Cost Impacts of Multiple Unilateral Cost Accounting Practice Changes

Comment: One commenter recommended that the combination of cost impacts resulting from unilateral cost accounting practice changes be permitted as prescribed in DoD CAS Working Group Paper 76–8, Interim Guidance on the Use of the Offset Principle in Contract Price Adjustments Resulting from Accounting Changes. The commenter ''disagrees with the Councils' interpretation of the statute

and believes that current statutory language permits aggregation of the impact of a unilateral change affecting more than one cost accounting practice rather than prohibiting the combining of cost impacts for two or more unilateral changes'' and opined that the Councils' reading of 41 U.S.C. 422(h)(1)(B) is ''overly narrow.''

Response: Nonconcur. The Councils have previously considered the commenter's recommendation in the publication of their final rule amending FAR Part 30, effective April 8, 2005 at 70 FR 11743, March 9, 2005. The Councils' comments in the discussion of Public Comments, Item 35, follow:

(c) *Combining unilateral changes and/or noncompliances.* When the individual cost-impact of each unilateral change and each noncompliance is increased costs in the aggregate, the Councils agree that the change and noncompliance may be combined for administrative ease in resolving cost-impacts, as indicated at FAR 30.606(a)(3)(ii). Such combinations can only be made by mutual agreement of both parties.

The Councils further believe that combining the cost-impacts of unilateral changes and/or noncompliances must be precluded if any of the individual changes or noncompliances involved results in decreased costs in the aggregate. When there are two or more unilateral changes/ noncompliances, some with increased costs and others with decreased costs, combining the cost-impact of those changes does not comply with the statutory requirement that the Government recover the increased costs in the aggregate for each unilateral change/ noncompliance. There is no statutory provision that permits offsetting the cost-impact of one unilateral change/ noncompliance with the cost-impact of any other unilateral change/ noncompliance.

As stated above, the Councils found that combining multiple cost impacts, where one or more of those cost impacts is decreased costs to the Government, does not comply with the CAS Board's requirement that the Government recover the increased costs in the aggregate for each unilateral change. The 1988 statute (41 U.S.C. 422(h)(3)) and subsequent revisions to 48 CFR 9903.201–4, both of which added the words ''in the aggregate'' in describing the amounts to be recovered as a result of a unilateral cost accounting practice change or noncompliance, effectively supersede Working Group Paper 76–8 and preclude the combination of the cost impacts of multiple unilateral cost accounting practice changes.

The Councils agree with the commenter that the Councils have construed the CAS narrowly. The Councils believe that to do otherwise would be a violation of 41 U.S.C 422(f) since that statute provides that only the CAS Board may interpret their rules, regulations and standards. Accordingly, the Councils have an obligation to construe the CAS as narrowly as possible when promulgating regulations so as to refrain from interpreting the CAS Board's rules and regulations, and second guessing the CAS Board's intent.

At its July 5, 2005 meeting, the CAS Board instructed its staff to establish a working group to evaluate whether revisions or interpretations to its rules and regulations are needed regarding the term ''increased costs in the aggregate'' and to consider how increased costs in the aggregate are to be computed when a contractor makes multiple accounting changes that take effect on the same date. After the CAS Board has considered these issues, the Councils may take additional actions to implement any changes to the CAS Board's rules and regulations.

Availability of Funds

Comment: One commenter recommended that the provision at FAR 30.603–2(b)(3)(iii) be deleted since the lack of available funds to pay any increased costs may compel CFAOs to deny virtually all requests that cost accounting practice changes be determined desirable.

Response: Nonconcur. The Councils believe the consideration of funding availability at FAR 30.603–2(b)(3)(iii) is necessary to ensure that CFAOs act within their authority in obligating the Government and to avoid potential noncompliance with the requirements of the Anti-Deficiency Act (31 U.S.C. 1341) in determining whether a contractor's cost accounting practice change is desirable. In instances where a CFAO's determination that a cost accounting practice change is desirable may obligate the Government to pay increased costs, it is incumbent upon the CFAO to ensure that funds are available on affected contracts to pay those increased costs.

Definition of ''Increased Costs''

Comment: One commenter opined that the ''Councils have exceeded their authority by including in FAR Part 30 language that in essence defines 'increased costs' by indicating what costs can and cannot be combined'' and that only the CAS Board has the authority to define the term.

Response: Nonconcur. The Councils believe they have taken actions that are consistent with the CAS Board's definition of ''increased costs'' at 48 CFR 9903.306, and have not exceeded their authorities or redefined the term ''increased costs'' by their narrow application of the Board's Rules and Regulations, as asserted by the commenter. In accordance with their narrow reading of the CAS, the Councils believe that the CAS Board's consistent use of the terms ''a change'' and ''the change'' in describing cost accounting practice changes dictates that each such change, including the related cost impact, must be considered separately.

As discussed in the comments above, the CAS Board is taking steps to determine whether or not additional rules and regulations are needed to clarify the meaning of the term ''increased costs in the aggregate.'' In the interim, the Councils have adopted regulations that reflect their understanding of the CAS Board's existing rules and regulations.

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 contracts and subcontracts awarded to small businesses are exempt from the Cost Accounting Standards.

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 30 and 52

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 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 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Amend section 30.001 by—

■ a. Removing from the definition ''Cognizant Federal agency official (CFAO)'' the word ''administer'' and adding ''administer the'' in its place;
■ b. Removing from the definition ''Desirable change'' the word ''unilateral'' and adding ''compliant'' in its place; and
■ c. Revising paragraph (1) of the definition ''Required change'' to read as follows:

30.001 Definitions.

* * * * *

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently becomes applicable to an existing CAS-covered contract or subcontract due to the receipt of another CAS-covered contract or subcontract; or

* * * * *

■ 3. Amend section 30.601 by removing from paragraph (b) ''52.230–6(b)'' and adding ''52.230–6(l), (m), and (n)'' in its place; and by adding paragraph (c) to read as follows:

30.601 Responsibility.

* * * * *

(c) In performing CAS administration, the CFAO shall request and consider the advice of the auditor as appropriate (see 1.602–2).

■ 4. Amend section 30.602 by revising paragraph (d) to read as follows:

30.602 Materiality.

* * * * *

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall follow the applicable provisions in 30.603, 30.604, 30.605, and 30.606.

■ 5. Amend section 30.604 by—
■ a. Removing from the introductory text of paragraphs (b) and (f) '', with the assistance of the auditor,'';
■ b. Revising the introductory text of paragraph (g);
■ c. Revising paragraph (h)(4); and
■ d. Removing from paragraph (i)(1) ''With the assistance of the auditor, estimate'' and adding ''Estimate'' in its place.

The revised text reads as follows:

30.604 Processing changes to disclosed or established cost accounting practices.

* * * * *

(g) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(4) For required or desirable changes, negotiate an equitable adjustment as provided in the Changes clause of the contract.

* * * * *

■ 6. Amend section 30.605 by—
■ a. Removing from the introductory text of paragraph (c)(2) '', with the assistance of the auditor,'';
■ b. Revising the introductory text of paragraph (f);
■ c. Removing from paragraph (h)(5) ''; and'' and adding '';'' in it place; and
■ d. Redesignating paragraph (h)(6) as (h)(7) and adding a new paragraph (h)(6).

The revised text reads as follows:

30.605 Processing noncompliances.

* * * * *

(f) *Detailed cost-impact proposal.* If the contractor is required to submit a DCI proposal, the CFAO shall promptly evaluate the DCI proposal and follow the procedures at 30.606 to negotiate and resolve the cost impact. The DCI proposal—

* * * * *

(h) * * *

(6) Determine the cost impact of each noncompliance that affects both cost estimating and cost accumulation by combining the cost impacts in paragraphs (h)(3), (h)(4), and (h)(5) of this section; and

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.230–6 by—
■ a. Revising the date of the clause; and
■ b. Amending paragraph (a) by—
■ i. In the definition ''Flexibly-priced contracts and subcontracts'' by revising paragraph (1); and
■ ii. In the definition ''Required change'' revising paragraph (1).

The revised text reads as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)

* * * * *

(a) * * *

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.203–1(a)(2), 16.204, 16.205, and 16.206;

* * * * *

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

* * * * *

(End of clause)

[FR Doc. E8–3371 Filed 2–27–08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2005–24; FAR Case 2007–004; Item VI; Docket 2008–0001; Sequence 5]

RIN 9000–AK88

Federal Acquisition Regulation; FAR Case 2007–004, Common Security Configurations

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 require agencies to include common security configurations in new information technology acquisitions, as appropriate. The revision reduces risks associated with security threats and vulnerabilities and will ensure public confidence in the confidentiality, integrity, and availability of Government information. This final rule requires agency contracting officers to consult with the requiring official to ensure the proper standards are incorporated in their requirements.

DATES: *Effective Date:* March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–24, FAR case 2007–004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to include a requirement in Federal contracts to ensure common security configurations are used when acquiring information technology, as required by the Office of Management and Budget Memorandum M–07–18 dated June 1, 2007.

Common security configurations provide a baseline of security, reduce risk from security threats and vulnerabilities, and save time and resources. This allows agencies to improve system performance, decrease operating costs, and ensure public confidence in the confidentiality, integrity, and availability of Government information.

This final rule will assist agency adoption of common security configurations by ensuring affected information technology providers (*i.e.*, those who provide products for which the National Institute of Standards and Technology (NIST) has established a common security configuration) incorporate common security configurations when delivering agencies their products.

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 39 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, et seq. (FAC 2005–24, FAR case 2007–004), in correspondence.

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 Part 39

Government procurement.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 1. The authority citation for 48 CFR part 39 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).

■ 2. Amend section 39.101 by revising paragraph (d) to read as follows:

39.101 Policy.

* * * * *

(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's Web site at *http://checklists.nist.gov*. Agency contracting officers should consult with the requiring official to ensure the appropriate standards are incorporated.

[FR Doc. E8–3367 Filed 2–27–08; 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 11]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–24; 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) 2005–24 which amend the 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 2005–24 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Diedra Wingate, FAR Secretariat, (202) 208–4052. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–24

Item	Subject	FAR case	Analyst
I	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission.	2005–011	Woodson.
II	Numbered Notes for Synopses	2006–016	Woodson.
III	Trade Agreements—New Thresholds (Interim)	2007–016	Murphy.
IV	New Designated Countries—Dominican Republic, Bulgaria, and Romania	2006–028	Murphy.
V	FAR Part 30—CAS Administration	2005–027	Loeb.
VI	Common Security Configurations	2007–004	Davis.

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 2005–24 amends the FAR as specified below:

Item I—Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission (FAR Case 2005–011)

This final FAR rule addresses the issues of contractor personnel that are providing support to the mission of the United States Government in a designated operational area or supporting a diplomatic or consular mission outside the United States, but are not authorized to accompany the U.S. Armed Forces. This final FAR rule clarifies that contractor personnel are only authorized to use deadly force in self-defense or in the performance of security functions, when use of such force reasonably appears necessary to execute their security mission. The purpose and effect of the rule is to relieve the perceived burden on contractors operating without consistent guidance or a standardized clause in a contingency operation or otherwise risky environment.

Item II—Numbered Notes for Synopses (FAR Case 2006–016)

This final rule amends the Federal Acquisition Regulation (FAR) to update and clarify policy for synopses of proposed contract actions and to delete all references to Numbered Notes (Notes) in the FAR and Federal Business Opportunities (FedBizOpps) electronic publication. The prescriptions for Numbered Notes were deleted from the FAR in a former FAR case and transitioned from the Commerce Business Daily to FedBizOpps actions. This transition resulted in other synopses-related changes that were not captured in the associated FAR language revision. Additionally, the transition to the electronic FedBizOpps publication for solicitation and other announcements rendered these Notes obsolete or outdated.

Item III—Trade Agreements—New Thresholds (FAR Case 2007–016) (Interim)

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

Item IV—New Designated Countries—Dominican Republic, Bulgaria, and Romania (FAR Case 2006–028)

This final rule converts, without change, the interim rule published in the **Federal Register** at 72 FR 46357, August 17, 2007. No comments were received in response to the interim rule. The effective date of the rule was August 17, 2007. The interim rule allowed contracting officers to purchase the goods and services of the Dominican Republic without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The threshold for applicability of the Dominican Republic-Central America-United States Free Trade Agreement is $67,826 for supplies and services (the same as other Free Trade Agreements to date except Morocco, Bahrain, Israel, and Canada) and $7,443,000 for construction (the same as all other Free Trade Agreements to date except NAFTA and Bahrain). The interim rule also added Bulgaria and Romania to the list of World Trade Organization Government Procurement Agreement countries wherever it appears.

Item V—FAR Part 30—CAS Administration (FAR Case 2005–027)

This final rule amending the Federal Acquisition Regulation (FAR) to implement revisions to the regulations related to the administration of the Cost Accounting Standards (CAS). Among other changes, the final rule streamlines the process for submitting, negotiating, and resolving cost impacts resulting from a change in cost accounting practice or noncompliance with stated practices.

Item VI—Common Security Configurations (FAR Case 2007–004)

This final rule amends the Federal Acquisition Regulation to require agencies to include common security configurations in new information technology acquisitions, as appropriate. The revision reduces risks associated with security threats and vulnerabilities and will ensure public confidence in the confidentiality, integrity, and availability of Government information. This final rule requires agency contracting officers to consult with the requiring official to ensure the proper standards are incorporated in their requirements.

Dated: February 19, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–3363 Filed 2–27–08; 8:45 am]

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Vol. 73, No. 40

Thursday, February 28, 2008

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General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

6007–6418 1
6419–6570 4
6571–6832 5
6833–7186 6
7187–7460 7
7461–7656 8
7657–8002 11
8003–8184 12
8185–8586 13
8587–8786 14
8787–8994 15
8995–9170 19
9171–9438 20
9439–9654 21
9655–9934 22
9935–10122 25
10123–10378 26
10379–10642 27
10643–10970 28

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6867 (See Notice of February 6, 2008) 7459
7757 (See Notice of February 6, 2008) 7459
8220 6831

Executive Orders:
13250 (Revoked by 13461) 9437
13338 (Amended by 13460) 8991
13396 (See Notice of February 5, 2008) 7185
13399 (See 13460).....8991
13457 6415
13458 7181
13459 8003
13460 8991
13461 9437

Administrative Orders:
Memorandums:
Memorandum of February 14, 2008 9169
Memorandum of March 19, 2002 (Revoked by EO 13461).....9437
Notices:
Notice of February 6, 2008 7459
Presidential Determinations:
No. 2008-8 of January 22, 2008 6567
No. 2008-9 of January 28, 2008 6571
No. 2008-10 of January 29, 2008 6569
No. 2008-11 of February 11, 2008 10123
No. 2008-12 of February 13, 2008 10125

5 CFR

315 7187
550 7188
532 8587
752 7187
892 7188
950 8587
1201 .....6833, 10127
1203 10127
1207 6833
1208 10127
1209 10127
2423 8995

Proposed Rules:
300 6857

7 CFR

246 6577
301 .....6577, 9171, 9172
319 7189
457 7190
915 6834
932 7199
982 9000
989 9005
1951 8007

Proposed Rules:
51 10185
301 7679
930 9965
985 8825
1260 7226

8 CFR

270 10130
274 9010
274a 10130
280 10130
1274a 10130

Proposed Rules:
214 8230
215 8230
274a 8230

9 CFR

78 .....6007, 10137
94 9174

Proposed Rules:
201 .....7482, 7686

10 CFR

19 8588
20 8588
50 8588

Proposed Rules:
35 8830
50 7690
60 10187
63 10187
73 10187
74 10187
170 8508
171 8508

12 CFR

8 .....9012, 9625
201 7202
229 8787
620 8008
630 7461

Proposed Rules:
204 8009
209 8009
708a 10697
708b 10697

13 CFR

Proposed Rules:
121 10697
125 10697
127 10697

134 10697

14 CFR

25 ....7203, 8788, 8791, 9014, 9176, 10379
39 ....6008, 6419, 6578, 6582, 6584, 6586, 6590, 6592, 6594, 6596, 6598, 6601, 6838, 7657, 7659, 7661, 7663, 7666, 8185, 8187, 8589, 8591, 9178, 9181, 9655, 9659, 9661, 9663, 9666, 9668, 9670, 10139, 10643, 10645, 10647, 10649, 10650, 10652, 10655, 10658, 10660
47 10662
61 ....7034, 10662
63 10662
65 10662
71 ....6424, 6425, 7667, 7668, 8593, 8594, 8595, 8596, 8794, 8795, 9183, 9185, 9186, 9439, 9440, 9442, 9443, 9445, 9447, 9448, 9450, 9451, 9452, 9454
73 8598
91 ....7034, 10140
97 ....6841, 7461, 9935, 9937
135 ....7034, 8796
1266 10143

Proposed Rules:

33 9494
39 ....6618, 6620, 6622, 6627, 6629, 6631, 6634, 6636, 6638, 6640, 7484, 7486, 7488, 7489, 7492, 7494, 7690, 8247, 8248, 8831, 8833, 9053, 9055, 9235, 9239, 9497, 9500, 9502, 9965, 9968, 9970, 10188, 10698
47 10701
71 ....6056, 6057, 6058, 6060, 7228, 8628, 9059, 9060, 9062, 9063, 9504
73 9241

15 CFR

4 10380
740 10668
742 6603
744 6603
748 6603
774 6603

Proposed Rules:

2004 8629

16 CFR

1633 6842

Proposed Rules:

23 10190
432 10403

17 CFR

36 8599
40 8599
200 7205
202 6011
230 ....6011, 10592
232 10592
239 10592
240 6011
260 6011
270 6011

Proposed Rules:

210 ....7450, 8936
228 7450
229 ....7450, 8936
231 8936
239 10102
240 10102
241 8936
249 ....7450, 8976, 10102
274 8976

18 CFR

40 7368
157 8190

19 CFR

Proposed Rules:

4 6061
12 6061
18 6061
101 6061
103 6061
113 6061
122 6061
123 6061
141 6061
143 6061
149 6061
162 9010
192 6061
201 8836
210 8836

20 CFR

404 10381
405 10381
416 10381

Proposed Rules:

404 10715
405 10715
416 10715
655 8538

21 CFR

101 9938
184 8606
347 6014
510 8191
520 ....6607, 8192, 9455
522 ....6017, 8191
558 6018
606 7463
607 7463
610 7463
640 7463
1312 6843

Proposed Rules:

133 7692
880 7498

22 CFR

42 7670

Proposed Rules:

309 9709

24 CFR

Proposed Rules:

5 7170

25 CFR

502 6019
522 6019
559 6019
573 6019

26 CFR

1 ....7464, 8798
301 ....8193, 9188, 9672
702 8608

Proposed Rules:

1 ....7503, 9971, 9972, 10716
702 8632

28 CFR

0 8815
16 9947
68 10130

Proposed Rules:

58 ....6062, 6447

29 CFR

4022 8816
4044 8816

Proposed Rules:

29 7693
101 10199
102 10199
501 8538
780 8538
788 8538
825 7876
1615 9065
2550 10405
4010 9243

30 CFR

49 7636
75 7636
100 7206

Proposed Rules:

250 9506
253 9506
254 9506
256 ....6073, 9506

32 CFR

240 9949
903 9456

33 CFR

100 10381
110 6607
117 ....8193, 8817, 9190
165 6610
401 9950

Proposed Rules:

100 6859
110 ....8633, 8635
138 ....6642, 8250
165 ....6861, 7229, 7231

36 CFR

1253 6030

Proposed Rules:

7 10730
1190 6080
1191 6080

37 CFR

Proposed Rules:

1 9254

38 CFR

36 6294

Proposed Rules:

17 9068

39 CFR

20 ....6031, 9191
111 ....6032, 6033, 9197, 9199
3020 6426

Proposed Rules:

3001 6081

40 CFR

52 ....6034, 6427, 7465, 7468, 8194, 8197, 8200, 8818, 9201, 9203, 9206, 9459, 10150, 10383, 10670, 10673
63 ....7210, 8408
70 7468
75 8408
80 8202
81 8209
97 ....6034, 8408
180 ....6851, 7472, 8212, 9211, 9214, 9217, 9222, 9226, 10390, 10396, 10398
271 8610
272 8610
300 6613

Proposed Rules:

52 ....6451, 6657, 7234, 7504, 8018, 8026, 8250, 8251, 8637, 8837, 9259, 9260, 9506, 10201, 10203, 10730, 10731
55 10406
70 7504
80 8251
81 6863
97 10411
180 6867
260 10204
261 10204
262 10204
263 10204
264 10204
265 10204
271 8640
272 8640
300 6659

41 CFR

102-42 7475
102-118 9232

42 CFR

410 ....9672, 9860
411 ....9679, 9860
412 9860
413 9860
414 9860
416 9860
419 9860
433 9685
482 9860
485 9860
489 9679

Proposed Rules:

3 8112
400 6451
405 6451
410 6451
412 6451
413 6451
414 6451
440 9714
447 9727
457 9727
488 6451
494 6451

43 CFR

3130 6430

44 CFR

64 10155
65 7476

67 9699
Proposed Rules:
67 ....9740, 9750, 9754

45 CFR

261 6772
262 6772
263 6772
265 6772
1356 10338
1611 8218
Proposed Rules:
404 10210

46 CFR

Proposed Rules:
401 6085

47 CFR

0 ....8617, 9017, 9462
1 9017
2 9017
52 9463
61 9017
64 ....6041, 6444, 9031
73 ....7671, 9481, 9492, 9954, 10402, 10675
76 ....6043, 10675
80 9017
Proposed Rules:
1 ....6879, 6888, 8028
52 9507
73 ....7694, 8255, 9515
74 8255
76 ....6099, 8029, 10411, 10732

48 CFR

Ch. 1 ....10942, 10968
2 10943
5 10960
6 10960
7 10943
10 10960
12 ....10943, 10960
22 ....10962, 10964
25 ....10943, 10960, 10962, 10964
30 10965
39 10967
52 ....10943, 10962, 10964, 10965
Proposed Rules:
9901 8259
9903 8259
904 ....8260, 9071
952 9071
970 9071

49 CFR

217 8442
218 8442
223 6370
238 6370
367 10157
385 9233
395 9233
563 8408
578 9955
Proposed Rules:
375 9266
612 9075

50 CFR

17 ....8412, 8748, 9408, 10514
223 7616
226 7616
229 ....7674, 8625
622 ....7223, 7676, 8219, 10158
635 7479
648 9957
660 9960
679 ....6055, 7224, 7480, 8228, 8229, 8821, 8822, 9034, 9035, 9493, 9707, 10159, 10160, 10415
Proposed Rules:
14 9972
17 ....6660, 6684, 7236, 7237, 9078, 9755, 10218, 10860
223 6895
226 6895
665 6101
679 10562
680 8838

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 FEBRUARY 28, 2008

COMMERCE DEPARTMENT

Industry and Security Bureau

Expanded Authorization for Temporary Exports and Reexports of Tools of Trade to Sudan; published 2-28-08

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14; published 1-29-08

ENVIRONMENTAL PROTECTION AGENCY

Health and Safety Data Reporting:

Addition of Certain Chemicals; published 1-29-08

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Airbus Model A319 and A320 Series Airplanes; published 1-24-08

Boeing Model 727 Airplanes; published 1-24-08

Boeing Model 747-400, -400D, and -400F Series Airplanes; Boeing Model 757 Airplanes; and Boeing Model 767 Airplanes; published 1-24-08

Boeing Model 767 200 and 767 300 Series Airplanes; published 1-24-08

Cessna Aircraft Company 172 and 182 Series Airplanes; published 1-24-08

General Electric Company CF6 50, 80A1/A3, and 80C2A Series Turbofan Engines; published 1-24-08

McDonnell Douglas Model 717 200 Airplanes; published 1-24-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal Welfare:

Climatic and Environmental Conditions for Transportation of Warmblooded Animals Other Than Marine Mammals; comments due by 3-3-08; published 1-3-08 [FR E7-25530]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy Efficiency Program for Consumer Products:

Public Meeting and Availability of the Framework Document for Fluorescent Lamp Ballasts; comments due by 3-7-08; published 1-22-08 [FR E8-00938]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Compression-ignition marine engines at or above 30 liters per cylinder; emissions control; comments due by 3-6-08; published 12-7-07 [FR E7-23556]

Approval and Promulgation of Air Quality Implementation Plans:

Control of Volatile Organic Compound Emissions From Kraft Foods Global, Inc.; Richmond Bakery, Henrico County, VA; comments due by 3-3-08; published 1-31-08 [FR E8-01777]

Approval and Promulgation of Implementation Plans:

Kentucky; Tennessee Valley Authority Paradise Facility State Implementation Plan Revision; comments due by 3-6-08; published 2-5-08 [FR E8-02089]

Approval and Promulgation of State Implementation Plans:

Ohio: Proposed Approval of Revised Oxides of Nitrogen (NOx), Phase II, and Revised NOx Trading Rule; comments due by 3-5-08; published 2-4-08 [FR E8-01799]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; comments due by 3-6-08; published 2-5-08 [FR E8-01963]

Ohio; Revised Oxides of Nitrogen (NOx) Regulation, Phase II, and Revised NOx Trading Rule; comments due by 3-5-08; published 2-4-08 [FR E8-01797]

Pesticide Programs:

Trifloxystrobin; Pesticide Tolerance; comments due by 3-3-08; published 1-2-08 [FR E7-25396]

State Hazardous Waste Management Program Revisions:

Massachusetts; comments due by 3-3-08; published 1-31-08 [FR E8-01316]

FEDERAL COMMUNICATIONS COMMISSION

Amendment of the Commissions Rules and Policies Governing Pole Attachments:

Implementation of Section 224 of the Act; comments due by 3-7-08; published 2-6-08 [FR E8-02177]

Carriage of Digital Television Broadcast Signals; comments due by 3-3-08; published 2-1-08 [FR E8-01914]

Petition To Establish Procedural Requirements To Govern Proceedings:

Forbearance Under Section 10 of Communications Act of 1934, as Amended; comments due by 3-7-08; published 2-6-08 [FR E8-02180]

FEDERAL DEPOSIT INSURANCE CORPORATION

Minority and Women Outreach Program Contracting; comments due by 3-3-08; published 1-3-08 [FR E7-25028]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare Program:

Option for Prescription Drug Plans To Lower Their Premiums for Low-Income Subsidy Beneficiaries; Correction; comments due by 3-3-08; published 1-29-08 [FR C8-00015]

Option for Prescription Drug Plans To Lower Their Premiums for Low-Income Subsidy Beneficiaries; comments due by 3-3-08; published 1-8-08 [FR 08-00015]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Importer Security Filing and Additional Carrier Requirements; comments due by 3-3-08; published 1-2-08 [FR E7-25306]

Importer Security Filing and Additional Carrier Requirements; Correction; comments due by 3-3-08; published 1-8-08 [FR E8-00050]

HOMELAND SECURITY DEPARTMENT

Coast Guard

2008 Rates for Pilotage on the Great Lakes; comments due by 3-3-08; published 2-1-08 [FR 08-00474]

Safety Zone:

Colorado River, Parker, AZ; comments due by 3-3-08; published 2-7-08 [FR E8-02212]

Safety Zone:

Oceanside Harbor, CA; comments due by 3-3-08; published 2-6-08 [FR E8-02167]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Flood elevation determinations:

Nebraska; comments due by 3-5-08; published 12-6-07 [FR E7-23701]

Flood elevation determinations:

Various States; comments due by 3-5-08; published 12-6-07 [FR E7-23696]

Flood elevation determinations:

Various States; comments due by 3-5-08; published 12-6-07 [FR E7-23702]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Risk-based capital:

Loss severity amendments; comments due by 3-4-08; published 12-5-07 [FR 07-05101]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Designation of Critical Habitat for the Sierra

Nevada Bighorn Sheep (Ovis canadensis californiana) and Proposed Taxonomic Revision; comments due by 3-6-08; published 2-5-08 [FR E8-01805]

INTERIOR DEPARTMENT

National Environmental Policy Act; Implementation; comments due by 3-3-08; published 1-2-08 [FR E7-25484]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Controlled Substances Schedules:

Indiplon; Schedule IV Placement; comments due by 3-3-08; published 1-31-08 [FR E8-01692]

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations:

The NASDAQ Stock Market LLC; comments due by 3-4-08; published 2-12-08 [FR E8-02567]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Automatic dependent surveillance-broadcast; out performance requirements to support air traffic control service; comments due by 3-3-08; published 12-21-07 [FR E7-24713]

Aircraft:

Automatic dependent surveillance-broadcast; out performance requirements to support air traffic control service; comments due by 3-3-08; published 11-19-07 [FR E7-22544]

Airworthiness Directives:

McDonnell Douglas Model 717 200 Airplanes, et al.; comments due by 3-3-08; published 1-18-08 [FR E8-00857]

Alpha Aviation Design Ltd. (Type Certificate No. A48EU previously held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-02047]

ATR Model ATR42-500 Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-02004]

Airworthiness Directives:

Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP Series Airplanes; comments due by 3-7-08; published 1-7-08 [FR E7-25614]

Airworthiness Directives:

Dassault Model Falcon 2000 Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-01984]

Dassault Model Mystere Falcon 50 Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-01985]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 120, 120ER, 120FC, 120QC, and 120RT Airplanes; comments due by 3-4-08; published 2-8-08 [FR E8-02356]

Eurocopter France Model AS-365N2 and N3, SA-365C, C1 and C2, and SA-365N and N1 Helicopters; comments due by 3-6-08; published 2-20-08 [FR E8-02849]

Gulfstream Aerospace LP Model Gulfstream G150 Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-01988]

Lycoming Engines, Fuel Injected Reciprocating Engines; comments due by 3-3-08; published 1-2-08 [FR E7-25456]

McDonnell Douglas Model DC 8 31, DC 8 32, DC 8 33, DC 8 41, DC 8 42, and DC 8 43 Airplanes, et al.; comments due by 3-3-08; published 1-18-08 [FR E8-00854]

Pacific Aerospace Limited Model 750XL Airplanes; comments due by 3-6-08; published 2-5-08 [FR E8-02046]

Robinson Helicopter Co. Models R22, R22 Alpha, R22 Beta, R22 Mariner, R44 and R44 and R44 II Helicopters; comments due by 3-3-08; published 1-3-08 [FR E7-25395]

Rolls Royce Deutschland Ltd & Co KG, BR700 715A1 30, BR700 715B1 30, and BR700 715C1 30 Turbofan Engines; comments due by 3-6-08; published 2-5-08 [FR E8-02039]

Stemme GmbH & Co. KG Model S10-VT Powered Sailplanes; comments due by 3-3-08; published 1-31-08 [FR E8-01679]

Proposed Establishment of Class E Airspace:

Pagosa Springs, CO; comments due by 3-3-08; published 1-18-08 [FR E8-00850]

Proposed Establishment of Class E Airspace; Walden, CO; comments due by 3-3-08; published 1-18-08 [FR E8-00844]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 3-7-08; published 2-6-08 [FR E8-02168]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Activities Under the United Nations Economic Commission for Europe 1998 Global Agreement: Head Restraints; comments due by 3-6-08; published 2-14-08 [FR E8-02521]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4253/P.L. 110–186

Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Feb. 14, 2008; 122 Stat. 623)

H.R. 3541/P.L. 110–187

Do-Not-Call Improvement Act of 2007 (Feb. 15, 2008; 122 Stat. 633)

S. 781/P.L. 110–188

Do-Not-Call Registry Fee Extension Act of 2007 (Feb. 15, 2008; 122 Stat. 635)

Last List February 15, 2008

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