Federal Register

9–8–06 Friday
Vol. 71 No. 174 Sept. 8, 2006

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–8–06 Friday
Vol. 71 No. 174 Sept. 8, 2006

Pages 52981–53298

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov*.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara*, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov*. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche — **202–512–1800**

Assistance with public subscriptions — **202–512–1806**

General online information — **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche — **202–512–1800**

Assistance with public single copies — **1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche — **202–741–6005**

Assistance with Federal agency subscriptions — **202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 12, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 174

Friday, September 8, 2006

Separate Parts In This Issue

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.

3 CFR
Proclamations
8046.....53297

7 CFR
301 (2 documents).....52981, 52982
Proposed Rules:
1435.....53051

9 CFR
55.....52983
81.....52983

14 CFR
39 (7 documents).....52983, 52988, 52990, 52992, 52994, 52998, 52999

17 CFR
228.....53158
229.....53158
232.....53158
239.....53158
240.....53158
245.....53158
249.....53158
274.....53158
Proposed Rules:
229.....53267

20 CFR
320.....53003
341.....53004

21 CFR
556.....53005
558 (2 documents).....53005, 53006

22 CFR
181.....53007

26 CFR
1.....53009
602.....53009
Proposed Rules:
1.....53052

30 CFR
Proposed Rules:
100.....53054

36 CFR
7.....53020

40 CFR
Proposed Rules:
60.....53272
62.....53272
63.....53272

41 CFR
60-2.....53032

48 CFR
202.....53042
204.....53044
207.....53044
210.....53042
213.....53042
215.....53042
219.....53042
225.....53045
236.....53044
237.....53047
252 (3 documents).....53044, 53045, 53047

50 CFR
648.....53049

Rules and Regulations

Federal Register
Vol. 71, No. 174
Friday, September 8, 2006

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0039]

Pine Shoot Beetle; Additions to Quarantined Areas; Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by designating the State of Wisconsin, in its entirety, as a quarantined area based on the detection of new pine shoot beetle infested areas in the State, as well as its decision to no longer enforce intrastate movement restrictions. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on September 8, 2006, we are adopting as a final rule the interim rule that became effective on May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle (PSB) is a pest of pine trees that can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of the PSB into noninfested areas of the United States.

In an interim rule [1] effective and published in the **Federal Register** on May 24, 2006, (71 FR 29761–29762, Docket No. APHIS–2006–0039), we amended § 301.50–3(c) of the regulations by designating the State of Wisconsin, in its entirety, as a quarantined area based on the detection of new PSB infested areas in the State, as well as its decision to no longer enforce intrastate movement restrictions.

Comments on the interim rule were required to be received on or before July 24, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by designating the State of Wisconsin, in its entirety, as a quarantined area for PSB. As a result of that action, there are additional restrictions on the interstate movement of regulated articles from the State.

The following analysis addresses the economic effect of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule affected those entities in the State of Wisconsin that are engaged in moving regulated articles interstate from areas that had not been previously designated as quarantined areas (*i.e.*, 63 of Wisconsin's 72 counties).

Entities affected by this rule may include nurserymen, Christmas tree growers, logging operations, moving companies, and others who sell, process, or move regulated articles interstate from Wisconsin. As a result of the interim rule, any regulated articles to be moved interstate from a quarantined area must first be inspected and/or treated in order to qualify for a certificate or limited permit authorizing the movement. Cut Christmas tree farms, nurseries and greenhouses, sawmills, logging operations, and others in the 63 newly quarantined counties will be required to inspect and/or treat infested pine products before moving them interstate. Certain pine products may not be shipped during certain months of the year or will be required to undergo debarking before transport occurs.

The Animal and Plant Health Inspection Service (APHIS) has identified approximately 1,996 entities that sell, process, or move forest products in the 63 newly regulated counties that might be impacted by the rule. Of these entities, there were approximately 1,223 that were producing nursery and greenhouse crops (2002 market value of products sold: $144.7 million), and 773 cut Christmas-tree farms (2002 market value of products sold: $22 million).[2] In addition, an unknown number of sawmills and logging operations in the newly operated counties process pine tree products. According to information previously collected by APHIS, pine trees and pine tree products such as cut Christmas trees sold in Wisconsin generally remain within the regulated areas. Nurseries and greenhouses specialize in production of deciduous landscape products rather than production of rooted pine Christmas trees and pine nursery stock. The latter products in general constitute a small part of their production, if they are produced at all. Therefore, the interim rule is not likely to have an effect on most nurseries and greenhouses.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create disparities based on size when they

[1] To view the interim rule, go to *http://www.regulations.gov*, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2006–0039, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

[2] Source: USDA, NASS, 2002 Census of Agriculture, Wisconsin County level data, Table 2, pp. 216–236.

have a significant economic impact on a substantial number of small entities.

According to SBA size standards, nursery stock growers are considered small entities when they have annual sales of $750,000 or less, and Christmas tree growers are considered small entities when they have annual sales of $5 million or less. The majority of these types of entities within the newly quarantined area are small by the SBA size standards.

As noted previously, those nurseries and greenhouses within the newly quarantined area specialize in production of deciduous landscape products, not the production of regulated articles such as rooted pine trees and pine nursery stock. Further, the Christmas trees and pine products from cut Christmas tree farms generally remain within the regulated area. For these reasons, the economic effects of the interim rule on regulated entities as a whole are not expected to be significant.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 29761–29762 on May 24, 2006.

Done in Washington, DC, this 31st day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14859 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–066–2]

Asian Longhorned Beetle; Addition and Removal of Quarantined Areas in New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. The interim rule also removed the areas within Hudson County, NJ, from the list of quarantined areas and removed restrictions on the interstate movement of regulated articles from those areas. These actions were necessary, respectively, to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States and to remove quarantine restrictions that were no longer necessary.

DATES: Effective on September 8, 2006, we are adopting as a final rule the interim rule that became effective on October 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, National Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of New Jersey and New York are designated as quarantined areas. Quarantined areas are listed in § 301.51–3 of the regulations.

In an interim rule [1] effective October 18, 2005, and published in the **Federal Register** on October 24, 2005 (70 FR 61349–61351, Docket No. 05–066–1), we amended the ALB regulations by adding a portion of Middlesex and Union Counties, NJ, to the list of quarantined areas in § 301.51–3 and restricting the interstate movement of regulated articles from those areas. The interim rule also removed the areas within Hudson County, NJ, from the list of quarantined areas in § 301.51–3, which relieved restrictions that were no longer necessary on the interstate movement of regulated articles from this area.

Comments on the interim rule were required to be received on or before December 23, 2005. We received one comment by that date, from a private citizen.

In general, the commenter supported the rule. However, the commenter suggested that inspections be carried out in the areas removed from quarantine in 2 years and again in 5 years to ensure that the beetle has not returned. Although we do not believe further regulation of these areas is necessary, we will continue to survey them to ensure that ALB does not reappear.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 61349–61351 on October 24, 2005.

Done in Washington, DC, this 30th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14860 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov*, click on the "Advanced Search" tab, and select "Docket Search." In the Docket ID field, enter APHIS–2005–0078, then click on "Submit." Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 55 and 81

[Docket No. 00–108–4]

Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose; Delay of Effective Date

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: We recently amended the regulations to establish a herd certification program and interstate movement restrictions for cervids to control the spread of chronic wasting disease. That final rule had an effective date of October 19, 2006. We are delaying that effective date until further notice, to give the agency time to consider several petitions we recently received that asked for the rule not to take effect as scheduled. This delay is needed to allow the agency to consider the issues raised in the petitions and decide what action to take in response to them.

DATES: The effective date for the final rule amending 9 CFR part 55 and adding 9 CFR part 81, published at 71 FR 41682, July 21, 2006, is delayed until further notice. APHIS will publish a document in the **Federal Register** announcing any new effective date or other decision.

FOR FURTHER INFORMATION CONTACT: Dr. Dean E. Goeldner, Senior Staff Veterinarian, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service's (APHIS's) regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. In accordance with the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock, and to pay claims growing out of the destruction of animals.

On July 21, 2006, we published a final rule in the **Federal Register** (71 FR 41682–41707) amending 9 CFR subchapter B by establishing regulations in part 55 for a Chronic Wasting Disease Herd Certification Program to help eliminate chronic wasting disease from the farmed or captive cervid herds in the United States (the CWD rule). Under that rule, owners of deer, elk, and moose herds who choose to participate would have to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. We also amended 9 CFR subchapter B by establishing a new part 81 containing interstate movement requirements to prevent the spread of CWD.

Delay in Effective Date

We recently received several petitions requesting a delay in the effective date of the CWD rule and reconsideration of several requirements of the rule. We are currently evaluating the merits of these petitions, and will publish a notice in the **Federal Register** in the near future making the contents of the petitions available to the public for comment. We are delaying the effective date of the CWD rule while this process is underway.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 30th day of August 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14861 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25760; Directorate Identifier 2006–CE–48–AD; Amendment 39–14757; AD 2006–18–51]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Aircraft Company (RAC) Models 1900, 1900C, and 1900D airplanes. This AD contains the same information as emergency AD 2006–18–51 and publishes the action in the **Federal Register**. This AD requires you to do a one-time visual inspection of both the left and right wing rear spar lower caps for cracking and other damage such as loose or missing fasteners; repair any cracks or damage found; and report any cracks or damage found to the FAA and RAC. This AD results from extensive cracks found in the wing rear spar lower caps and rear spar web of two of the affected airplanes. One of the airplanes also had missing fasteners. We are issuing this AD to detect and correct cracking and other damage in the wing rear spar lower caps of the affected airplanes before the cracks or damage lead to failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control.

DATES: This AD becomes effective on September 8, 2006.

We must receive any comments on this AD by November 7, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To view the comments to this AD, go to *http://dms.dot.gov*. The docket number is FAA–2006–25760; Directorate Identifier 2006–CE–48–AD.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA received recent reports of cracks found in the wings of two RAC 1900D airplanes. During routine maintenance, the wing rear spar lower caps and rear spar web were found to have significant cracks.

The RAC Structural Inspection Manual requires a thorough inspection of the wing rear spar at 17,500 hours time-in-service (TIS) with repetitive inspections at intervals of 3,000 hours TIS.

One airplane had 19,126 hours TIS when cracks were found. The cracks were in the lower aft spar cap flange, but the cracks extended upward into the web and terminated at the lightening hole in the spar web. Fasteners were also found missing in the spar cap and wing cove splice plate. There were no discrepancies recorded from the initial inspection at 17,500 hours TIS on this airplane.

Early indications show similar cracking on the other airplane. We continue to gather information on this airplane.

Analysis shows that similar cracks could also develop in the wings of the Models 1900 and 1900C airplanes.

Cracking in the wing rear spar lower caps, if not corrected, could result in wing failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control.

On August 31, 2006, FAA issued emergency AD 2006–18–51 to require you to do a one-time visual inspection of both the left and right wing rear spar lower caps for cracking and other damage such as loose or missing fasteners; repair any cracks or damage found; and report any cracks or damage found to the FAA and RAC.

FAA's Determination

The FAA determined that immediate corrective action was required, that notice and opportunity for prior public comment were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual letters issued on August 31, 2006, to all known U.S. operators of the affected RAC Models 1900, 1900C, and 1900D airplanes. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA–2006–25760; Directorate Identifier 2006–CE–48–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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.

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated 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, Safety.

Adoption of the 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 airworthiness directive (AD):

2006–18–51 Raytheon Aircraft Company (RAC): Amendment 39–14757; Docket No. FAA–2005–25760; Directorate Identifier 2006–CE–48–AD.

Effective Date

(a) This AD becomes effective on September 8, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
(1) 1900	UA–3.
(2) 1900C (C–12J)	UB–1 through UB–74, UC–1 through UC–174, and UD–1 through UD–6.
(3) 1900D	UE–1 through UE–439.

Unsafe Condition

(d) This AD is the result of extensive cracks found in the wing rear spar lower caps and rear spar web of two of the affected airplanes. One of the airplanes also had missing fasteners. We are issuing this AD to detect and correct cracking and other damage in the wing rear spar lower caps of the affected airplanes before the cracks or damage lead to failure. Such a wing failure could result in the wing separating from the airplane with consequent loss of control.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) A one-time visual inspection of both the left and right wing rear spar lower caps for cracks and other damage such as loose or missing fasteners.	At whichever occurs later after September 8, 2006 (the effective date of this AD), except to those who received emergency AD 2006–18–51, which contained the requirements of this amendment and became effective immediately upon receipt: (i) Within 24 hours; or (ii) Prior to further flight.	Follow the procedures in the Appendix to this AD.
(2) For the inspection in paragraph (e)(1) of this AD, you may return/position the airplane to a home base, hangar, maintenance facility, etc.	For this repositioning, you may operate the airplane up to 3 hours time-in-service provided the flight(s) occur(s) no later than 30 days after September 8, 2006 (the effective date of this AD), except to those who received emergency AD 2006–18–51, which contained the requirements of this amendment and became effective immediately upon receipt.	The following limitations are imposed for such a repositioning flight: (i) ONLY THE PILOT AND ANY ADDITIONAL FLIGHT CREW MEMBER REQUIRED FOR SAFE OPERATION IS ALLOWED FOR THIS FLIGHT; (ii) FLIGHT INTO KNOWN OR FORECAST MODERATE OR SEVERE TURBULENCE IS PROHIBITED; and (iii) INDICATED AIRSPEED IS LIMITED TO 175 KNOTS MAXIMUM.
(3) Repair any cracks or other damage such as loose or missing fasteners found during the inspection required in paragraph (e)(1) of this AD. Do this by obtaining and incorporating an FAA-approved repair scheme from RAC.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Contact RAC at Post Office Box 85, Wichita, Kansas 67201–0085; phone: 316–676–8366; fax: (316) 676–8745; e-mail: *tom_peay@rac.ray.com.*
(4) Report the inspection results to the FAA and RAC. For the 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.	Within 72 hours after completing the inspection required in paragraph (e)(1) of this AD.	Send your report to Steven E. Potter, FAA, 1801 Airport Road, Wichita, Kansas 67209; fax: (316) 946–4107; e-mail: *steven.potter@faa.gov;* and Tom Peay, Raytheon Aircraft Company, Post Office Box 85, Wichita, Kansas 67201–0085; fax: (316) 676–8745; e-mail: *tom_peay@rac.ray.com.* Include in your report the following information: (i) Aircraft model and serial number; (ii) Number of cycles; (iii) Aircraft hours TIS; (iv) Left and right wing lower spar cap hours TIS; (v) Hours TIS on the spar cap since last inspection; (vi) Answer yes or no whether cracking, missing fasteners, or other damage was found; and (vii) If cracking was found, identify size and location of cracks.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office, FAA, ATTN: Steven E. Potter, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures in 14 CFR 39.

APPENDIX TO AD 2006–18–51

Inspection Instructions—Raytheon Aircraft Company 1900 Series Wing Rear Spar

Step 1. Lower the wing flaps to provide visual access to the wing rear spar cove area. Although the pictures show the flaps removed, this AD does not require flap removal to do the inspection.

Step 2. Using a strong, high-intensity light visually inspect the area of the wing rear spar identified in Figure 1. There is ample visually visual access from above the upper surface of the flap. Look for cracks (like those shown in Figures 2 and 3) and loose or missing fasteners.

Step 3. Clean the wing rear spar area 10 inches inboard and outboard of the buttock line (BL) 114 area.

Step 4. Repeat the Step 2 inspection.

BILLING CODE 4910–13–U

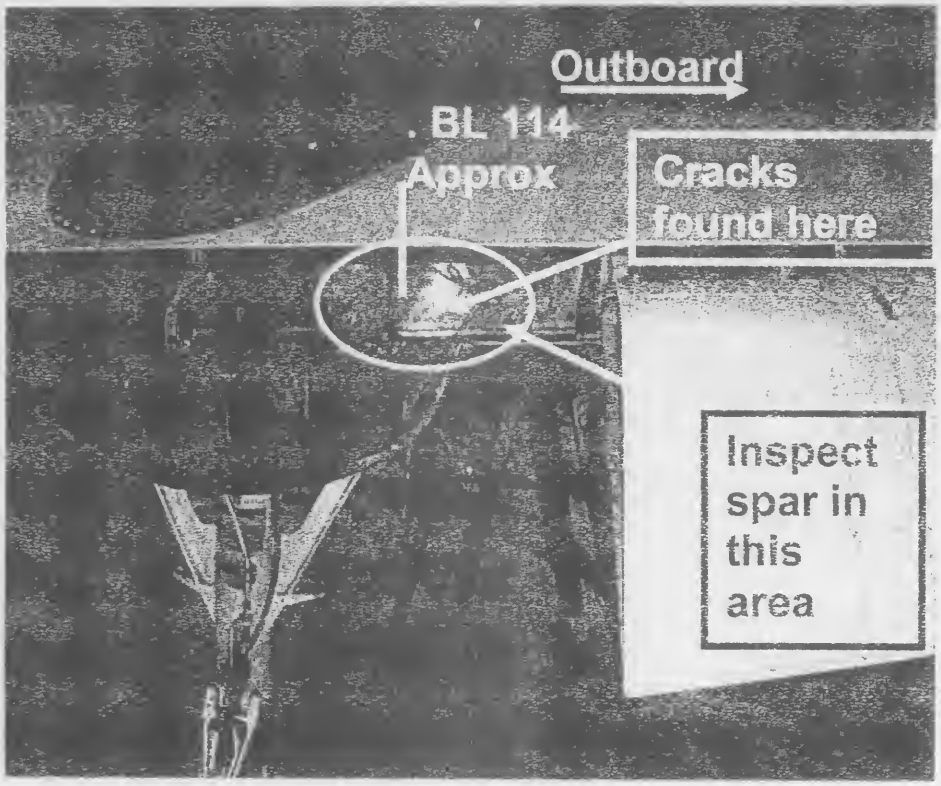


Figure 1: View of R/H wing rear spar at BL 114 area looking forward (The inboard flap is removed in this figure, but removal of the flap is not required to do the inspection).

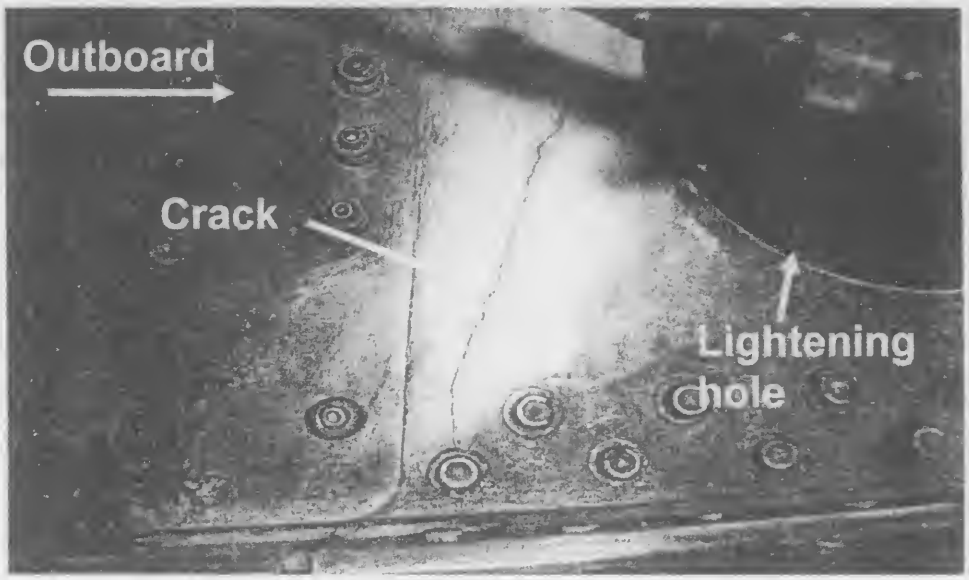


Figure 2: Closeup view of R/H wing rear spar web crack at BL 114 area looking forward (The inboard flap is removed in this figure, but removal of the flap is not required to do the inspection).

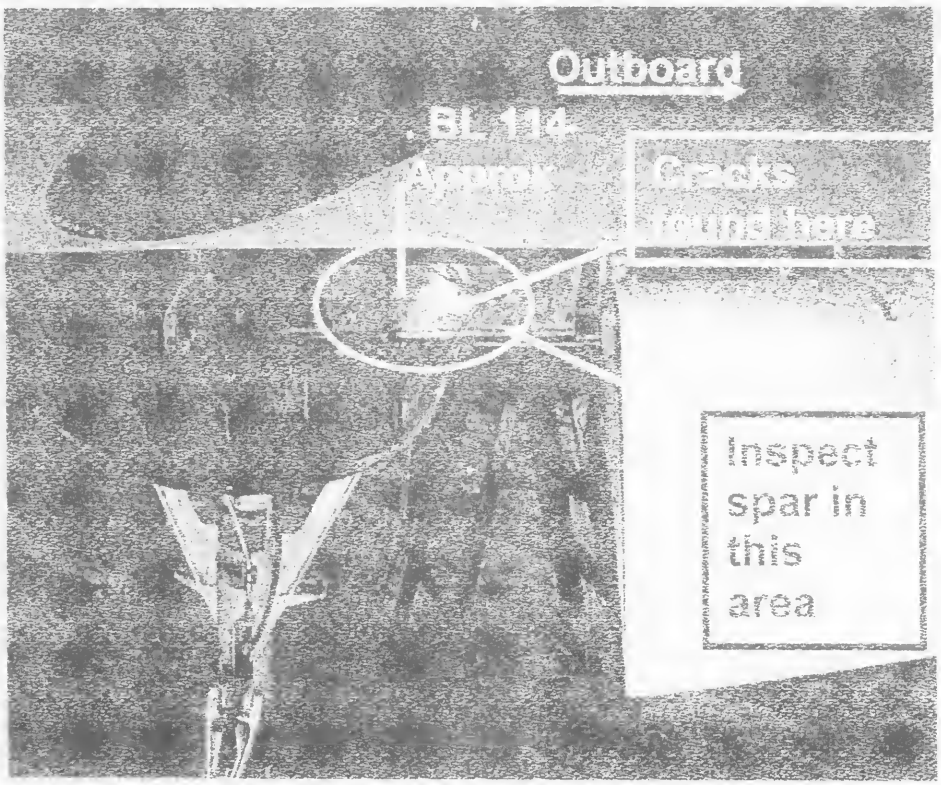


Figure 1: View of R/H wing rear spar at BL 114 area looking forward (The inboard flap is removed in this figure, but removal of the flap is not required to do the inspection).

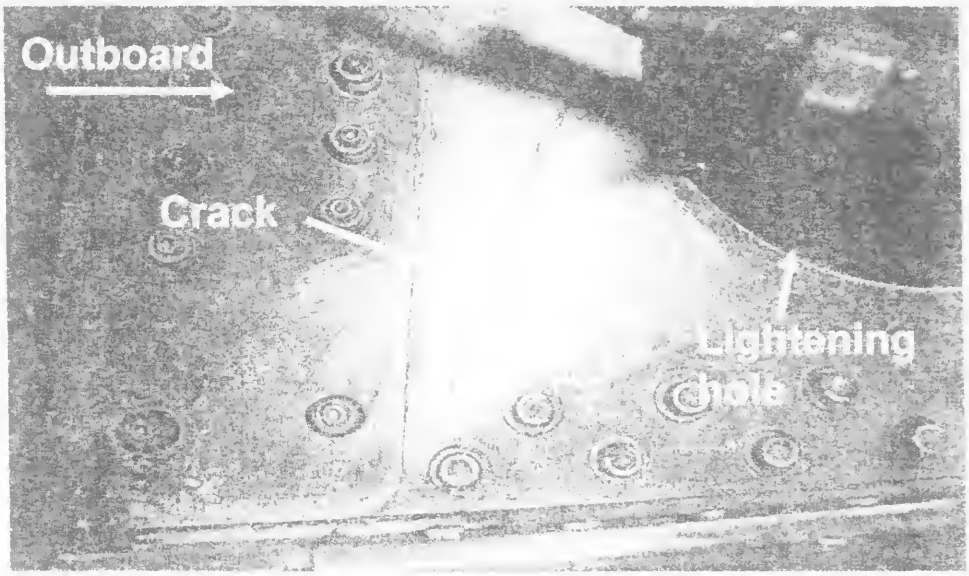


Figure 2: Closeup view of R/H wing rear spar web crack at BL 114 area looking forward (The inboard flap is removed in this figure, but removal of the flap is not required to do the inspection).

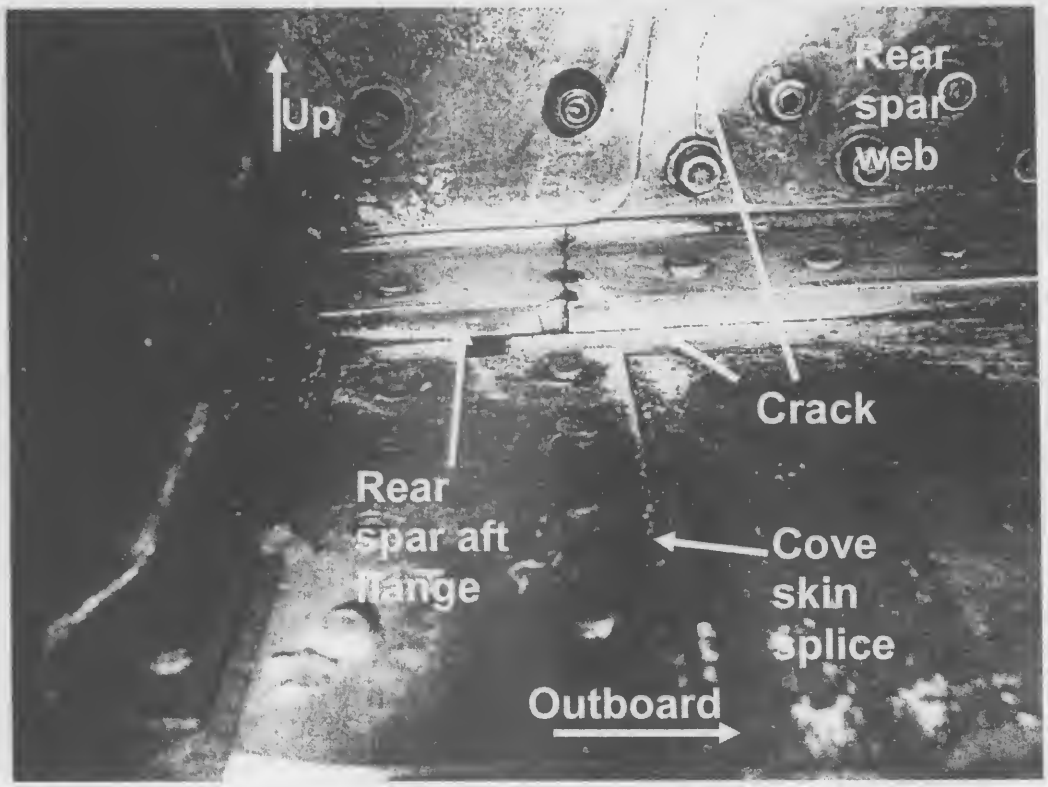


Figure 3: Closeup view of R/H wing rear spar cracks at BL 114 area looking forward (The inboard flap is removed in this figure, but removal of the flap is not required to do the inspection).

Issued in Kansas City, Missouri, on September 1, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–7511 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD; Amendment 39–14753; AD 2006–18–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 650–15 and Tay 651–54 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines. That AD currently establishes cyclic life limits for certain part number (P/N) stage 1 high pressure turbine (HPT) discs and stage 1 low pressure turbine (LPT) discs operating under certain flight plan profiles. This AD requires calculating and re-establishing the achieved cyclic life of stage 1 HPT discs, P/N JR32013 or P/N JR33838, and stage 1 LPT discs, P/N JR32318A, that have been exposed to different flight plan profiles. This AD also requires removing from service those stage 1 HPT discs and stage 1 LPT discs operated under Tay 650–15 engine flight plan profiles A, B, C, and D, and operated under Tay 651–54 engine datum flight profile, at reduced cyclic life limits, using a drawdown schedule. This AD results from RRD updating their low-cycle-fatigue analysis for stage 1 HPT discs and stage 1 LPT discs and reducing their cyclic life limits. We are issuing this AD to prevent cracks leading to turbine disc failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective October 13, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 13, 2006.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15872 Blankenfelde-Mahlow, Germany, telephone 49–0–33–7086–1768; fax 49–0–33–7086–3356.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRD Tay 650–15 and Tay 651–54 turbofan engines. We published the proposed AD in the **Federal Register** on May 4, 2006 (71 FR 26282). That action proposed to require calculating and re-establishing the achieved cyclic life of stage 1 HPT discs, P/N JR32013 or P/N JR33838, and stage 1 LPT discs, P/N JR32318A, that have been exposed to different flight plan profiles. That action also proposed to require removing those stage 1 HPT discs and stage 1 LPT discs at reduced cyclic life limits, using a drawdown schedule.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Request for Clarification of Flight Plan Profiles

RRD requests we clarify that engine flight plan profiles A, B, C, and D, apply to Tay 650–15 engines, and that an engine datum flight profile applies to Tay 651–54 engines. We agree and clarified the profiles in the Summary paragraph of this AD. It now reads "This AD requires calculating and re-establishing the achieved cyclic life of stage 1 HPT discs, P/N JR32013 or P/N JR33838, and stage 1 LPT discs, P/N JR32318A, that have been exposed to different engine flight plan profiles. This AD also requires removing from service those stage 1 HPT discs and stage 1 LPT discs operated under Tay 650–15 engine flight plan profiles A, B, C, and D, and operated under Tay 651–54 engine datum flight profile, at reduced cyclic life limits, using a drawdown schedule". We also clarified the references to the flight plan profiles and engine datum flight profile in the compliance section.

Change in Compliance Time

In the Notice of Proposed Rulemaking, we required initial compliance with the proposed rule on or before August 31, 2006. Because that date has past, we have changed the initial compliance date requirement to start after the effective date of this AD.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2006–25513. The old Docket No. became the Directorate Identifier, which is 99–NE–61–AD. This final rule might get logged into the DMS docket, ahead of the proposed AD and comments received, as we are in the process of sending those items to the DMS.

Conclusion

We have carefully reviewed the available data, including the comment 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 50 Tay 650–15 and Tay 651–54 turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to calculate and re-establish the achieved cyclic life for a disc, and that the average labor rate is $80 per work-hour. We estimate that the prorated cost of the life reduction per engine will be $15,000. Based on these figures, we estimate that if all of the engines required calculating and re-establishing achieved cyclic life, the total cost of the AD to U.S. operators will be $752,000.

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:

2006–18–14 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–14753. Docket No. FAA–2006–25513; Directorate Identifier 99–NE–61–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 13, 2006.

Affected ADs

(b) This AD supersedes AD 2000–08–01, Amendment 39–11687.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines with stage 1 high pressure turbine (HPT) discs, part number (P/N) JR32013 or P/N JR33838, and stage 1 low pressure turbine (LPT) discs, P/N JR32318A, installed. These engines are installed on, but not limited to, Fokker Model F.28 Mark 0100, and Boeing 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW (727–QF).

Unsafe Condition

(d) This AD results from RRD updating their low-cycle-fatigue analysis for stage 1 HPT discs and stage 1 LPT discs and reducing their cyclic life limits. We are issuing this AD to prevent cracks leading to turbine disc failure, which could result in an uncontained engine failure and damage to 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.

(f) Information on the referenced Tay 650–15 engine flight plan profiles A, B, C, and D and Tay 651–54 engine datum flight profile, can be found in RRD Tay Engine Manual, Section 70–01–10.

Calculating and Re-Establishing Within 30 Days, the Achieved Cyclic Life of a Stage 1 HPT Disc or Stage 1 LPT Disc Previously Exposed to Different Flight Plan Profiles

(g) If a stage 1 HPT disc or stage 1 LPT disc was previously exposed to flight plan profile(s) different than the currently operated flight plan:

(1) You must calculate and re-establish the achieved cyclic life for that disc, within 30 days after the effective date of this AD.

(2) Use paragraphs 3.A. through 3.D.(2)(c) of Accomplishment Instructions of RRD Alert Service Bulletin (ASB) No. Tay–72–A1676, Revision 1, dated August 16, 2005, to calculate and re-establish the achieved cyclic life.

After an Engine Flight Plan Profile Changeover, Calculating and Re-Establishing Within 30 Days, the Achieved Cyclic Life of Stage 1 HPT Discs and Stage 1 LPT Discs

(h) After an engine has a flight plan profile changeover:

(1) You must calculate and re-establish the achieved cyclic life for the stage 1 HPT disc and stage 1 LPT disc, within 30 days after the flight plan changeover.

(2) Use paragraphs 3.A. through 3.D.(2)(c) of Accomplishment Instructions of RRD ASB No. Tay–72–A1676, Revision 1, dated August 16, 2005, to calculate and re-establish the achieved cyclic life.

Removal of Stage 1 HPT Discs and Stage 1 LPT Discs From Service Tay 650–15 Engine Flight Plan Profile A

(i) Remove from service Tay 650–15 stage 1 HPT discs and stage 1 LPT discs operated under flight plan profile A, before accumulating 23,000 cycles-since-new (CSN), and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile B

(j) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile B and replace with serviceable parts:

(1) On or before July 31, 2007, before accumulating 21,000 CSN; and

(2) After July 31, 2007, before accumulating 20,000 CSN.

(k) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile B, before accumulating 21,000 CSN, and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile C

(l) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile C and replace with serviceable parts:

(1) After the effective date of this AD, before accumulating 15,800 CSN; and

(2) After July 31, 2007, before accumulating 14,700 CSN.

(m) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile C, before accumulating 18,000 CSN, and replace with serviceable parts.

Tay 650–15 Engine Flight Plan Profile D

(n) Remove from service Tay 650–15 stage 1 HPT discs operated under flight plan profile D and replace with serviceable parts after the effective date of this AD, before accumulating 11,000 CSN.

(o) Remove from service Tay 650–15 stage 1 LPT discs operated under flight plan profile D, before accumulating 14,250 CSN, and replace with serviceable parts.

Tay 651–54 Engine Datum Flight Profile

(p) Remove from service Tay 651–54 stage 1 HPT discs operated under the engine datum flight profile, and replace with serviceable parts after the effective date of this AD, before accumulating 12,600 CSN.

(q) Remove from service Tay 651–54 stage 1 LPT discs before accumulating 20,000 CSN and replace with serviceable parts.

Alternative Methods of Compliance

(r) The Manager, Engine Certification Office, FAA, 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

(s) Luftfahrt-Bundesamt airworthiness directive No. D–2005–252R1, dated August 31, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(t) You must use Rolls-Royce Deutschland Ltd & Co KG Alert Service Bulletin No. Tay–72–A1676, Revision 1, dated August 16, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15872 Blankenfelde-Mahlow, Germany, telephone 49–0–33–7086–1768; fax 49–0–33–7086–3356. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 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.*

Issued in Burlington, Massachusetts, on August 30, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–14685 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24951; Directorate Identifier 2005–NM–184–AD; Amendment 39–14752; AD 2006–18–13]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV and GV–SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Model GV and GV–SP series airplanes. This AD requires repairing the force link assembly wire harness. This AD results from a report indicating that the wiring harness outer shield and insulation on the primary conductors may have been inadvertently cut due to an improper method used to remove the wiring outer jacket. We are issuing this AD to prevent the loss of the hardover prevention system (HOPS) in the roll axis due to a short circuit in the wiring harness, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective October 13, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 13, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6095; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Gulfstream Model GV and GV–SP series airplanes. That NPRM was published in the **Federal Register** on June 6, 2006 (71 FR 32487). That NPRM proposed to require repairing the force link assembly wire harness.

Comments

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

Conclusion

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

Costs of Compliance

There are about 99 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

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
3	$80	The manufacturer states that it will supply required parts to the operators at no cost.	$240	77	$18,480

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 adding the following new airworthiness directive (AD):

2006–18–13 Gulfstream Aerospace Corporation: Amendment 39–14752. Docket No. FAA–2006–24951; Directorate Identifier 2005–NM–184–AD.

Effective Date

(a) This AD becomes effective October 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Gulfstream Aerospace Corporation airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model	Serial Nos.
GV series airplanes	674 through 693 inclusive.
GV–SP series airplanes.	5001 through 5072 inclusive.

Unsafe Condition

(d) This AD results from a report indicating that the wiring harness outer shield and insulation on the primary conductors may have been inadvertently cut due to an improper method used to remove the wiring outer jacket. We are issuing this AD to prevent the loss of the hardover prevention system (HOPS) in the roll axis due to a short circuit in the wiring harness, which could result in reduced controllability 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.

Repair

(f) Within 12 months after the effective date of this AD, repair the force link assembly wire harness by doing all actions specified in the Accomplishment Instructions of the applicable service information identified in Table 2 of this AD, except as required by paragraph (g) of this AD.

TABLE 2.—SERVICE INFORMATION

For Model—	Use—
GV–SP series airplanes.	Gulfstream G500 Customer Bulletin 14, dated June 23, 2005.
GV–SP series airplanes.	Gulfstream G550 Customer Bulletin 14, dated June 23, 2005.
GV series airplanes.	Gulfstream GV Customer Bulletin 135, dated June 23, 2005.

Note 1: The Gulfstream customer bulletins identified in Table 2 of this AD include Vought Service Bulletin SB–VAIGV/GVSP–27–PG0098, dated May 9, 2005, as an additional source of service information for the repair.

Exception to Service Bulletin Specifications

(g) During the inspection of the environmental seal around the installed wires required by paragraph (f) of this AD: If any nick or other damage is found, repair before further flight using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Atlanta ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use the service information identified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. Each Gulfstream customer bulletin listed in Table 3 of this AD includes Vought Aircraft Industries Service Bulletin SB–VAIGV/GVSP–27–PG0098, dated May 9, 2005. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Customer bulletin	Date
Gulfstream G500 Customer Bulletin 14.	June 23, 2005.
Gulfstream G550 Customer Bulletin 14.	June 23, 2005.
Gulfstream GV Customer Bulletin 135.	June 23, 2005.

Issued in Renton, Washington, on August 28, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14688 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–114–AD; Amendment 39–14751; AD 2006–18–12]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, that requires modification and repetitive inspections of the hot detection system of the tail pipe harness of the engine nacelles. The actions specified by this AD are intended to prevent false warning indications to the flightcrew from the hot detection system due to discrepancies of the harness, which could result in an unnecessary aborted takeoff on the ground or in-flight engine shutdowns. This action is intended to address the identified unsafe condition.

DATES: Effective October 13, 2006.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of October 13, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 26, 2006 (71 FR 36252). That action proposed to require modification and repetitive inspections of the hot detection system of the tail pipe harness of the engine nacelles.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the supplemental NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Cost Impact

We estimate that 280 airplanes of U.S. registry will be affected by this AD.

It will take about 10 work hours per airplane to accomplish the modification, at an average labor rate of $80 per work hour. Required parts cost will be between $218 and $2,253. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be between $285,040 and $854,840, or between $1,018 and $3,053 per airplane.

It will take about 1 work hour per airplane to accomplish the inspection and application of sealant, at an average labor rate of $80 per work hour. Based on these figures, the cost impact of this

action on U.S. operators is estimated to be $22,400, or $80 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2006–18–12 Saab Aircraft AB: Amendment 39–14751. Docket 2003–NM–114–AD.

Applicability

Model SAAB-Fairchild SF340A (SAAB/SF340A) airplanes, serial numbers –004 through –159 inclusive, and SAAB 340B airplanes, serial numbers –160 through –459 inclusive, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent false warning indications to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles due to discrepancies of the harness, which could result in an unnecessary aborted takeoff on the ground or in-flight engine shutdowns, accomplish the following:

Modification/Repetitive Inspections

(a) Within 12 months after the effective date of this AD: Modify the hot detection system of the tail pipe harness of the engine nacelles (including a general visual inspection of the heat shrink sleeve, thixotropic sealant, and connectors for damage and/or corrosion, and all applicable repairs), by doing all the actions specified in the Accomplishment Instructions of Saab Service Bulletin 340–26–030, Revision 01, dated November 14, 2003. All applicable repairs must be done before further flight in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 12 months.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Accomplishing the modification/repetitive inspections specified in Saab Service Bulletin 340–26–030, dated October 28, 2002; or Saab Service Bulletins 340–26–018, Revision 02, and 340–26–029, both dated October 28, 2002; before the effective date of this AD, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Reporting Requirement

(c) Within 30 days after any false warning indication to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles occurs: Submit a report containing the information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD to the Swedish Civil Aviation Authority (Luftfartsstyrelsen)—Attn: Mr. Christer Sundqvist, SAAB 340 Certification Manager, SE–601 79, Norrköping, Sweden. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) The date and time, weather conditions, and phase of flight of the warning.

(2) The action taken by the flightcrew to address the warning (aborted takeoff, high speed/high energy abort requiring inspection, return for landing, in-flight diversion, declared emergency, air traffic control (ATC) priority handling requested or given, or engine shutdown).

(3) The action taken by maintenance to address/correct the warning.

(4) Time-in-service on the airplane since the last inspection accomplished in accordance with paragraph (a) of this AD.

Alternative Methods of Compliance (AMOCs)

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve AMOCs for this AD.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Note 2: The subject of this AD is addressed in Swedish airworthiness directive 1–184, effective October 28, 2002.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions must be done in accordance with Saab Service Bulletin 340–26–030, Revision 01, dated November 14, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Saab Aircraft AB, SAAB

Aircraft Product Support, S–581.88. Linköping, Sweden. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on October 13, 2006.

Issued in Renton, Washington, on August 28, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14690 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25244; Directorate Identifier 2006–NE–25–AD; Amendment 39–14754; AD 2006–18–15]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) Series Propellers

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) series propellers with non-suffix serial number (SN) propeller hubs installed on Lycoming O–, IO–, LO–, and AEIO–360 series reciprocating engines. This AD requires initial and repetitive eddy current inspections (ECI) of the front cylinder half of the propeller hub for cracks and removing cracked hubs from service before further flight. In addition, this AD allows installation of an improved design propeller hub (suffix SN "A" or "B") as terminating action to the repetitive ECI. This AD results from a report of a propeller blade separating from a propeller hub. We are issuing this AD to prevent failure of the propeller hub causing blade separation and subsequent loss of airplane control.

DATES: This AD becomes effective September 25, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 25, 2006.

We must receive any comments on this AD by November 7, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7132; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: In April 2006, we received a report of a propeller blade separation on a Hartzell Propeller Inc. two blade, aluminum hub, "compact" ( )HC–( )2Y( )–( ) series propeller. Also, to date, we received seven reports of excessive vibration determined to be caused by cracks in the propeller hub fillet. Those propellers were manufactured before December 1991 (non-suffix SN propeller hubs) and are installed on Lycoming O–, IO–, LO–, and AEIO–360 series reciprocating engines. This condition, if not corrected, could result in blade separation and subsequent loss of airplane control.

Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–269, dated April 18, 2005. That SB describes procedures for eddy current inspections of propeller hubs on affected propellers. That SB also lists improved design replacement propeller hub part numbers.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) series propellers of the same type design. For that reason, we are issuing this AD to prevent failure of the propeller hub causing blade separation and subsequent loss of airplane control. This AD requires, within 50 operating hours time-in-service (TIS), an initial ECI of the front cylinder half of non-suffix SN propeller hubs for cracks. This AD also requires, within every 100 operating hours TIS or annual inspection, whichever occurs first, repetitive ECIs of the front cylinder half of non-suffix SN propeller hubs for cracks. This AD also requires removing cracked hubs from service before further flight. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2006–25244; Directorate Identifier 2006–NE–25–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a 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

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–15 Hartzell Propeller Inc.: Amendment 39–14754. Docket No. FAA–2006–25244; Directorate Identifier 2006–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 25, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) series propellers with non-suffix serial number (SN) propeller hubs installed on Lycoming O–, IO–, LO–, and AEIO–360 series reciprocating engines. These propellers and engines could be installed on, but not limited to:

O–360–A1A	Piper Aircraft	Comanche (PA–24).
	Lake Aircraft	Colonial (C–2, LA –4, 4A, or 4P).
	Mooney Aircraft	Mark "20B" (M–20B).
	Earl Horton	Pawnee (Piper PA–25).
	Partenavia	Oscar (P–66).
	Siai-Marchetti	(S–205).
	Procaer	Picchio (F–15–A).
	S.A.A.B.	Safir (91–D).
	Malmo	Vipan (MF–10B).
	Aero Boero	AB–180.
	Beagle	Airedale (A–109).
	DeHavilland	Drover (DHA–3MK3).
	Kingsford-Smith	Bushmaster (J5–6).
O–360–A1AD	S.O.C.A.T.A.	Tabago TB–10.
O–360–A1D	Piper Aircraft	Comanche (PA–24).
	Lake Aircraft	Colonial (LA –4, 4A, or 4P).
	Doyn Aircraft	Doyn-Beech (Beech 95).
	Mooney Aircraft	Master "21" (M–20E).
		Mark "20B", "20D", (M20B, M20C),
		Mooney Statesman (M–20G).
O–360–A1F6	Cessna Aircraft	Cardinal.
O–360–A1F6D	Cessna Aircraft	Cardinal 177.
O–360–A1G6	Teal III Aero Commander.	TSC (1A3).

O–360–A1G6D	Beech Aircraft	Duchess 76.
O–360–A1H6	Piper Aircraft	Seminole (PA–44).
O–360–A1P	Aviat	Husky.
O–360–A2A	Avion Jodel S.O.C.A.T.A. Partenavia Beagle	D–140–B. Rallye Commodore (MS–893). Oscar (P–66). Husky (D5–180) (J1–U).
O–360–A2D	Piper Aircraft Mooney Aircraft	Comanche (PA–24), Cherokee "C" (PA–28 "180"). Master "21" (M–20D), Mark "21" (M–20E).
O–360–A2F	Dynac Aerospace Corp	Aero Commander Model 100.
O–360–A2G	Beech Aircraft	Sport.
O–360–A3A	C.A.A.R.P.S.A.N. Robin S.O.C.A.T.A. Norman Aeroplace Co. Nash Aircraft Ltd.	(M–23III). Regent (DR400/180), Remorqueur (DR400/180R), R–3170. Rallye 180GT, Sportavia Sportsman (RS–180). NAC–1 Freelance. Petrel.
O–360–A3AD	S.O.C.A.T.A. Robin	TB–10. Aiglon (R–1180T).
O–360–A4A	Piper Aircraft	Cherokee "D" (PA–28 "180").
O–360–A4D	Varga	Kachina.
O–360–A4G	Beech Aircraft	Musketeer Custom III.
O–360–A4K	Grumman American Beech Aircraft	Tiger. Sundowner 180.
O–360–A4M	Piper Aircraft Valmet	Archer II (PA–28 "18"). PIK–23.
O–360–A4N	Cessna Aircraft	172 (Optional).
O–360–A4P	Penn Yan	Super Cub Conversion.
O–360–A5AD	C. Itoh and Co.	Fuji FA –200.
O–360–B2C	Seabird Aviation	SB7L.
O–360–C1A	Intermountain Mfg. Co.	Call Air (A–6).
O–360–C1E	Bellanca Aircraft	Scout (8GCBC–CS).
O–360–C1F	Maule	Star Rocket MX–7–180.
O–360–C1G	Christen	Husky (A–1).
O–360–C2E	Bellanca Aircraft	Scout (8GCBC FP).
O–360–C4F	Maule	MX–7–180A.
O–360–C4P	Penn Yan	Super Cub Conversion.
O–360–F1A6	Cessna Aircraft	Cutlass RG.
O–360–J2A	Robinson	R22.
IO–360–B1A	Beech Aircraft Doyn Aircraft	Travel-Air (B–95A). Doyn-Piper (PA –23 "200").
IO–360–B1B	Beech Aircraft Doyn Aircraft Fuji	Travel-Air (B–95B). Doyn-Piper (PA –23 "200"). (FA–200).
IO–360–B1D	United Consultants	See-Bee.

IO–360–B1E	Piper Aircraft	Arrow (PA–28 "180R").
IO–360–B1F	Utva	75.
IO–360–B2E	C.A.A.R.P.	C.A.P. (10).
IO–360–B1F6	Great Lakes	Trainer.
IO–360–B1G6	American Blimp	Spector 42.
IO–360–B2F6	Great Lakes	Trainer.
LO–360–A1G6D	Beech Aircraft	Duchess.
LO–360–A1H6	Piper Aircraft	Seminole (PA–44).
IO–360–E1A	T.R. Smith Aircraft	Aerostar.
IO–360–M1A	Diamond Aircraft	DA–40.
IO–360–M1B	Vans Aircraft Lancair	RV6, RV7, RV8. 360.
AEIO–360–B1F	F.F.A. Grob	Bravo (200). G115/Sport-Acro.
AEIO–360–B1G6	Great Lakes.	
AEIO–360–B2F	Mundry	CAP–10.
AEIO–360–B4A	Pitts	S–1S.
AEIO–360–H1A	Bellanca Aircraft	Super Decathalon (8KCAB–180).
AEIO–360–H1B	American Champion	Super Decathalon.

(d) The parentheses appearing in the propeller model number indicates the presence or absence of an additional letter(s) that varies the basic propeller model. This AD still applies regardless of whether these letters are present or absent in the propeller model designation.

Propellers Not Affected by This AD

(e) Hartzell Propeller Inc. ( )HC–( )2Y( )–( ) series propellers installed on the following aircraft are not affected by this AD, but are affected by AD 2001–23–08 which addresses the same unsafe condition:

(1) Aerobatic aircraft (including certificated aerobatic aircraft, military trainers, or any aircraft routinely exposed to aerobatic usage).

(2) Agricultural aircraft.

(3) Piper PA–32( ) series aircraft with Lycoming 540 series reciprocating engines rated at 300 HP or higher.

(4) Britten Norman BN–2( ) series aircraft with Lycoming 540 series reciprocating engines.

Unsafe Condition

(f) This AD results from a report of a propeller blade separating from a propeller hub. We are issuing this AD to prevent failure of the propeller hub causing blade separation and subsequent loss of airplane control. We are issuing this AD to prevent failure of the propeller hub causing blade separation and subsequent loss of airplane control.

Compliance

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

Initial Propeller Hub Eddy Current Inspection (ECI)

(h) Within 50 operating hours time-in-service (TIS) after the effective date of this AD, perform an initial ECI of the front cylinder half of the propeller hub for cracks.

(i) Use paragraphs 3.A. through 3.A.(4)(g) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–269, dated April 18, 2005, to perform the ECI inspection.

(j) If any cracks are found, remove the propeller hub from service before further flight.

(k) If no cracks are found, mark the propeller using paragraph 3.A.(6)(a) of the Accomplishment Instructions of Hartzell Propeller Inc. Service Bulletin (SB) HC–SB–61–269, dated April 18, 2005, to indicate compliance with Hartzell Propeller Inc. SB HC–SB–61–269, dated April 18, 2005.

Repetitive Propeller Hub ECIs

(l) Within every 100 operating hours TIS after the last propeller hub ECI inspection, or at every annual inspection, whichever occurs first, perform repetitive ECIs of the front cylinder half of the propeller hub for cracks.

(m) If any cracks are found, remove the propeller hub from service before further flight.

Optional Terminating Action

(n) As optional terminating action to the repetitive ECIs required by this AD:

(1) Replace the non-suffix SN propeller hub with a propeller hub identified by an "A" or "B" suffix letter in the propeller hub SN; except

(2) Do not install a suffix "A" propeller hub that was previously installed on an aircraft affected by the original issue or later revision of Hartzell Propeller Inc. SB HC–SB–61–227.

(3) Replacement propeller hub part numbers can be found in paragraph 2.A., Material Information, of Hartzell Propeller Inc. SB HC–SB–61–269, dated April 18, 2005.

Alternative Methods of Compliance

(o) The Manager, Chicago Aircraft 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

(p) Hartzell Propeller Inc. SB HC–SB–61–227, Revision 2, dated April 18, 2005, and AD 2001–23–08 pertain to the subject of this AD.

Material Incorporated by Reference

(q) You must use Hartzell Propeller Inc. Service Bulletin HC–SB–61–269, dated April 18, 2005, to perform the ECI inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in

accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 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.*

Issued in Burlington, Massachusetts, on August 30, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–14691 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24640; Directorate Identifier 2006–CE–26–AD; Amendment 39–14755; AD 2006–18–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Raytheon Aircraft Company Model 390 airplanes. This AD requires you to inspect the spigot bearing, part number (P/N) MS14104–16, for the proper position in the spigot fitting assembly and to install the wing spigot bearing retainer kit, P/N 390–4304–0001. We are issuing this AD to detect spigot bearings that are not positioned flush with the fitting assembly. This condition could result in the spigot bearing becoming disengaged from the fitting assembly, which could cause motion between the wing and the fuselage and degrade the structural integrity of the wing attachment to the fuselage. This could lead to wing separation and loss of control of the airplane.

DATES: This AD becomes effective on October 13, 2006.

As of October 13, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: For service information identified in this AD, contact Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67201.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–24640; Directorate Identifier 2006–CE–26–AD.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Senior Aerospace Engineer, Wichita Aircraft Certification Office, Airframe and Services Branch, ACE–118W, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4107; e-mail: *david.ostrodka@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 17, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Aircraft Company Model 390 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 23, 2006 (71 FR 29595). The NPRM proposed to require you to inspect the spigot bearing, P/N MS14104–16, for the proper position in the spigot fitting assembly and to install the wing spigot bearing retainer kit, P/N 390–4304–0001.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 78 airplanes in the U.S. registry.

We estimate the following costs to do the installation of the spigot bearing retainer kit, P/N 390–4304–0001:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work-hours × $80 per hour = $640	$1,442	$2,082	$162,396

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 AD.

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 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 summary of the costs to comply with this AD (and other

information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2006–24640; Directorate Identifier 2006–CE–26–AD" in your request.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–16 Raytheon Aircraft Company: Amendment 39–14755; Docket No. FAA–2006–24640; Directorate Identifier 2006–CE–26–AD.

Effective Date

(a) This AD becomes effective on October 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects Model 390 airplanes, serial numbers RB–1 and RB–4 through RB–139, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of two reports of the spigot bearing not being positioned flush with the fitting assembly, but protruding outside of the fitting assembly. The actions specified in this AD are intended to detect spigot bearings that are not positioned flush with the fitting assembly. This condition could result in the spigot bearing becoming disengaged from the fitting assembly, which could cause motion between the wing and the fuselage and degrade the structural integrity of the wing attachment to the fuselage. This could lead to wing separation and loss of control of the airplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect to determine whether the spigot bearing, part number (P/N) MS14104–16, is positioned flush inside the spigot fitting assembly and not protruding outside of the fitting assembly.	Within 50 hours time-in-service (TIS) after October 13, 2006 (the effective date of this AD), and repetitively inspect thereafter every 50 hours TIS until the installation in paragraph (e)(2) of this AD is done.	Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 53–3765, issued: November, 2005.
(2) Install the spigot bearing retainer kit, P/N 390–4304–0001. This installation terminates the inspection requirements in paragraph (e)(1) of this AD.	At whichever of the following occurs first, unless already done:. (i) Before further flight after any inspection required by this AD where the spigot bearing, P/N MS14104–16, is found not to be flush with the spigot fitting assembly; or (ii) Within 200 hours TIS or one calendar year October 13, 2006 (the effective date of this AD), whichever occurs first	Follow Raytheon Aircraft Company Mandatory Service Bulletin SB 53–3765, issued: November, 2005.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: David Ostrodka, Senior Aerospace Engineer, Wichita ACO, Airframe and Services Branch, ACE–118W, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4129; facsimile: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) None.

Material Incorporated by Reference

(h) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin SB 53–3765, issued: November, 2005. The Director of the **Federal Register** approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67201. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–24640; Directorate Identifier 2006–CE–26–AD.

Issued in Kansas City, Missouri, on August 30, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14781 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23873; Directorate Identifier 2005–NM–110–AD; Amendment 39–14756; AD 2006–18–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F 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 747–400, 747–400D, and 747–400F series airplanes. The existing AD currently requires reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCMs) for cracking, and

replacing the PCMs if necessary; and reporting all airplane maintenance records review and inspection results to the manufacturer. This new AD expands the applicability and discontinues certain requirements of the existing AD. This AD adds repetitive inspections of the PCMs, and replacement of the PCMs if necessary. This AD results from manufacturer findings that the inspections required by the existing AD must be performed at regular intervals. We are issuing this AD to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

DATES: This AD becomes effective October 13, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 13, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003–23–01, amendment 39–13364 (68 FR 64263, November 13, 2003). The existing AD applies to certain Boeing Model 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on February 13, 2006 (71 FR 7446). That NPRM proposed to continue to require certain requirements of the existing AD. That NPRM also proposed to expand the applicability and discontinue certain requirements of the existing AD. That NPRM also proposed to require repetitive inspections of the power control modules (PCMs) and replacement of the PCMs if necessary.

Comments

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

Support for the NPRM

One commenter, Northwest Airlines (NWA), expresses support for the NPRM, stating that the type of failure event addressed in the NPRM has occurred on a NWA airplane.

Request to Cite Revised Service Information

Three commenters, Boeing, South African Airways, and NWA request that we revise the NPRM to refer to current service information. The commenters state that Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005, has been issued.

We agree with this request. We have determined that Boeing Service Bulletin 747–27A2397, Revision 2, shows changes of operators in the effectivity and clarifies the compliance information, but does not add any further actions or increase the economic burden on operators. Therefore, we have revised the AD to refer to Boeing Service Bulletin 747–27A2397, Revision 2, as the appropriate source of service information for accomplishing the requirements of the AD. We have also revised paragraph (k) of the AD to indicate that actions done previously in accordance with Boeing Alert Service Bulletin 747–27A2397, Revision 1, dated March 31, 2005, are also acceptable for compliance with the corresponding requirements of this AD.

Request to Remove Certain Part Numbers (P/Ns)

One commenter, Boeing, requests that two P/Ns be removed from the NPRM. Boeing states that P/Ns 332700–1009 and 333200–1009 are internal supplier P/Ns that are stamped on the PCM manifold and are not PCM top assembly P/Ns. Boeing states that these P/Ns are not referenced on the equipment identification plate for either the upper or lower PCM.

We agree with this request. Though all revisions of the Boeing service bulletin specify P/Ns 332700–1009 and 333200–1009 as replacement P/Ns for cracked PCMs, we have determined that these P/Ns do not refer to PCM top assemblies; instead, these P/Ns refer only to the PCM manifolds. Only top assembly P/Ns of the upper or lower rudder PCMs should be identified in the AD; that is P/N 332700–1003, –1005, or –1007; or P/N 333200–1003, –1005, or –1007. Therefore, to prevent confusion on the part of operators attempting to track PCM installations, we have removed the reference to P/Ns 332700–1009 and 333200–1009 as top assembly P/Ns from paragraph (l) of the AD.

Request to Revise Paragraph (j)(2) of the NPRM

One commenter, Fortner Engineering, requests that we revise paragraph (j)(2) of the NPRM to read "PCMs or manifolds" rather than "PCMs" only. Fortner Engineering states that certified repair stations in addition to Parker Hannifin, which is the PCM original equipment manufacturer (OEM), overhaul the valve (manifold) and that those repair stations should not be required to send the entire PCM to the OEM if a crack is discovered in the manifold. Fortner Engineering asserts that, as long as all information required by paragraph (j)(1) of the NPRM is included with the manifold, there is no need to send the entire PCM to the OEM.

We agree with this request. The intent of paragraph (j)(2) of this AD is to return PCMs having cracked manifolds to the manufacturer for analysis of the cause of the cracking. If the PCM can be returned to service with a new or serviceable manifold, there is no need to send the entire assembly to the OEM. Therefore, we have revised paragraph (j)(2) of the AD to read "PCMs or manifolds."

Request to Revise Paragraph (l) of the NPRM

The same commenter requests that we delete the phrase, "either by the operator or the supplier" from paragraph (l), "Parts Installation," of the NPRM. Fortner Engineering asserts that the operator should be free to determine whether the PCMs will be inspected by the operator, the supplier, or any other appropriately rated and equipped facility.

We agree with this request. The intent of paragraph (l) of the AD is to ensure that all affected PCMs are inspected for cracks before any return to service. The primary concern is not which facility inspects the PCMs, but rather that the inspections are performed by properly

equipped and authorized facilities in accordance with the applicable service information. Therefore, we have revised paragraph (l) by deleting the phrase specified by Fortner Engineering.

Request to Include Alternative Method of Inspection

The same commenter requests that we include an alternative method of inspecting for cracking of the manifolds of suspected PCMs. Fortner Engineering states that a dye penetrant inspection performed in accordance with ASTM-E474, Type 1, Method A, Sensitivity Level 4, will better ensure detection of any manifold defects. Further, Fortner Engineering asserts that the OEM, Parker Hannifin, has already received approval of this dye penetrant method as an alternative method of compliance (AMOC) with AD 2003–23–01.

We agree that a dye penetrant inspection is an acceptable alternative to the ultrasonic inspection specified by the AD, because the dye penetrant technique provides a more thorough method for detecting cracking of the area of interest on the PCM manifold. However, we do not agree that ASTM–E474, Type 1, Method A, Sensitivity Level 4, has already been approved as an AMOC with AD 2003–23–01. In fact, the AMOC using dye penetrant inspection that was requested by Parker Hannifin and approved as of November 21, 2003, was in accordance with ASTM–E1417, Type 1, Method A, Sensitivity Level 4, and does not actually specify that it applies to the manifold. We are not aware of the dye penetrant inspection specification ASTM–E474, Type 1, Method A, Sensitivity Level 4; therefore, no change is necessary to the AD in this regard. However, as specified in paragraph (m) of the AD, a further AMOC may be requested if data are submitted to substantiate that ASTM-E474, Type 1, Method A, Sensitivity Level 4, specifies an acceptable method of inspection for compliance with the requirements of this AD.

Notification of Compliance Time Conflict

The Air Transport Association (ATA), on behalf of its member NWA, states that there are errors in a chronology described in the preamble of the NPRM. NWA points out an apparent conflict between the compliance times specified in different sections of the NPRM. NWA notes that the third paragraph of the "Actions Since Existing AD Was Issued" section of the preamble states, "The compliance time for the initial inspection (for airplanes not previously inspected as required by AD 2003–23–01) has been revised to the earlier of 56,000 total flight hours or 9,000 total flight cycles * * *." NWA then notes that paragraph (h) of the NPRM states, "For airplanes not inspected prior to the effective date of this AD as specified in paragraph (g) of this AD: At the later of the times specified * * * prior to the accumulation of 56,000 total flight hours or 9,000 total flight cycles * * *."

We acknowledge NWA's concern; however, we do not agree that there is a conflict in the compliance time statements. Paragraph (h) of the AD more fully states, "For airplanes not inspected prior to the effective date of this AD as specified in paragraph (g) of this AD, At the later of the times specified in paragraph (h)(1) or (h)(2) of this AD * * *." Paragraph (h)(1) of the AD states, "Prior to the accumulation of 56,000 total flight hours or 9,000 total flight cycles, whichever occurs first." Paragraph (h)(2) of the AD states, "Within 24 months after the effective date of this AD." The "later of the times" statement of paragraph (h) refers to the relationship between paragraphs (h)(1) and (h)(2). In paragraph (h)(1), the statement, "whichever occurs first" is consistent with the statement "the earlier of" that appears in the "Actions Since Existing AD Was Issued" section of the preamble. Paragraph (h)(2) is the grace period for airplanes not inspected prior to the effective date of the AD. No change is needed to the AD in this regard.

Request to Withdraw NPRM

ATA, on behalf of its member United Airlines (UAL), states that it is opposed to the NPRM. UAL states that, based on the original AD 2003–23–01, there have been no further reports of cracked PCM manifolds. UAL asserts that the original incident of a cracked PCM manifold airplane failure was an isolated event, and further asserts that the event was controllable. Although UAL made no specific statement to this effect, we infer that UAL considers the AD to be unnecessary and requests us to withdraw the NPRM.

We do not agree with this request. Although UAL correctly states that no other cracked PCM manifolds have been discovered since the release of AD 2003–23–01, the root cause for the premature fatigue failure of the lower rudder PCM on the event airplane has yet to be determined; and although analysis of the results of accomplishing AD 2003–23–01 did not yield that root cause, that analysis highlighted a previously unidentified single point failure of the PCMs. This new AD is intended to protect against such a single point failure occurring on the upper rudder PCM. Without the on-going inspections required by this AD, a developing crack of either the upper or lower PCM could remain latent and grow to the point of failure, which, under certain phases of flight, could be catastrophic. For these reasons, we have determined that this AD is necessary to maintain safety of the fleet and will not be withdrawn. Further, the inspection reports required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and to possibly develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Recommendation to Develop In-Flight Procedures to Deal with a Failed PCM

Air Line Pilots Association (ALPA) recommends that procedures to deal with an in-flight situation of a failed rudder PCM be developed and provided to the flightcrews. ALPA states that this procedure would aid pilot workload in the event of a failed rudder PCM. ALPA submitted the same comment to the docket for AD 2003–23–01, asserting that "industry must develop a set of operational procedures to allow flightcrews to deal with such an in-flight situation." ALPA states that no such procedures have yet been provided and reiterates its recommendation that industry supply such procedures.

We acknowledge ALPA's concern. We understand that any such procedures would be provided by industry; in this case, Boeing. However, we have concluded, and Boeing concurs, that the repetitive inspections required by this AD will detect any cracking or potential cracking of the PCM before any PCM failure. Therefore, non-normal operational procedures are not needed to maintain fleet safety in this regard. As ALPA did not request any specific change to the NPRM, we have not changed the AD as regards this comment.

Request to Reduce Compliance Time

The same commenter, ALPA, requests that we change the compliance time of the NPRM from 24 months to 12 months. ALPA states that the potential hazard for an "uncommanded rudder hardover, consequent increased pilot workload, and possible runway departure upon landing" warrants a more conservative initial inspection period. ALPA asserts that allowing a longer initial time period may allow failed yaw damper actuators to remain in operation much longer than necessary and put may aircraft at risk of experiencing a failure similar to the one on the incident airplane.

We do not agree. AD 2003–23–01 has already required the inspection of Model 747–400 airplanes with suspected high usage rudder PCMs, and the compliance period to complete the original inspections has passed with no additional failures detected. This, along with the knowledge the rudder PCMs have undergone extensive investigation, provides us with a degree of confidence that there are no imminent failures predicted. Instead, we have determined that on-going inspections are needed because the root cause for the premature fatigue failure on the incident airplane has not been determined. Further, this AD is intended to protect against a failure condition not previously analyzed: failure of the upper rudder PCM. The existing initial compliance time of 24 months provides a balance between further possible failures due to the unknown cause of the failed part and the additional burden of on-going inspections. No revision is needed to the AD in this matter.

Clarification of Parts Installation Paragraph

The clear intent of this AD is that PCMs having cracked manifolds must be removed from service and replaced with serviceable PCMs having manifolds without cracks. To prevent confusion and ensure conformity with the intent of the AD, we have added the phrase "and found to be without cracks" to paragraph (l) of the AD.

Conclusion

We have reviewed the available data, including the comments that have been 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.

Interim Action

Because the root cause of the cracking addressed in AD 2003–23–01 has not yet been determined, we consider this AD to be interim action and have continued the requirement to return cracked PCMs or manifolds to Parker Hannifin in paragraph (j)(2) of this AD. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

There are approximately 636 airplanes of the affected design in the worldwide fleet. We estimate that 86 airplanes of U.S. registry will be affected by this AD, and that it will take approximately 4 work hours per airplane to accomplish the ultrasonic inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection is estimated to be $22,360, or $260 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

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 39–13364 (68 FR 64263, November 13, 2003) and adding the following new airworthiness directive (AD):

2006–18–17 Boeing: Amendment 39–14756. Docket No. FAA–2006–23873; Directorate Identifier 2005–NM–110–AD.

Effective Date

(a) This AD becomes effective October 13, 2006.

Affected ADs

(b) This AD supersedes AD 2003–23–01.

Applicability

(c) This AD applies to all Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from manufacturer findings that the inspections required by AD 2003–23–01 must be performed at regular intervals. We are issuing this AD to detect and correct potential cracking in the yaw damper actuator portion of the upper and lower rudder power control modules (PCMs), which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing.

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.

Verification of Rudder PCM/Main Manifold Time-in-Service

(f) For any affected airplane, if it can be positively verified that any rudder PCM or PCM main manifold installed on that airplane has accumulated a different total of flight hours or flight cycles than the totals accumulated by that airplane, the flight cycles or flight hours accumulated by the rudder PCM or PCM main manifold will be acceptable as valid starting points for meeting the compliance times required by this AD.

Inspection Accomplished Prior to the Issuance of This AD

(g) For airplanes which, prior to the effective date of this AD, have received an ultrasonic inspection for cracking of the yaw damper actuator portion of the upper and lower rudder PCM, in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003, as required by AD 2003–23–01: Do paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable, in accordance with the Accomplishment Instructions of

Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

(1) Perform the ultrasonic inspection described in paragraph (g) of this AD at the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, then do paragraph (g)(2) or (g)(3) of this AD, as applicable; and paragraph (g)(4) of this AD.

(i) Within 28,000 flight hours or 4,500 flight cycles after the date of the prior inspection, whichever occurs first.

(ii) Within 24 months after the effective date of this AD.

(2) If no cracking is found during any inspection required by paragraph (g)(1) or (h) of this AD: Apply sealant and a torque stripe and install a lockwire on the rudder PCM in accordance with the Accomplishment Instructions and Figure 1 or Figure 2, as applicable, of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

(3) If any cracking is found during any inspection required by paragraph (g)(1) or (h) of this AD: Before further flight, replace the affected PCM with a new or serviceable PCM and submit the report required by paragraph (i) of this AD.

(4) Repeat the ultrasonic inspection described in paragraph (g) of this AD at intervals not to exceed 28,000 flight hours or 4,500 flight cycles, whichever occurs first, and repeat the actions in paragraph (g)(2) or (g)(3) of this AD, as applicable.

Initial Inspection

(h) For airplanes not inspected prior to the effective date of this AD as specified in paragraph (g) of this AD: At the later of the times specified in paragraph (h)(1) or (h)(2) of this AD, perform an ultrasonic inspection for cracking of the yaw damper actuator portion of the upper and lower rudder PCM main manifold; and do the actions specified in paragraph (g)(2) or (g)(3) of this AD, as applicable; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005. Repeat the inspection thereafter at intervals not to exceed 28,000 flight hours or 4,500 flight cycles, whichever occurs first.

(1) Prior to the accumulation of 56,000 total flight hours or 9,000 total flight cycles, whichever occurs first.

(2) Within 24 months after the effective date of this AD.

Reporting Requirements and Damaged Parts Disposition

(i) For all airplanes: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, accomplish the actions in paragraph (j) of this AD.

(1) If the inspection was done after the effective date of this AD: Submit the report and part, if applicable, within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report and part, if applicable, within 30 days after the effective date of this AD.

(j) At the applicable time specified in paragraph (i) of this AD: Do the requirements of paragraphs (j)(1) and (j)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(1) If any inspection required by this AD reveals any indication of a cracked or broken part, submit a report to: The Boeing Company, Service Engineering—Mechanical Systems. The report must contain the airplane and rudder PCM serial numbers, the total flight hours and flight cycles for each rudder PCM (and rudder PCM main manifold, if known), and a description of any damage found. Submission of the Inspection Report Form (Figure 3 of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005) is one acceptable method of complying with this requirement.

(2) Send any cracked or broken PCMs or manifolds to Parker Hannifin Corporation in accordance with the shipping instructions specified in Appendix A of Boeing Alert Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

Prior Accomplishment of Requirements

(k) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; or Revision 1, dated March 31, 2005; are considered acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

(l) As of the effective date of this AD, no person shall install on any airplane a rudder PCM having a top assembly part number (P/N) 332700–1003, –1005, or –1007; or P/N 333200–1003, –1005, or –1007; unless the PCM has been ultrasonically inspected and found to be without cracks; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005.

Alternative Methods of Compliance (AMOCs)

(m)(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) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously according to AD 2003–23–01 are approved as AMOCs with this AD.

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 747–27A2397, Revision 2, dated September 1, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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 Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the 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 August 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14782 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 320

RIN 32207–AB58

Electronic Filing of Reconsideration Requests by Railroad Employers

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to include the option of electronic filing by railroad employers of requests for reconsideration of initial decisions under the Railroad Unemployment Insurance Act (RUIA). Part 320 currently requires that reconsideration requests be submitted in writing. The amended rule allows reconsideration requests to be made by railroad employers either in writing or electronically. In addition, § 320.10(c) and 320.10(d) inadvertently contain inaccurate references. This amended rule corrects those references.

DATES: *Effective Date:* This regulation will be effective September 8, 2006.

ADDRESSES: Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945, TDD (312) 754–4701.

SUPPLEMENTARY INFORMATION: Part 320 of the Board's regulations deals generally with administrative review of initial determinations of claims or requests for waiver of recovery of overpayments under the Railroad Unemployment Insurance Act (RUIA). Currently, the regulations require all requests for reconsideration of initial decisions to be made in writing. The Railroad Retirement Board amends its regulations to allow railroad employers to use

updated technology, such as computers and e-mail, to request reconsideration of an initial decision. Specifically, the Board amends section 320.10(a) to allow railroad employers to file requests for reconsideration under the RUIA via an electronic program that has been approved by the agency.

In addition, the Railroad Retirement Board amends section 320.10(c) to change the incorrect reference of "§ 310.12" to the correct references of "§ 320.12" in the last two sentences of this section.

Section 320.10(d) is amended to change the incorrect references of "§ 310.5" to the correct reference of "§ 320.5" in the first sentence of this section. This section is also amended to provide that a railroad employer's request for reconsideration can be made in writing or electronically.

The Board published the proposed rule on July 25, 2005 (70 FR 42517) and invited comments by September 23, 2005. No comments were received. Accordingly, the proposed rule is being published as a final rule without change.

Collection of Information Requirements

There is an information collection impacted by the amended rule:

The Railroad Retirement Board is providing notice that OMB has approved the information collection requirements contained in the affected sections of these final rules. The OMB Control Number for this collection is 3220–0171, expiring June 30, 2008.

The Board, with the concurrence of the Office of Management and Budget (OMB), has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, Chapter II, subchapter C, part 320 of the Code of Federal Regulations as follows:

PART 320–INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

■ 1. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

■ 2. Section 320.10 is amended as follows:

■ a. Add a new sentence at the end of paragraph (a);

■ b. Amend paragraph (c) by removing the reference to "§ 310.12" and adding a reference to "§ 320.12" in its place wherever it appears; and

■ c. Revise paragraph (d).

The addition and revision read as follows:

§ 320.10 Reconsideration of initial determination.

(a) * * * A railroad employer may fulfill the written request requirement by using an electronic system that has been approved by the agency in the manner prescribed by the agency.

* * * * *

(d) Right to further review of initial determination. The right to further review of a determination made under § 320.5 or § 320.9 of this part shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the party requesting reconsideration for failing to file a timely request for reconsideration. A railroad employer may fulfill the written request requirement by using an electronic system approved by the agency in the manner prescribed by the agency.

* * * * *

Dated: September 5, 2006.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E6–14883 Filed 9–7–06; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 341

RIN 3220–AB60

Electronic Filing of Settlement and Final Judgment Notices by Railroad Employers

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to include the option of electronic notification by railroad employers of settlements and final judgments based on an injury for which sickness benefits have been paid under the Railroad Unemployment Insurance Act (RUIA). Part 341 currently requires that notifications of settlements and final judgments be submitted to the Board in writing. This rule allows these notifications to be made by railroad employers either in writing or by sending an electronic message, *e.g.* via e-mail.

DATES: *Effective Date:* This regulation shall be effective September 8, 2006.

ADDRESSES: Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 341 of the Board's regulations deals with the notification of settlements and final judgments based on an injury for which sickness benefits have been paid under the Railroad Unemployment Insurance Act (RUIA). Currently, the regulations require all individuals or companies to make notifications of settlements and final judgments in writing to the Board. These revisions allow railroad employers to also notify the Board electronically in these instances, *e.g.* via e-mail.

Section 341.6(a) is amended to allow railroad employers to notify the Board, in writing or electronically in the manner prescribed by the agency, of a settlement or final judgment based on an injury for which the employee received sickness benefits.

In addition, this rule amends sections 341.8(a) and 341.8(b) to allow a railroad employer to notify the Board electronically or in writing. Also, sections 341.8(b) and (c) are amended to change the outdated references of "Division of Claims Operations" and "Bureau of Unemployment and Sickness Insurance" to the correct reference of "Sickness and Unemployment Benefits Section".

The Board, with the concurrence of the Office of Management and Budget (OMB), has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required.

There is an information collection impacted by the amended rule.

The Railroad Retirement Board is providing notice that OMB has approved the information collection requirements contained in the affected sections of this final rule. The OMB Control Number for this collection is 3220–0036, expiring January 31, 2009.

The Board published the proposed rule on December 9, 2005 (70 FR 73176) and invited comments by February 7, 2006. No comments were received. Accordingly, the proposed rule is being published as a final rule.

List of Subjects in 20 CFR Part 341

Railroad unemployment insurance, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, Chapter II, subchapter C, part 341 of the Code of Federal Regulations as follows:

PART 341—STATUTORY LIEN WHERE SICKNESS BENEFITS PAID

■ 1. The authority citation for part 341 continues to read as follows:

Authority: 45 U.S.C. 362(o).

■ 2. Revise § 341.6(a) introductory text to read as follows:

§ 341.6 Report of settlement or judgment.

(a) When a person or company makes a settlement or must satisfy a final judgment based on an injury for which the employee received sickness benefits, the person or company shall notify the Board of the settlement or final judgment. That notice shall be in writing and submitted within five days of the settlement or final judgment. A railroad employer may fulfill the written notice requirement by sending an electronic message in the manner prescribed by the agency. That notification shall contain:

* * * * *

■ 3. Amend § 341.8 as follows:

■ a. Add a new sentence to the end of paragraph (a);

■ b. Revise paragraph (b); and

■ c. Amend paragraph (c) by removing the phrase "Division of Claims Operations" and adding the phrase "Sickness and Unemployment Benefits Section" in its place.

■ The additions and revisions read as follows:

§ 341.8 Termination of sickness benefits due to a settlement.

(a) * * * A railroad employer may file the required report by sending an electronic message in the manner prescribed by the agency.

(b) A report of settlement shall be made to the Sickness and Unemployment Benefits Section and shall include the information required in § 341.6. Where the report is an oral report, and the informant is neither the employee nor his or her representative, the informant shall be told that written confirmation containing the information called for by § 341.6 must be submitted to the Board within 5 days from the date of the oral report. A railroad employer may fulfill the written report requirement by sending an electronic message in the manner prescribed by the agency.

* * * * *

Dated: September 5, 2006.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E6–14884 Filed 9–7–06; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs; Zilpaterol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet Inc. The NADA provides for use of a zilpaterol hydrochloride Type A medicated article to formulate Type B and Type C medicated feeds for cattle fed in confinement for slaughter.

DATES: This rule is effective September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–120), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301 827–1600, e-mail: *eric.dubbin@.fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Intervet Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, filed NADA 141–258 for the oral use of ZILMAX (zilpaterol hydrochloride 4.8%) Type A medicated article to formulate Type B (liquid and dry) and Type C medicated cattle feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter during the last 20 to 40 days on feed. The NADA is approved as of August 10, 2006, and the regulations are amended in part 556 (21 CFR part 556) and part 558 (21 CFR part 558) by adding new §§ 556.765 and 558.665 and by amending § 558.4 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 10, 2006.

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

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 2. Add § 556.765 to read as follows:

§ 556.765 Zilpaterol.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of zilpaterol is 0.083 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for zilpaterol freebase (the marker residue) is 12 parts per billion (ppb).

(ii) [Reserved]

(2) [Reserved]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 4. In paragraph (d) of § 558.4, in the "Category II" table, alphabetically add an entry for "Zilpaterol" to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent[1] Type A	Type B maximum (100x)	Assay limits percent[1] Type B/C[2]
*	*	*	*
Zilpaterol	90–110	680 g/t (0.075%)	80–110/75–115

[1]Percent of labeled amount.
[2]Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

■ 5. Add § 558.665 to read as follows:

§ 558.665 Zilpaterol.

(a) *Specifications.* Type A medicated articles containing 21.77 grams (g) zilpaterol hydrochloride per pound.

(b) *Approvals.* See No. 057926 in § 510.600(c) of this chapter.

(c) *Tolerances.* See § 556.765 of this chapter.

(d) *Special considerations*—(1) Labeling of Type B and Type C cattle feeds shall bear the following:

(i) Do not allow horses or other equines access to feed containing zilpaterol.

(ii) Not for use in animals intended for breeding.

(iii) Do not use in veal calves.

(2) Type B Liquid Feeds can be manufactured containing 68 to 680 g zilpaterol hydrochloride/ton. The liquid Type B feeds must be maintained at a pH of 3.8 to 7.5. For liquid feeds stored in recirculating tank systems: Recirculate immediately prior to use for not less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used. For liquid feeds stored in mechanical, air or other agitation-type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

(3) Do not pellet medicated feeds containing zilpaterol.

(e) *Conditions of use in cattle*—(1) *Amount.* 6.8 g/ton of feed to provide 60 to 90 milligrams zilpaterol hydrochloride per head per day.

(2) *Indications for use.* For increased rate of weight gain, improved feed efficiency and increased carcass leanness in cattle fed in confinement for slaughter during the last 20 to 40 days on feed.

(3) *Limitations.* Feed continuously as the sole ration during the last 20 to 40 days on feed. Withdrawal period: 3 days.

Dated: August 29, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–14899 Filed 9–7–06; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feed; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Phibro Animal Health. The supplemental NADA revises labeling of oxytetracycline Type A medicated article with the current genus for the causative bacteria for American foulbrood of honeybees.

DATES: This rule is effective September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 65 Challenger Rd., 3d floor, Ridgefield Park, NJ 07660, filed a supplement to NADA 95–143 that provides for use of TERRAMYCIN 100MR (oxytetracycline dihydrate) Type A medicated article for treatment of various bacterial diseases of livestock. The supplemental NADA revises labeling with the current genus for the causative bacteria for American foulbrood of honeybees. The supplemental NADA is approved as of August 11, 2006, and the regulations in 21 CFR 558.450 are amended to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under § 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.450 [Amended]

■ 2. In § 558.450, in the table in paragraph (d)(1)(xiv) in the "Indications for use" column, remove "*Bacillus*" and add in its place "*Paenibacillus*".

Dated: August 30, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–14898 Filed 9–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 181

RIN 1400–AC21

[Public Notice: 5527]

Publication, Coordination, and Reporting of International Agreements: Amendments

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State is updating the regulations implementing 1 U.S.C. 112a and 112b in order to reflect amendments to the statutes governing publication of U.S. international agreements and their transmittal to the Congress. It will not be publishing certain categories of international agreements in the compilation entitled "United States Treaties and Other International Agreements" or in the "Treaties and Other International Acts Series." Further, the regulations are being amended to reflect adjustments to certain internal procedures within the State Department on the reporting of international agreements to Congress. Finally, the Department is adding a new requirement concerning procedures for consultation with the Secretary of State in the negotiation and conclusion of international agreements. Where an international agreement could reasonably require for its implementation the issuance of a significant domestic regulatory action, agencies proposing the agreement are to consult in a timely manner with the Office of Management and Budget (OMB), and the Department of State should confirm that timely consultations were undertaken.

DATES: *Effective Date:* This rule is effective October 10, 2006.

FOR FURTHER INFORMATION CONTACT: John Kim, Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, DC 20520, 202–647–1660, or at *kimmjj@state.gov*.

SUPPLEMENTARY INFORMATION: Two statutes set forth the Secretary's unique role and important responsibilities in the area of publishing, coordinating, and reporting international agreements. Pursuant to 1 U.S.C. 112a, the Secretary of State is required to publish annually a compilation of all treaties and international agreements to which the United States is a party that were signed, proclaimed, or "with reference to which any other final formality ha[d] been executed" during the calendar year. The Secretary of State, however, may determine that certain categories of agreements should not be published if certain criteria are met. Any such determination must be published in the **Federal Register**.

Under the second statute, 1 U.S.C. 112b, the Secretary of State is required to transmit to the Congress the text of any international agreement other than a treaty to which the United States is a party as soon as practicable but no later than 60 days after it enters into force. Those agreements that the President determines should be classified are to be transmitted, not to Congress as a whole, but to the House Committee on International Relations (at that time called "the House Committee on Foreign Affairs") and to the Senate Foreign Relations Committee under an injunction of secrecy. The statute further recognizes the Secretary of State's special role in the negotiation and conclusion of all U.S. international agreements, providing that "[n]otwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement."

The Department of State has issued regulations to implement these statutory provisions. These regulations are codified in Part 181 of Chapter 22 of the Code of Federal Regulations (CFR). Congress has amended both 1 U.S.C. 112a and 1 U.S.C. 112b several times, most recently in section 7121 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (Dec. 17, 2004). The State Department is amending sections of 22 CFR Part 181 in order to reflect (1) the changes made to 1 U.S.C. 112a and 112b in December 2004; (2) certain changes made to internal Departmental procedures; and (3) four additional categories of international agreements that meet the non-publication criteria of 1 U.S.C. 112a.

In addition, the Department is amending the procedures regarding the negotiation and conclusion of international agreements. These procedures are set forth in 22 CFR 181.4 and in the Circular 175 procedure referenced therein. In particular, if a proposed international agreement embodies a commitment that could reasonably be expected to require (for its implementation) the issuance of a "significant regulatory action" (as defined in section 3 of Executive Order 12866), the agency proposing the agreement shall consult in a timely manner with the OMB regarding such commitment. This amendment is aimed at ensuring that OMB is apprised of international commitments that may have a significant regulatory impact on domestic entities or persons prior to the negotiation or conclusion of the international agreement containing the commitment.

A proposed rule on these subjects was published in the **Federal Register** on May 18, 2006 (71 FR 28831), which contains a more detailed discussion. Only one comment was received on the proposed regulations. The comment supported the proposed amendment to the consultation procedures in 22 CFR 181.4(e) with respect to proposed international agreements that reasonably may result in a "significant regulatory action." The commenter expressed the view that the amendment to the regulations would ensure a greater level of transparency in the negotiation and conclusion of international agreements that may lead to significant regulatory impacts on domestic U.S. entities.

Further, the comment made two recommendations relating to the implementation of the amendment once it was finalized. First, the commenter said that agencies should be required to consult with OMB at the earliest possible stage in the discussions of a possible international agreement. Second, the commenter requested that the State Department require agencies to publish a short notice in the **Federal Register** when consultation has been initiated with OMB, asking for public comment where appropriate. In the commenter's view, such a notice would ensure that the public and other interested agencies are made aware of consultations with OMB, thereby fostering the transparency of an agency's development of international agreements.

As there has been no objection to the proposed rule, the State Department will promulgate the final rule without change. The Department nevertheless has considered the commenter's suggestions. With respect to the first suggestion, the Department believes that the term "timely" is sufficient to indicate the need for agencies to consult with OMB at an appropriate stage in the discussions concerning proposed international agreements. The

Department and OMB already have agreed to develop inter-agency procedures to best implement the final rule and ensure that OMB has a sufficient opportunity to be consulted prior to the authorization of the negotiation or conclusion of international agreements under these regulations. With respect to the second suggestion in the comment, the Department does not provide notices in the **Federal Register** of proposed negotiations of international agreements nor does it believe that such notices would be appropriate given the nature of the conduct of foreign relations and international negotiations. The time for public notice in the **Federal Register** is the occasion of the agency's rulemaking.

Finally, no comments were received concerning the other aspects of the State Department's proposed rule; therefore, the final rule will be published also without any change to those aspects. In particular, no comments were received with respect to the Department's determination that four additional categories of international agreements meet the criteria for non-publication in 1 U.S.C. 112a(b). Also, no comments were received with respect to adjustments to certain internal procedures within the State Department on the reporting of international agreements to Congress.

Regulatory Analysis

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 553), the Department is publishing these proposed regulations and inviting public comment.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order No. 13272, section 3(b).

The Small Business Regulatory Enforcement Fairness Act of 1996

These proposed regulations do not constitute a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. These regulations would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. These proposed regulations would not result in any such expenditure nor would it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

These regulations would 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. Nor would the regulations have federalism implications warranting the application of Executive Order No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

Because a portion of this proposed rule directly involves the participation of OMB, the Department of State has submitted it to OMB for its review.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. The Department of State has determined that this proposal contains no new collection of information requirements for the purposes of the PRA.

List of Subjects in 22 CFR Part 181

Treaties.

■ For the reasons set forth above, part 181 is amended as follows:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

■ 1. The authority citation for part 181 continues to read as follows:

Authority: 1 U.S.C. 112a, 112b; and 22 U.S.C. 2651a.

■ 2. § 181.2 is amended by:
■ A. Removing the third and fourth sentences of paragraph (a) (2);
■ B. Adding a new third sentence of paragraph (a) (2); and
■ C. Adding new paragraph (f).
The additions read as follows:

§ 181.2 Criteria.

(a) * * *

(2) * * * The duration of the activities pursuant to the undertaking or the duration of the undertaking itself shall not be a factor in determining whether it constitutes an international agreement. * * *

* * * * * *

(f) Notwithstanding the other provisions of this section, arrangements that constitute international agreements within the meaning of this section include

(1) Bilateral or multilateral counterterrorism agreements and

(2) Bilateral agreements with a country that is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

■ 3. § 181.4 is amended in paragraph (e) as follows:
■ A. By designating the existing text as paragraph (e)(1); and
■ B. Adding a new paragraph (e)(2) to read as follows:

§ 181.4 Consultations with the Secretary of State.

* * * * * *

(e)(1) * * *

(2) If a proposed agreement embodies a commitment that could reasonably be expected to require (for its implementation) the issuance of a significant regulatory action (as defined in section 3 of Executive Order 12866), the agency proposing the arrangement shall state what arrangements have been planned or carried out concerning timely consultation with the Office of Management and Budget (OMB) for such commitment. The Department of State should receive confirmation that OMB has been consulted in a timely manner concerning the proposed commitment.

* * * * * *

§ 181.7 [Amended]

■ 4. § 181.7 is amended as follows:
■ A. In paragraph (b): By removing "Assistant Secretary of State for Congressional Relations" and adding in its place "Assistant Legal Adviser for Treaty Affairs"; and removing "House Committee on Foreign Affairs" and adding in its place "House Committee on International Relations".
■ B. In paragraph (c):
■ 1. By removing ", the negotiations, the effect of the agreement," in the third sentence; and
■ 2. By removing, in the last sentence the phrase "Assistant Secretary of State for Congressional Relations" and adding in its place "Assistant Legal Adviser for Treaty Affairs", and removing the phrase"House Committee on Foreign Affairs" and adding in its place "House Committee on International Relations".
■ C. In paragraph (d), by removing "Assistant Secretary of State for Congressional Relations" and "Assistant Secretary for Congressional Relations" wherever each appears and adding in its place "Assistant Legal Adviser for Treaty Affairs".

■ 5. § 181.8 is amended as follows by:
■ A. Adding paragraphs (a)(10) through (13);
■ B. Adding a sentence to the end of paragraph (b); and
■ C. Adding a new paragraph (d) to read as follows:

§ 181.8 Publication.

(a) * * *

(10) Bilateral agreements with other governments that apply to specific activities and programs financed with foreign assistance funds administered by the United States Agency for International Development pursuant to the Foreign Assistance Act, as amended, and the Agricultural Trade Development and Assistance Act of 1954, as amended;

(11) Letters of agreements and memoranda of understanding with other governments that apply to bilateral assistance for counter-narcotics and other anti-crime purposes furnished pursuant to the Foreign Assistance Act, as amended;

(12) Bilateral agreements that apply to specified education and leadership development programs designed to acquaint U.S. and foreign armed forces, law enforcement, homeland security, or related personnel with limited, specialized aspects of each other's practices or operations; and

(13) Bilateral agreements between aviation agencies governing specified aviation technical assistance projects for the provision of managerial, operational, and technical assistance in developing and modernizing the civil aviation infrastructure; and

(b) * * * Agreements on the subjects listed in paragraphs (a)(10) through (13) of this section that had not been published as of September 8, 2006.

* * * * *

(d) The Assistant Legal Adviser for Treaty Affairs shall annually submit to Congress a report that contains an index of all international agreements, listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States:

(1) Has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

(2) Has not been published, or is not proposed to be published, in the compilation entitled "United States Treaties and Other International Agreements."

■ 6. Add new § 181.9 to read as follows:

§ 181.9 Internet Web site publication.

The Office of the Assistant Legal Adviser for Treaty Affairs, with the cooperation of other bureaus in the Department, shall be responsible for making publicly available on the Internet Web site of the Department of State each treaty or international agreement proposed to be published in the compilation entitled "United States Treaties and Other International Agreements" not later than 180 days after the date on which the treaty or agreement enters into force.

Dated: August 21, 2006.

John J. Kim,

Assistant Legal Adviser for Treaty Affairs, Department of State.

[FR Doc. E6–14850 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9286]

RIN 1545–BE91

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II railroad or Class III railroad and other eligible taxpayers during the taxable year. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective September 8, 2006.

Applicability Date: For dates of applicability, see § 1.45G–1T(g).

FOR FURTHER INFORMATION CONTACT: Winston H. Douglas, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2031. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 to provide regulations

under section 45G of the Internal Revenue Code (Code). Section 45G was added to the Code by section 245(a) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (AJCA), and was modified by section 403(f) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577).

General Overview

Section 38 allows a credit for the taxable year for, among other things, the current year business credit. The current year business credit is the sum of the credits listed in section 38(b). Section 245(c)(1) of the AJCA amended section 38(b) of the Code to add to the list of credits the railroad track maintenance credit (RTMC) determined under section 45G(a).

Section 45G(a) provides that, for purposes of section 38, the RTMC for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures (QRTME) paid or incurred by an eligible taxpayer during the taxable year. Section 45G(d) defines the term QRTME to mean expenditures (whether or not chargeable to capital account) for maintaining railroad track owned by, or leased to, a Class II railroad or Class III railroad as of January 1, 2005. Section 45G(e) defines the terms Class II railroad and Class III railroad to have the respective meanings given those terms by the Surface Transportation Board (STB). Section 45G(c) defines an eligible taxpayer to mean any Class II railroad or Class III railroad, and any person who transports property using the rail facilities of such a railroad, or who furnishes railroad-related property or services to such a railroad, but only with respect to miles of railroad track assigned to such person by such a railroad.

Section 45G(b) imposes limitations on the amount of the RTMC for any taxable year. The credit allowed under section 45G(a) may not exceed $3,500 multiplied by the sum of (1) the number of miles of railroad track owned by, or leased to, the eligible taxpayer as of the close of the taxable year, and (2) the number of miles of railroad track assigned to the eligible taxpayer by a Class II railroad or Class III railroad that owns or leases the track as of the close of the taxable year.

Section 45G applies to QRTME paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

Scope

The temporary regulations define several terms, including eligible taxpayer, QRTME, rail facilities, railroad-related property, and railroad-related services. The temporary regulations also instruct an eligible taxpayer how to determine the RTMC for the taxable year. Further, the temporary regulations provide guidance on assignments of miles of railroad track for purposes of section 45G, adjustments to basis for the RTMC, and the treatment of controlled groups under section 45G.

Explanation of Provisions

Eligible Taxpayer

The temporary regulations provide that only an eligible taxpayer may claim the RTMC. An eligible taxpayer is defined in the temporary regulations as: (1) A Class II railroad or Class III railroad during the taxable year; (2) any person that transports property using the rail facilities of a Class II railroad or Class III railroad during the taxable year; or (3) any person that furnishes railroad-related property or railroad-related services to a Class II railroad or Class III railroad during the taxable year. A Class I railroad is an eligible taxpayer only if the Class I railroad is in the second or third category above and is assigned miles of railroad track for the taxable year by a Class II railroad or Class III railroad. A taxpayer in the second or third category is an eligible taxpayer only with respect to the miles of railroad track assigned to the person for the taxable year by a Class II railroad or Class III railroad.

Consistent with section 45G(e)(1), the temporary regulations provide that the terms Class II railroad and Class III railroad have the respective meanings given these terms by the STB. As determined by the STB, Class II railroads have annual carrier operating revenues of less than $250 million but in excess of $20 million after applying the railroad revenue deflator formula (Current Year's Revenues x (1991 Average Railroad Freight Price Index/ Current Year's Average Railroad Freight Price Index)). 49 CFR part 1201, subpart A, § 1–1(a). In general, Class III railroads have annual carrier operating revenues of $20 million or less after applying the railroad revenue deflator formula. 49 CFR part 1201, subpart A, § 1–1(a).

The temporary regulations also provide that the rail facilities of a Class II railroad or Class III railroad include railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and that are owned or leased by the Class II railroad or Class III railroad.

Railroad-related property is defined in the temporary regulations as meaning property that is provided directly to, and is unique to, a railroad. Further, this property must be property that, in the hands of a Class II railroad or Class III railroad, is described in asset classes 40.1 through 40.54 of Rev. Proc. 87–56 (1987–2 CB 674), with certain modifications, and is described in the STB property accounts for grading, tunnels and subways, and storage warehouses.

The temporary regulations define railroad-related services as meaning services that are provided directly to, and are unique to, a railroad. In addition, these services must relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. Examples of railroad-related services are the transport of freight by rail, the loading and unloading of freight transported by rail, locomotive leasing or rental, and maintenance of a railroad's right-of-way (including vegetation control). Examples of services that are not railroad-related services are general business services, cleaning services, banking services (including financing of railroad-related property), and office building rental.

Computation of Railroad Track Maintenance Credit

For purposes of section 38, the temporary regulations provide that the RTMC generally is equal to 50 percent of the QRTME paid or incurred by an eligible taxpayer during the taxable year. However, this credit amount cannot exceed the credit limitation provided by the temporary regulations. The credit limitation for a Class II railroad or Class III railroad differs from the credit limitation for other eligible taxpayers.

If an eligible taxpayer is a Class II railroad or Class III railroad, the temporary regulations provide that the RTMC cannot exceed $3,500 multiplied by the sum of: (1) The number of miles of railroad track owned or leased by the Class II railroad or Class III railroad within the United States at the close of its taxable year ("eligible railroad track"), reduced by the number of miles of eligible railroad track assigned by the Class II railroad or Class III railroad to another eligible taxpayer for that year; and (2) the number of miles of eligible railroad track owned or leased by another Class II railroad or Class III railroad that are assigned to the Class II railroad or Class III railroad for the taxable year.

If an eligible taxpayer is not a Class II railroad or Class III railroad, the temporary regulations provide that the RTMC cannot exceed $3,500 multiplied

by the number of miles of eligible railroad track assigned to the eligible taxpayer by a Class II railroad or Class III railroad for the taxable year.

Determination of QRTME Paid or Incurred

The temporary regulations provide that QRTME is equal to the amount of expenditures paid or incurred during the taxable year by an eligible taxpayer for maintaining railroad track, roadbed, bridges, and related track structures that are located within the United States and owned or leased as of January 1, 2005, by a Class II railroad or Class III railroad. These expenditures may or may not be chargeable to a capital account. The regulations also define railroad track, roadbed, bridges, and related track structures as meaning property described in certain STB property accounts ("qualifying railroad structure").

The temporary regulations also define the term "paid or incurred" with respect to a taxpayer using an accrual method of accounting. In this case, paid or incurred means a liability incurred within the meaning of § 1.446–1(c)(1)(ii). Consequently, a liability may not be taken into account under section 45G prior to the taxable year during which the liability is incurred. Further, the temporary regulations provide that QRTME is not paid or incurred during the taxable year to the extent that a taxpayer is entitled to reimbursement of any such expenditures. The temporary regulations provide that reimbursements may consist of amounts paid either directly or indirectly to the taxpayer. Examples of indirect reimbursements are discounted freight shipping rates, price markups of railroad-related property, debt forgiveness, or other similar arrangements. Thus, the temporary regulations limit the QRTME paid or incurred to the actual out-of-pocket expenditures paid or incurred by a taxpayer.

If an eligible taxpayer (assignee) pays a Class II railroad or Class III railroad (assignor) an amount in exchange for an assignment of one or more miles of eligible railroad track, the temporary regulations provide that the amount is treated as QRTME paid or incurred by the assignee, and not the assignor railroad, at the time and to the extent the assignor pays or incurs QRTME. Consistent with the preceding paragraph, this QRTME would be reduced by any direct or indirect reimbursements made to the assignee during the taxable year with respect to that assignment.

Assignment of Railroad Track Miles

For purposes of section 45G, the temporary regulations provide that an assignment of a mile of railroad track is not a legal transfer of title, but merely a designation. This designation must be in writing and must include the names and taxpayer identification numbers of the Class II railroad or Class III railroad (assignor) making, and the eligible taxpayer (assignee) receiving, the assignment of eligible railroad track miles, the date of this assignment, and the number of miles of eligible railroad track that is assigned by the assignor to the assignee for a taxable year. The regulations also provide that the designation need not specify the location of the assigned mile of eligible railroad track and the assigned mile of eligible railroad track does not have to correspond to the mile of eligible railroad track on which the QRTME is paid or incurred by an eligible taxpayer.

Consistent with section 45G(b), the temporary regulations provide that only a Class II railroad or Class III railroad may assign a mile of eligible railroad track. Thus, if a Class II railroad or Class III railroad assigns a railroad track mile to an eligible taxpayer, the assignee is not permitted to reassign any eligible railroad track mile to another eligible taxpayer. The regulations also provide that the maximum number of miles of eligible railroad track that may be assigned by a Class II railroad or Class III railroad (assignor) for any taxable year are the total miles of eligible railroad track owned by, or leased to, the assignor reduced by the eligible railroad track miles that the assignor retains for itself in determining the RTMC.

The temporary regulations also provide that the assignment is treated as being made by the Class II railroad or Class III railroad at the close of Class II railroad's or Class III railroad's taxable year in which the assignment is made. The assignee takes the assignment into account for its taxable year that includes the date the assignment is treated as being made by the assignor railroad under the preceding sentence.

The temporary regulations require that a taxpayer must file Form 8900, "Qualified Railroad Track Maintenance Credit," with its timely filed (including extensions) Federal income tax return for the taxable year for which the taxpayer: (1) Claims the RTMC; (2) assigns any miles of eligible railroad track; or (3) receives an assignment of any miles of eligible railroad track. Thus, for example, a Class II railroad or Class III railroad (assignor) that assigns all of its miles of eligible railroad track during a taxable year will need to file Form 8900 even though the assignor is not claiming any RTMC for that year.

As required by the temporary regulations, an assignor must attach to its Form 8900 an information statement identifying the name and taxpayer identification number (TIN) of each assignee, the total number of the assignor's eligible railroad track miles, the number of eligible railroad track miles assigned by the assignor to each assignee for the taxable year, and the total number of eligible railroad track miles assigned by the assignor to all assignees for the taxable year. Further, an eligible taxpayer (assignee) that received an assignment of railroad track miles during its taxable year from an assignor Class II railroad or Class III railroad and that claims the RTMC for that taxable year must attach to its Form 8900 a statement providing the total number of eligible railroad track miles assigned to the assignee for the taxable year and attesting that the assignee has in writing, and has retained as part of the assignee's records for purposes of § 1.6001–1(a), information identifying the name and TIN of each assignor railroad, the date of each assignment, and the number of eligible railroad track miles assigned by each assignor railroad for the assignee's taxable year. If the Federal income tax return of a Class II railroad or Class III railroad, or another eligible taxpayer, for a taxable year ending after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the Class II railroad, Class III railroad, or other eligible taxpayer wants to apply the temporary regulations to that taxable year but did not include with that return the applicable information statement specified above, the regulations require the information statement to be attached to the taxpayer's next filed Federal income tax return or to the taxpayer's amended Federal income tax return filed pursuant to the effective date provisions in the temporary regulations (discussed later), provided this amended return is filed before the taxpayer's next filed Federal income tax return.

The temporary regulations also address situations in which a Class II railroad or Class III railroad (assignor) assigns more miles of eligible railroad track than the total number of miles that it owns or that are leased to it at the end of the taxable year in which the assignment is made. If the assignor does not own or have leased to it any eligible railroad track at the end of that year, the temporary regulations provide that any assignment made during that year is not valid, regardless of whether the

assignment is properly reported. Similarly, if an assignor assigns more miles of eligible railroad track than it owned or are leased to it as of the end of the taxable year in which the assignment is made, the temporary regulations provide that the assignment is valid only with respect to the name of the assignee and the number of miles listed by the assignor on the information statement attached to its Form 8900 for that year and only to the extent of the maximum number of miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad for the taxable year.

Special Rules

The temporary regulations provide rules for adjusting basis for the amount of the RTMC claimed by an eligible taxpayer. All or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year may be required to be capitalized under section 263(a) as a tangible asset or as an intangible asset (see, for example, § 1.263(a)–4(d)(8), which generally requires capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another). The basis of the tangible asset or intangible asset includes the capitalized amount of the QRTME. Thus, for purposes of section 45G(e)(3), the regulations provide that railroad track is qualifying railroad structure (railroad track, roadbed, bridges, and related track structures) and intangible assets to which the QRTME is capitalized.

Consequently, if an eligible taxpayer claims the RTMC, the temporary regulations provide that the adjusted basis of these tangible and intangible assets must be reduced by the amount of the RTMC allowable. This reduction is taken into account at the time the QRTME is paid or incurred by an eligible taxpayer and before the depreciation deduction is determined for the taxable year for which the RTMC is allowable. If the amount of the QRTME is capitalized to more than one asset (for example, railroad track and bridges), whether tangible or intangible, the reduction to the basis of these assets is allocated among each of the assets subject to the reduction in proportion to the unadjusted basis of each asset at the time the QRTME is paid or incurred during that taxable year.

The temporary regulations also address the issue of how section 45G coordinates with section 61. Except as specifically provided in the Code, section 61 and § 1.61–1(a) provide that gross income means all income from whatever source derived. Section 1.61–1(a) further provides that gross income includes income realized in any form, whether in money, property, or services. Section 45G does not provide, and its legislative history does not refer to, any exception to this rule. Accordingly, pursuant to section 61 and the regulations under section 61, the owner of the tangible assets (for example, railroad track and roadbed) with respect to which the QRTME is paid or incurred by another person that does not have a depreciable interest in those assets has gross income in the amount of that QRTME. However, the application of section 61 to QRTME paid or incurred with respect to eligible railroad track that is leased by a Class II railroad or Class III railroad raises a question as to under what circumstances the owner or lessee should recognize gross income with respect to QRTME. The IRS and Treasury Department request comments on this issue.

Finally, if an eligible taxpayer is a member of a controlled group of corporations, section 45G(e)(2) provides that rules similar to rules of section 41(f)(1) apply. Accordingly, the temporary regulations provide rules similar to those of § 1.41–6T for determining the amount of the controlled group's RTMC, and rules for allocating the credit among members of the group.

Effective Date

These temporary regulations apply to taxable years ending on or after the date these regulations are filed in the **Federal Register** and beginning before January 1, 2008. However, a taxpayer may apply the temporary regulations to taxable years beginning after December 31, 2004, and ending before these regulations are filed in the **Federal Register**, provided that the taxpayer applies all provisions in these regulations to the taxable year.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f), these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Winston H. Douglas, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.45G–0T is added to read as follows:

§ 1.45G–0T Table of contents for the railroad track maintenance credit rules (temporary).

This section lists the major paragraphs contained in § 1.45G–1T.

§ 1.45G–1T Railroad track maintenance credit (temporary).

(a) In general.
(b) Definitions.
(1) Class II railroad and Class III railroad.
(2) Eligible railroad track.
(3) Eligible taxpayer.
(4) Qualifying railroad structure.
(5) Qualified railroad track maintenance expenditures.
(6) Rail facilities.
(7) Railroad-related property.
(8) Railroad-related services.
(9) Railroad track.
(10) Form 8900.
(11) Examples.
(c) Determination of amount of railroad track maintenance credit for the taxable year.
(1) General amount.
(2) Limitation on the credit.
(i) Eligible taxpayer is a Class II railroad or Class III railroad.
(ii) Eligible taxpayer is not a Class II railroad or Class III railroad.
(iii) Effect of double track.
(3) Determination of amount of QRTME paid or incurred.

(i) In general.
(ii) Effect of reimbursements.
(4) Examples.
(d) Assignment of track miles.
(1) In general.
(2) Assignment eligibility.
(3) Effective date of assignment.
(4) Assignment information statement.
(i) In general.
(ii) Assignor.
(iii) Assignee.
(iv) Special rule for 2005 returns.
(5) Special rules.
(i) Effect of subsequent dispositions of eligible railroad track during the assignment year.
(ii) Effect of multiple assignments of eligible railroad track miles during the same taxable year.
(6) Examples.
(e) Special rules.
(1) Adjustments to basis.
(i) In general.
(ii) Basis adjustment made to railroad track.
(iii) Examples.
(2) Coordination with section 61.
(f) Controlled groups.
(1) In general.
(2) Definitions.
(i) Trade or business.
(ii) Group and controlled group.
(iii) Group credit.
(iv) Consolidated group.
(v) Credit year.
(3) Computation of the group credit.
(4) Allocation of the group credit.
(i) In general.
(ii) Stand-alone entity credit.
(5) Special rules for consolidated groups.
(i) In general.
(ii) Special rule for allocation of group credit among consolidated group members.
(6) Tax accounting periods used.
(i) In general.
(ii) Special rule when timing of QRTME is manipulated.
(7) Membership during taxable year in more than one group.
(8) Intra-group transactions.
(i) In general.
(ii) Payment for QRTME.
(g) Effective date.
(1) In general.
(2) Application of regulation project REG–142270–05 to pre-effective date.
(3) Special rules for 2005 returns.

■ **Par. 3.** Section 1.45G–1T is added to read as follows:

§ 1.45G–1T Railroad track maintenance credit (temporary).

(a) *In general.* For purposes of section 38, the railroad track maintenance credit (RTMC) for qualified railroad track maintenance expenditures (QRTME) paid or incurred by an eligible taxpayer during the taxable year is determined under this section. A taxpayer claiming the RTMC must do so by filing Form 8900, "Qualified Railroad Track Maintenance Credit," with its timely filed (including extensions) Federal income tax return for the taxable year for which the RTMC is claimed. Paragraph (b) of this section provides definitions of terms. Paragraph (c) of this section provides rules for computing the RTMC, including rules regarding limitations on the amount of the credit. Paragraph (d) of this section provides rules for assigning miles of railroad track. Paragraph (e) of this section contains special rules. Paragraph (f) of this section contains rules for computing the amount of the RTMC in the case of a controlled group, and for the allocation of the group credit among members of the controlled group.

(b) *Definitions.* For purposes of section 45G and this section, the following definitions apply:

(1) *Class II railroad and Class III railroad* have the respective meanings given to these terms by the Surface Transportation Board (STB).

(2) *Eligible railroad track* is railroad track located within the United States that is owned or leased by a Class II railroad or Class III railroad at the close of its taxable year. For purposes of section 45G and this section, a Class II railroad or Class III railroad owns railroad track if the railroad track is subject to the allowance for depreciation under section 167 by the Class II railroad or Class III railroad.

(3) *Eligible taxpayer* is—

(i) A Class II railroad or Class III railroad during the taxable year;

(ii) Any person that transports property using the rail facilities of a Class II railroad or Class III railroad during the taxable year, but only with respect to the miles of eligible railroad track assigned to the person for that taxable year by that Class II railroad or Class III railroad under paragraph (d) of this section; or

(iii) Any person that furnishes railroad-related property or railroad-related services to a Class II railroad or Class III railroad during the taxable year, but only with respect to the miles of eligible railroad track assigned to the person for that taxable year by that Class II railroad or Class III railroad under paragraph (d) of this section.

(4) *Qualifying railroad structure* is property located within the United States that is described in the following STB property accounts in 49 CFR part 1201, subpart A:

(i) Property Account 3, Grading.
(ii) Property Account 4, Other right-of-way expenditures.
(iii) Property Account 5, Tunnels and subways.
(iv) Property Account 6, Bridges, trestles, and culverts.
(v) Property Account 7, Elevated structures.
(vi) Property Account 8, Ties.
(vii) Property Account 9, Rails and other track material.
(viii) Property Account 11, Ballast.
(ix) Property Account 13, Fences, snowsheds, and signs.
(x) Property Account 27, Signals and interlockers.
(xi) Property Account 39, Public improvements; construction.

(5) *Qualified railroad track maintenance expenditures (QRTME)* are expenditures for maintaining, repairing, and improving qualifying railroad structure that is owned or leased as of January 1, 2005, by a Class II railroad or Class III railroad. These expenditures may or may not be chargeable to a capital account.

(6) *Rail facilities* of a Class II railroad or Class III railroad are railroad yards, tracks, bridges, tunnels, wharves, docks, stations, and other related assets that are used in the transport of freight by a railroad and that are owned or leased by the Class II railroad or Class III railroad.

(7) *Railroad-related property* is property that is provided directly to, and is unique to, a railroad and that, in the hands of a Class II railroad or Class III railroad, is described in—

(i) The STB property accounts 3, Grading; 5, Tunnels and subways; and 22, Storage warehouses, in 49 CFR part 1201, subpart A; and

(ii) Asset classes 40.1 through 40.54 in the guidance issued by the Internal Revenue Service under section 168(i)(1) (for further guidance, for example, see Rev. Proc. 87–56 (1987–2 CB 674), and § 601.601(d)(2)(ii)(*b*) of this chapter), except that any office building, any passenger train car, and any miscellaneous structure if such structure is not provided directly to, and is not unique to, a railroad are excluded from the definition of railroad-related property.

(8) *Railroad-related services* are services that are provided directly to, and are unique to, a railroad and that relate to railroad shipping, loading and unloading of railroad freight, or repairs of rail facilities or railroad-related property. Examples of railroad-related services are the transport of freight by rail; the loading and unloading of freight transported by rail; railroad bridge services; railroad track construction; providing railroad track material or equipment; locomotive leasing or rental; maintenance of railroad's right-of-way (including vegetation control);

piggyback trailer ramping; rail deramping services; and freight train cars repair services. Examples of services that are not railroad-related services are general business services, such as, accounting and bookkeeping, marketing, legal services; cleaning services; office building rental; banking services (including financing of railroad-related property); and purchasing of, or services performed on, property not described in paragraph (b)(7) of this section.

(9) Except as provided in paragraph (e)(1) of this section, *railroad track* is property described in STB property accounts 8 (ties), 9 (rails and other track material), and 11 (ballast) in 49 CFR part 1201, subpart A.

(10) *Form 8900.* If Form 8900 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(11) *Examples.* The application of this paragraph (b) is illustrated by the following examples. In all examples, the taxpayers use a calendar taxable year, and are not members of a controlled group:

Example 1. A is a manufacturer that in 2006, transports its products by rail using the railroad tracks owned by B, a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. B properly assigns for purposes of section 45G 100 miles of eligible railroad track to A in 2006. A is an eligible taxpayer for 2006 with respect to the 100 miles of eligible railroad track.

Example 2. C is a bank that loans money to several Class III railroads. In 2006, C loans money to D, a Class III railroad, who in turn uses the loan proceeds to purchase track material. Because providing loans is not a service that is unique to a railroad, C is not providing railroad-related services and, thus, C is not an eligible taxpayer, even if D assigns miles of eligible railroad track to C for purposes of section 45G.

Example 3. E leases locomotives directly to Class I, Class II, and Class III railroads. In 2006, E leases locomotives to F, a Class II railroad that owns 200 miles of railroad track within the United States on December 31, 2006. F properly assigns for purposes of section 45G 200 miles of eligible railroad track to E. Because locomotives are property that is unique to a railroad, and E leases these locomotives directly to F in 2006, E is an eligible taxpayer for 2006 with respect to the 200 miles of eligible railroad track assigned to E by F.

(c) *Determination of amount of railroad track maintenance credit for the taxable year*—(1) *General amount.* Except as provided in paragraph (c)(2) of this section, for purposes of section 38, the RTMC determined under section 45G(a) for the taxable year is equal to 50 percent of the QRTME paid or incurred (as determined under paragraph (c)(3) of this section) by an eligible taxpayer during the taxable year.

(2) *Limitation on the credit*—(i) *Eligible taxpayer is a Class II railroad or Class III railroad.* If an eligible taxpayer is a Class II railroad or Class III railroad, the RTMC determined under paragraph (c)(1) of this section for the Class II railroad or Class III railroad for any taxable year must not exceed $3,500 multiplied by the sum of—

(A) The number of miles of eligible railroad track owned or leased by the Class II railroad or Class III railroad, reduced by the number of miles of eligible railroad track assigned under paragraph (d) of this section by the Class II railroad or Class III railroad to another eligible taxpayer for that taxable year; and

(B) The number of miles of eligible railroad track owned or leased by another Class II railroad or Class III railroad that are assigned under paragraph (d) of this section to the Class II railroad or Class III railroad for the taxable year.

(ii) *Eligible taxpayer is not a Class II railroad or Class III railroad.* If an eligible taxpayer is not a Class II railroad or Class III railroad, the RTMC determined under paragraph (c)(1) of this section for the eligible taxpayer for any taxable year must not exceed $3,500 multiplied by the number of miles of eligible railroad track assigned under paragraph (d) of this section by a Class II railroad or Class III railroad to the eligible taxpayer for the taxable year.

(iii) *Effect of double track.* For purposes of this paragraph (c)(2), double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(3) *Determination of amount of QRTME paid or incurred*—(i) *In general.* The term *paid or incurred* means, in the case of a taxpayer using an accrual method of accounting, a liability incurred (within the meaning of § 1.446–1(c)(1)(ii)). A liability may not be taken into account under section 45G and this section prior to the taxable year during which the liability is incurred.

(ii) *Effect of reimbursements.* The amount of QRTME treated as paid or incurred during the taxable year shall be reduced by any amount to which the taxpayer is entitled to be reimbursed, directly or indirectly, whether or not such reimbursement takes place during the taxable year in which the QRTME is, but for this sentence, paid or incurred by the taxpayer. Examples of indirect reimbursements include discounted freight shipping rates, markup of the price for track materials, and debt forgiveness. Similarly, any amount that an eligible taxpayer (assignee) pays a Class II railroad or Class III railroad (assignor) in exchange for an assignment of one or more miles of eligible railroad track under paragraph (d) of this section, is treated, for purposes of this section, as QRTME paid or incurred by the assignee, and not by the assignor, at the time and to the extent the assignor pays or incurs QRTME.

(4) *Examples.* The application of this paragraph (c) is illustrated by the following examples. In all examples, the taxpayers use an accrual method of accounting and a calendar taxable year, and are not members of a controlled group:

Example 1. Computation of RTMC; section 45G credit limitation is not exceeded. (i) G is a Class II railroad that owns or has leased to it 1,000 miles of railroad track within the United States on December 31, 2006. H is a manufacturer that in 2006, transports its products by rail using the rail facilities of G. In 2006, for purposes of section 45G, G assigns 100 miles of eligible railroad track to H and does not make any other assignments of railroad track miles. H did not receive any other assignments of railroad track miles in 2006. During 2006, G incurred QRTME in the amount of $2.5 million and H incurred QRTME in the amount of $200,000.

(ii) For 2006, G determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $1,250,000 (50% multiplied by $2,500,000 QRTME incurred by G during 2006). G further determines G's credit limitation under paragraph (c)(2)(i) of this section for 2006 to be $3,150,000 ($3,500 multiplied by 900 miles of eligible railroad track (1,000 miles owned by, or leased to, G on December 31, 2006, less 100 miles assigned by G to H in 2006)). Because G's tentative amount of RTMC does not exceed G's credit limitation amount for 2006, G may claim a RTMC for 2006 in the amount of $1,250,000.

(iii) For 2006, H determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $100,000 (50% multiplied by $200,000 QRTME incurred by H during 2006). H further determines H's credit limitation under paragraph (c)(2)(ii) of this section for 2006 to be $350,000 ($3,500 multiplied by 100 miles of eligible railroad track assigned by G to H in 2006). Because H's tentative amount of RTMC does not exceed H's credit limitation amount for 2006, H may claim a RTMC in the amount of $100,000.

Example 2. Computation of RTMC; section 45G credit limitation is exceeded. (i) The facts are the same as in *Example 1*, except that G assigned for purposes of section 45G only 50 miles of railroad track to H in 2006 and, during 2006, H incurred QRTME in the amount of $400,000.

(ii) For 2006, G determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $1,250,000 (50% multiplied by $2,500,000 QRTME incurred by G during 2006). G further determines G's credit

limitation under paragraph (c)(2)(i) of this section for 2006 to be $3,325,000 ($3,500 multiplied by 950 miles of eligible railroad track (1,000 miles owned by, or leased to, G on December 31, 2006, less 50 miles assigned by G to H in 2006)). Because G's tentative amount of RTMC does not exceed G's credit limitation amount for 2006, G may claim a RTMC in the amount of $1,250,000.

(iii) For 2006, H determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $200,000 (50% multiplied by $400,000 QRTME incurred by H during 2006). H further determines H's credit limitation under paragraph (c)(2)(ii) of this section for 2006 to be $175,000 ($3,500 multiplied by 50 miles of eligible railroad track assigned by G to H in 2006). Because H's tentative amount of RTMC exceeds H's credit limitation amount for 2006, H may claim a RTMC in the amount of $175,000 (the credit limitation amount). There is no carryover of the amount of $25,000 (the tentative amount of $200,000 less the credit limitation amount of $175,000).

Example 3. Railroad track miles assigned for payment. (i) J is a Class II railroad that owns or has leased to it 1,000 miles of railroad track within the United States on December 31, 2006. K is a corporation that sells ties, ballast, and other track material to Class I, Class II, and Class III railroads. During 2006, K sold these items to J and J incurred QRTME in the amount of $1 million. Also, on December 6, 2006, J assigned for purposes of section 45G 150 miles of eligible railroad track to K and K paid J $800,000 for that assignment. K did not pay or incur any QRTME during 2006.

(ii) For 2006, in accordance with paragraph (c)(3)(ii) of this section, J is treated as having incurred QRTME in the amount of $200,000 ($1 million QRTME actually incurred by J less the $800,000 paid by K to J for the assignment of the railroad track miles in 2006). For 2006, J determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $100,000 (50% multiplied by $200,000 QRTME treated as incurred by J during 2006). J further determines J's credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $2,975,000 ($3,500 multiplied by 850 miles of eligible railroad track (1,000 miles owned by, or leased to, J on December 31, 2006, less 150 miles assigned by J to K in 2006)). Because J's tentative amount of RTMC does not exceed J's credit limitation amount for 2006, J may claim a RTMC in the amount of $100,000.

(iii) For 2006, K is an eligible taxpayer because, during 2006, K provided railroad-related property to J and received an assignment of eligible railroad track miles from J. Under paragraph (c)(3)(ii) of this section, K is treated as having incurred QRTME in the amount of $800,000 (the amount paid by K to J for the assignment of the railroad track miles in 2006). For 2006, K determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $400,000 (50% multiplied by $800,000 QRTME treated as incurred by K during 2006). K further determines K's credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $525,000 ($3,500 multiplied by 150 miles of eligible railroad track assigned by J in 2006). Because K's tentative amount of RTMC does not exceed K's credit limitation amount for 2006, K may claim a RTMC in the amount of $400,000.

Example 4. Reimbursement of QRTME. (i) L is a Class III railroad that owns or has leased to it 500 miles of railroad track within the United States on December 31, 2006. M is a manufacturer that in 2006 transports its products by rail using the rail facilities of L. During 2006, L did not incur any QRTME. Also, in 2006, L assigned for purposes of section 45G 200 miles of eligible railroad track to M and agreed to reduce L's freight shipping rates to M by $250,000 in exchange for M upgrading these railroad track miles. Consequently, during 2006, M incurred QRTME of $500,000 to upgrade these 200 miles of railroad track and L reduced L's freight shipping rates for M by $250,000.

(ii) For 2006, M is an eligible taxpayer because, during 2006, M transported property using the rail facilities of L and received an assignment of eligible railroad track miles from L. Under paragraph (c)(3)(ii) of this section, the amount of QRTME paid or incurred by M during 2006 is $250,000 ($500,000 QRTME actually incurred by M, less the reimbursement of $250,000 by L to M). For 2006, M determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $125,000 (50% multiplied by $250,000 QRTME incurred by M during 2006). M further determines M's credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $700,000 ($3,500 multiplied by 200 miles of eligible railroad track assigned by L to M in 2006). Because M's tentative amount of RTMC does not exceed M's credit limitation amount for 2006, M may claim a RTMC in the amount of $125,000.

(d) *Assignment of track miles*—(1) *In general.* An assignment of any mile of eligible railroad track under this paragraph (d) is a designation by a Class II railroad or Class III railroad that is made solely for purposes of section 45G and this section of a specific number of miles of eligible railroad track as being assigned to another eligible taxpayer for a taxable year. A designation must be in writing and must include the name and taxpayer identification number of the assignee, and the information required under the rules of paragraph (d)(4)(iii)(B) of this section. A designation requires no transfer of legal title or other indicia of ownership of the eligible railroad track, and need not specify the location of any assigned mile of eligible railroad track. Further, an assigned mile of eligible railroad track need not correspond to any specific mile of eligible railroad track with respect to which the eligible taxpayer actually pays or incurs the QRTME. For purposes of this paragraph (d), double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(2) *Assignment eligibility.* Only a Class II railroad or Class III railroad may assign a mile of eligible railroad track. If a Class II railroad or Class III railroad assigns a mile of eligible railroad track to an eligible taxpayer, the assignee is not permitted to reassign any mile of eligible railroad track to another eligible taxpayer. The maximum number of miles of eligible railroad track that may be assigned by a Class II railroad or Class III railroad for any taxable year is its total miles of eligible railroad track less the miles of eligible railroad track that the Class II railroad or Class III railroad retains for itself in determining its RTMC for the taxable year.

(3) *Effective date of assignment.* If a Class II railroad or Class III railroad assigns a mile of eligible railroad track, the assignment is treated as being made by the Class II railroad or Class III railroad at the close of its taxable year in which the assignment was made. With respect to the assignee, the assignment of a mile of eligible railroad track is taken into account for the taxable year of the assignee that includes the date the assignment is treated as being made by the assignor Class II railroad or Class III railroad under this paragraph (d)(3).

(4) *Assignment information statement*—(i) *In general.* A taxpayer must file Form 8900, "Qualified Railroad Track Maintenance Credit," with its timely filed (including extensions) Federal income tax return for the taxable year for which the taxpayer assigns any mile of eligible railroad track, even if the taxpayer is not itself claiming the RTMC for that taxable year.

(ii) *Assignor.* Except as provided in paragraph (d)(4)(iv) of this section, a Class II railroad or Class III railroad (assignor) that assigns one or more miles of eligible railroad track during a taxable year to one or more eligible taxpayers must attach to the assignor's Form 8900 for that taxable year an information statement providing—

(A) The name and taxpayer identification number of each assignee;

(B) The total number of miles of the assignor's eligible railroad track;

(C) The number of miles of eligible railroad track assigned by the assignor to each assignee for the taxable year; and

(D) The total number of miles of eligible railroad track assigned by the assignor to all assignees for the taxable year.

(iii) *Assignee.* Except as provided in paragraph (d)(4)(iv) of this section, an eligible taxpayer (assignee) that has

received an assignment of miles of eligible railroad track during its taxable year from a Class II railroad or Class III railroad, and that claims the RTMC for that taxable year, must attach to the assignee's Form 8900 for that taxable year a statement—

(A) Providing the total number of miles of eligible railroad track assigned to the assignee for the assignee's taxable year; and

(B) Attesting that the assignee has in writing, and has retained as part of the assignee's records for purposes of § 1.6001–1(a), the following information from each assignor:

(*1*) The name and taxpayer identification number of each assignor;

(*2*) The date of each assignment made by each assignor (as determined under paragraph (d)(3) of this section) to the assignee; and

(*3*) The number of miles of eligible railroad track assigned by each assignor to the assignee for the assignee's taxable year.

(iv) *Special rule for 2005 returns.* If an eligible taxpayer's Federal income tax return for a taxable year beginning after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the eligible taxpayer wants to apply paragraph (g)(2) of this section but did not include with that return the information specified in paragraph (d)(4)(ii) or (iii) of this section, as applicable, the eligible taxpayer must attach a statement containing the information specified in paragraph (d)(4)(ii) or (iii) of this section, as applicable, to either—

(A) The eligible taxpayer's next filed original Federal income tax return; or

(B) The eligible taxpayer's amended Federal income tax return that is filed pursuant to paragraph (g)(2) of this section, provided that amended Federal income tax return is filed by the eligible taxpayer before its next filed original Federal income tax return.

(5) *Special rules*—(i) *Effect of subsequent dispositions of eligible railroad track during the assignment year.* If a Class II railroad or Class III railroad assigns one or more miles of eligible railroad track that it owned or leased as of the actual date of the assignment, but does not own or lease any eligible railroad track at the close of the taxable year in which the assignment is made by the Class II railroad or Class III railroad, the assignment is not valid for that taxable year for purposes of section 45G and this section.

(ii) *Effect of multiple assignments of eligible railroad track miles during the same taxable year.* If a Class II railroad or Class III railroad assigns more miles of eligible railroad track than it owned or leased as of the close of the taxable year in which the assignment is made by the Class II railroad or Class III railroad, the assignment is valid for purposes of section 45G and this section only with respect to the name of the assignee and the number of miles listed by the assignor Class II railroad or Class III railroad on the statement required under paragraph (d)(4)(ii) of this section and only to the extent of the maximum miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad as determined under paragraph (d)(2) of this section. If the total number of miles on this statement exceeds the maximum miles of eligible railroad track that may be assigned by the assignor Class II railroad or Class III railroad (as determined under paragraph (d)(2) of this section), the total number of miles on the statement shall be reduced by the excess amount of miles. This reduction is allocated among each assignee listed on the statement in proportion to the total number of miles listed on the statement for that assignee.

(6) *Examples.* The application of this paragraph (d) is illustrated by the following examples. In none of the examples are the taxpayers members of a controlled group:

Example 1. Assignor and assignee have the same taxable year. (i) N, a calendar year taxpayer, is a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. O, a calendar year taxpayer, is not a railroad, but is a taxpayer that provides railroad-related property to N during 2006. On November 7, 2006, N assigns for purposes of section 45G 300 miles of eligible railroad track to O. O receives no other assignment of eligible railroad track in 2006. O pays or incurs QRTME in the amount of $100,000 in November 2006, and $50,000 in February 2007. N and O each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section reporting the assignment of the 300 miles of eligible railroad track to O.

(ii) The assignment of the 300 miles of eligible railroad track made by N to O on November 7, 2006, is treated as made on December 31, 2006 (at the close of the N's taxable year). Consequently, the assignment is taken into account by O for O's taxable year ending on December 31, 2006. For 2006, O is an eligible taxpayer because, during 2006, O provides railroad-related property to N and receives an assignment of 300 eligible railroad track miles from N. For 2006, O determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $50,000 (50% multiplied by $100,000 QRTME paid or incurred by O during 2006). O further determines the credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $1,050,000 ($3,500 multiplied by 300 miles of eligible railroad track assigned by N to O on December 31, 2006). Because O's tentative amount of RTMC does not exceed O's credit limitation amount for 2006, O may claim a RMTC for 2006 in the amount of $50,000.

Example 2. Assignor and assignee have different taxable years. (i) The facts are the same as in *Example 1*, except that O's taxable year ends on March 31.

(ii) The assignment of the 300 miles of eligible railroad track made by N to O on November 7, 2006, is treated as made on December 31, 2006. As a result, the assignment is taken into account by O for O's taxable year ending on March 31, 2007. Thus, for the taxable year ending on March 31, 2007, O determines the tentative amount of RMTC under paragraph (c)(1) of this section to be $75,000 (50% multiplied by $150,000 QRTME incurred by O during its taxable year ending March 31, 2007). Because O's tentative amount of RTMC does not exceed O's credit limitation amount for 2006, O may claim a RMTC for 2006 in the amount of $75,000.

Example 3. Assignment location differs from QRTME location. (i) P, a calendar-year taxpayer, is a Class III railroad that owns or has leased to it 200 miles of railroad track within the United States on December 31, 2006. P owns 50 miles of this railroad track and leases 150 miles of this railroad track from Q, a Class I railroad. On February 8, 2006, P assigns for purposes of section 45G 50 miles of eligible railroad track to R. R is not a railroad, but is a taxpayer that ships products using the 50 miles of eligible railroad track owned by P, and R paid $100,000 in 2006 to P to enable P to upgrade these 50 miles of eligible railroad track. In March 2006, P also assigns for purposes of section 45G 150 miles of eligible railroad track to S. S is not a railroad, but is a taxpayer that provides railroad-related property to P, and S paid $400,000 to P to enable P to upgrade P's 200 miles of eligible railroad track. For 2006, P pays or incurs QRTME in the amount of $500,000 to upgrade the 150 miles of eligible railroad track that it leases from Q and pays or incurs no QRTME on the 50 miles of eligible railroad track that it owns. For 2006, P receives no other assignment of eligible railroad track miles and did not retain any eligible railroad track miles for itself. Also, R and S do not pay or incur any other amounts that would qualify as QRTME during 2006. P, R, and S each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) or (iii) of this section, whichever applies, reporting the assignment of eligible railroad track by P to R or S in 2006.

(ii) For 2006, in accordance with paragraph (c)(3)(ii) of this section, P is treated as having incurred QRTME in the amount of $0 ($500,000 QRTME actually incurred by P less the $100,000 paid by R to P for the assignment of the 50 miles of eligible railroad track and the $400,000 paid by S to P for the assignment of the 150 miles of eligible railroad track). Further, P assigned all of its eligible railroad track miles to R and S for 2006. Accordingly, for 2006, P may not claim any RTMC.

(iii) For 2006, R is an eligible taxpayer because, during 2006, R ships property using the rail facilities of P and receives an assignment of 50 eligible railroad track miles from P. In accordance with paragraph (c)(3)(ii) of this section, R is treated as having incurred QRTME in the amount of $100,000 (the amount paid by R to P for the assignment of the eligible railroad track miles in 2006) even though no work was performed on the 50 miles of eligible railroad track that was assigned by P to R. For 2006, R determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $50,000 (50% multiplied by $100,000 QRTME treated as incurred by R during 2006). R further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $175,000 ($3,500 multiplied by 50 miles of eligible railroad track assigned by P to R in 2006). Because R's tentative amount of RTMC does not exceed R's credit limitation amount for 2006, R may claim a RTMC for 2006 in the amount of $50,000.

(iv) For 2006, S is an eligible taxpayer because, during 2006, S provides railroad-related property to P and receives an assignment of 150 eligible railroad track miles from P. In accordance with paragraph (c)(3)(ii) of this section, S is treated as having incurred QRTME in the amount of $400,000 (amount paid by S to P for the assignment of the eligible railroad track miles in 2006). For 2006, S determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $200,000 (50% multiplied by $400,000 QRTME treated as incurred by S during 2006). S further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $525,000 ($3,500 multiplied by 150 miles of eligible railroad track assigned by P to S in 2006). Because S's tentative amount of RTMC does not exceed S's credit limitation amount for 2006, S may claim a RTMC for 2006 in the amount of $200,000.

Example 4. Multiple assignments of track miles. (i) T, a calendar-year taxpayer, is a Class III railroad that owns or has leased to it 200 miles of railroad track within the United States on December 31, 2006. T owns 75 miles of this railroad track and leases 125 miles of this railroad track from U, a Class I railroad. V and W are not railroads, but are both taxpayers that provide railroad-related services to T during 2006. On January 15, 2006, T assigns for purposes of section 45G 200 miles of eligible railroad track to V. V agrees to incur, in 2006, $1.4 million of QRTME to upgrade a portion of/segment of these 200 miles of eligible railroad track. Due to unexpected financial difficulties, V only incurs $250,000 of QRTME during 2006 and on May 15, 2006, T learns that V is unable to incur the remainder of the QRTME. On June 15, 2006, T assigns for purposes of section 45G the 200 miles of railroad track to W. In 2006, W incurs $1,100,000 of QRTME to upgrade a portion of/segment of the railroad track. For 2006, T receives no other assignment of eligible railroad track miles and did not retain any eligible railroad track miles for itself. V and W do not receive any other assignments of miles of eligible railroad track miles from a Class II railroad or Class III railroad during 2006. T and W each file Form 8900 with their timely filed Federal income tax returns for 2006, and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section, reporting the assignment of 200 miles of eligible railroad track to W.

(ii) Because T did not retain any miles of eligible railroad track for itself for 2006, the maximum miles of eligible railroad track that may be assigned by T for 2006 is 200 miles pursuant to paragraph (d)(2) of this section. On the statement required by paragraph (d)(4)(ii) of this section, T assigned a total of 200 miles of eligible railroad track to W. Consequently, because T did not list V as an assignee on T's statement required by paragraph (d)(4)(ii) of this section, V did not receive an assignment of eligible railroad track miles from T during 2006 and V is not an eligible taxpayer for 2006. Thus, for 2006, V may not claim any RTMC even though V incurred QRTME in the amount of $250,000.

(iii) For 2006, W is an eligible taxpayer because, during 2006, W provides railroad-related services to T and receives an assignment of 200 eligible railroad track miles from T. W determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $550,000 (50% multiplied by $1,100,000 QRTME incurred by W during 2006). W further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $700,000 ($3,500 multiplied by the 200 miles of eligible railroad track assigned by T to W in 2006). Because W's tentative amount of RTMC does not exceed W's credit limitation amount for 2006, W may claim a RTMC for 2006 in the amount of $550,000.

Example 5. Multiple assignments of track miles. (i) Same facts as in *Example 4*, except T, to its Form 8900 for 2006, attaches the statement required by paragraph (d)(4)(ii) of this section assigning 200 miles of eligible railroad track to W and 200 miles of eligible railroad track to V.

(ii) Because T did not retain any miles of eligible railroad track for itself for 2006, the maximum miles of eligible railroad track that may be assigned by T for 2006 is 200 miles pursuant to paragraph (d)(2) of this section. However, on the statement required by paragraph (d)(4)(ii) of this section, T assigned a total of 400 miles of eligible railroad track (200 miles to W and 200 miles to V). Consequently, the 400 miles of eligible railroad track on this statement must be reduced to the 200 maximum miles of eligible railroad track available for assignment for 2006. Because the statement reports 200 miles of eligible railroad track assigned to each W and V, the reduction of 200 miles (400 total miles of eligible railroad track on the statement less 200 maximum miles of eligible railroad track available for assignment) is allocated pro-rata between W and V and, therefore, 100 miles each to W and V. Thus, pursuant to paragraph (d)(5)(ii) of this section, the number of miles of eligible railroad track assigned by T to W and V for 2006 is 100 miles each.

(iii) For 2006, V is an eligible taxpayer because, during 2006, V provides railroad-related services to T and receives an assignment of 100 eligible railroad track miles from T. V determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $125,000 (50% multiplied by $250,000 QRTME incurred by V during 2006). V further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $350,000 ($3,500 multiplied by the 100 miles of eligible railroad track assigned by T to V in 2006). Because V's tentative amount of RTMC does not exceed W's credit limitation amount for 2006, V may claim a RTMC for 2006 in the amount of $125,000.

(iv) For 2006, W is an eligible taxpayer because, during 2006, W provides railroad-related services to T and receives an assignment of 100 eligible railroad track miles from T. W determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $550,000 (50% multiplied by $1,100,000 QRTME incurred by W during 2006). W further determines the credit limitation amount under paragraph (c)(2)(ii) of this section to be $350,000 ($3,500 multiplied by the 100 miles of eligible railroad track assigned by T to W in 2006). Because W's tentative amount of RTMC exceeds W's credit limitation amount for 2006, W may claim a RTMC for 2006 in the amount of $350,000 (the credit limitation). There is no carryover of the amount of $200,000 (the tentative amount of $550,000 less the credit limitation amount of $350,000).

(e) *Special rules*—(1) *Adjustments to basis*—(i) *In general.* All or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year may be required to be capitalized under section 263(a) as a tangible asset or as an intangible asset. See, for example, § 1.263(a)–4(d)(8), which requires capitalization of amounts paid or incurred by a taxpayer to produce or improve real property owned by another (except to the extent the taxpayer is selling services at fair market value to produce or improve the real property) if the real property can reasonably be expected to produce significant economic benefits for the taxpayer. The basis of the tangible asset or intangible asset includes the capitalized amount of the QRTME.

(ii) *Basis adjustment made to railroad track.* An eligible taxpayer must reduce the adjusted basis of any railroad track with respect to which the eligible taxpayer claims the RTMC. For purposes of section 45G(e)(3) and this paragraph (e)(1), the adjusted basis of any railroad track with respect to which the eligible taxpayer claims the RTMC is limited to the amount of QRTME, if any, that is required to be capitalized into the qualifying railroad structure or an intangible asset. The adjusted basis of the railroad track is reduced by the amount of the RTMC allowable (as determined under paragraph (c) of this section) by the eligible taxpayer for the taxable year, but not below zero. This reduction is taken into account at the

time the QRTME is paid or incurred by an eligible taxpayer and before the depreciation deduction with respect to such railroad track is determined for the taxable year for which the RTMC is allowable. If all or some of the QRTME paid or incurred by an eligible taxpayer during the taxable year is capitalized under section 263(a) to more than one asset, whether tangible or intangible (for example, railroad track and bridges), the reduction to the basis of these assets under this paragraph (e)(1)(ii) is allocated among each of the assets subject to the reduction in proportion to the unadjusted basis of each asset at the time the QRTME is paid or incurred during that taxable year.

(iii) *Examples.* The application of this paragraph (e)(1) is illustrated by the following examples. In each example, all taxpayers use a calendar taxable year, and no taxpayers are members of a controlled group.

Example 1. (i) X is a Class II railroad that owns 500 miles of railroad track within the United States on December 31, 2006. During 2006, X incurs $1 million of QRTME for maintaining this railroad track. X uses the track maintenance allowance method for track structure expenditures (for further guidance, see Rev. Proc. 2002–65 (2002–2 CB 700) and § 601.601(d)(2)(ii)(b) of this chapter). Assume all of the $1 million QRTME is track structure expenditures and none of it was expended for new track structure.

(ii) For 2006, X determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $500,000 (50% multiplied by $1 million QRTME incurred by X during 2006). X further determines the credit limitation amount under paragraph (c)(2)(i) of this section for 2006 to be $1,750,000 ($3,500 multiplied by 500 miles of eligible railroad track). Because X's tentative amount of RTMC does not exceed X's credit limitation amount for 2006, X may claim a RTMC for 2006 in the amount of $500,000.

(iii) Of the $1 million QRTME incurred by X during 2006, X determines under the track maintenance allowance method that $750,000 is the track maintenance allowance under section 162 and $250,000 is the capitalized amount for the track structure. In accordance with paragraph (e)(1)(ii) of this section, X reduces the capitalized amount of $250,000 by the RTMC of $500,000 claimed by X for 2006, but not below zero. Thus, the capitalized amount of $250,000 is reduced to zero. X also deducts under section 162 a track maintenance allowance of $750,000 on its 2006 Federal income tax return.

Example 2. (i) Y is a Class II railroad that owns or has leased to it 500 miles of eligible railroad track within the United States on December 31, 2006. Z is not a railroad, but is a taxpayer that, in 2006, transports its products using the rail facilities of Y. In 2006, Y assigns for purposes of section 45G 300 miles of eligible railroad track to Z. Z does not receive any other assignments of eligible railroad track miles in 2006. During 2006, Z incurs QRTME in the amount of $1 million, and Y does not incur any QRTME. Y and Z each file Form 8900 with their timely filed Federal income tax returns for 2006 and attach the statement required by paragraph (d)(4)(ii) and (iii), respectively, of this section reporting the assignment of the 300 miles of eligible railroad track to Z.

(ii) For 2006, Z determines the tentative amount of RTMC under paragraph (c)(1) of this section to be $500,000 (50% multiplied by $1 million QRTME incurred by Z during 2006). Z further determines the credit limitation amount under paragraph (c)(2)(ii) of this section for 2006 to be $1,050,000 ($3,500 multiplied by 300 miles of eligible railroad track assigned by Y to Z in 2006). Because Z's tentative amount of RTMC does not exceed Z's credit limitation amount for 2006, Z may claim a RTMC for 2006 in the amount of $500,000.

(iii) For 2006, Z also must determine the portion of the $1 million QRTME that Z incurs that is required to be capitalized under section 263(a), and the portion that is a section 162 expense. Because Z is not a Class II railroad or Class III railroad, Z cannot use the track maintenance allowance method. Assume that all of the QRTME constitutes an intangible asset under § 1.263(a)–4(d)(8) and, therefore, is required to be capitalized by Z under section 263(a) as an intangible asset. In accordance with paragraph (e)(1)(ii) of this section, Z reduces the capitalized amount of $1 million by the RTMC of $500,000 claimed by Z for 2006. Thus, the capitalized amount of $1 million for the intangible asset is reduced to $500,000. Further, pursuant to § 1.167(a)–3(b)(1)(iv), Z may treat this intangible asset with an adjusted basis of $500,000 as having a useful life of 25 years for purposes of the depreciation allowance under section 167(a).

(2) *Coordination with section 61.* Except as specifically provided in the Code and regulations under the Code, the owner of qualifying railroad structure has gross income if another person paid or incurred QRTME for the owner's qualifying railroad structure and that person does not have a depreciable interest in the tangible improvements made by the QRTME. See, for example, section 109, which excludes from gross income of the lessor, the value of property attributable to buildings or other improvements made by a lessee.

(f) *Controlled groups*—(1) *In general.* Pursuant to section 45G(e)(2), if an eligible taxpayer is a member of a controlled group of corporations, rules similar to the rules in § 1.41–6T apply for determining the amount of the RTMC under section 45G(a) and this section. To determine the amount of RTMC (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (f)(3) of this section; and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (f)(4) of this section.

(2) *Definitions.* For purposes of section 45G(e)(2) and paragraph (f) of this section—

(i) A *trade or business* is a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). Any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business;

(ii) *Group* and *controlled group* means a controlled group of corporations, as defined in section 41(f)(5), or a group of trades or businesses under common control. For rules for determining whether trades or businesses are under common control, see § 1.52–1 (b) through (g);

(iii) *Group credit* means the RTMC (if any) allowable to a controlled group;

(iv) *Consolidated group* has the meaning set forth in § 1.1502–1(h); and

(v) *Credit year* means the taxable year for which the member is computing the RTMC.

(3) *Computation of the group credit.* All members of a controlled group are treated as a single taxpayer for purposes of computing the RTMC. The group credit is computed by applying all of the section 45G computational rules (including the rules set forth in this section) on an aggregate basis.

(4) *Allocation of the group credit*—(i) *In general.* (A) To the extent the group credit (if any) computed under paragraph (f)(3) of this section does not exceed the sum of the stand-alone entity credits of all of the members of a controlled group, computed under paragraph (f)(4)(ii) of this section, such group credit shall be allocated among the members of the controlled group in proportion to the stand-alone entity credits of the members of the controlled group, computed under paragraph (f)(4)(ii) of this section:

$$\text{group credit that does not exceed sum of all the members' stand-along entity credits} \times \frac{\text{member's stand-alone entity credit}}{\text{Sum of all the members' stand-alone entity credits.}}$$

(B) To the extent that the group credit (if any) computed under paragraph (f)(3) of this section exceeds the sum of the stand-alone entity credits of all of the members of the controlled group, computed under paragraph (f)(4)(ii) of this section, such excess shall be allocated among the members of a controlled group in proportion to the QRTMEs of the members of the controlled group:

$$\text{(group credit less the sum of all the members' stand-alone entity credits)} \times \frac{\text{QRTMEs of members that are eligible taxpayers}}{\text{sum of QRTMEs of all members that are eligible taxpayers.}}$$

(ii) *Stand-alone entity credit.* The term *stand-alone entity credit* means the RTMC (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 45G(e)(2) did not apply, except that the member must apply the rules provided in paragraphs (f)(5) (relating to consolidated groups) and (f)(8) (relating to intra-group transactions) of this section.

(5) *Special rules for consolidated groups*—(i) *In general.* For purposes of applying paragraph (f)(4) of this section, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group and a single stand-alone entity credit is computed for the consolidated group.

(ii) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to the members of the consolidated group in accordance with the principles of paragraph (f)(4) of this section. However, for this purpose, the stand-alone entity credit of a member of a consolidated group is computed without regard to section 45G(e)(2).

(6) *Tax accounting periods used*—(i) *In general.* The credit allowable to a member of a controlled group is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, Q, R, and S are members of a controlled group of corporations. Both Q and R are calendar year taxpayers. S files a return using a fiscal year ending June 30. For purposes of computing the group credit at the end of Q's and R's taxable year on December 31, S's fiscal year ending June 30, which ends within Q's and R's taxable year, is treated as S's credit year.

(ii) *Special rule when timing of QRTME is manipulated.* If the timing of QRTME by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

(7) *Membership during taxable year in more than one group.* A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph (f)(7), a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) federal income tax return for the taxable year the group in which it is being included. If the business does not so designate, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return will determine the group in which the business is to be included. If the Federal income tax return for a taxable year beginning after December 31, 2004, and ending before September 7, 2006, is filed before October 10, 2006, and the business wants to apply paragraph (g)(2) of this section but did not designate its group membership in that return, the business must designate its group membership for that year either—

(i) In its next filed original Federal income tax return; or

(ii) In its amended Federal income tax return that is filed pursuant to paragraph (g)(2) of this section, provided that amended Federal income tax return is filed by the business before its next filed original Federal income tax return.

(8) *Intra-group transactions*—(i) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the RTMC, transfers between members of the group are generally disregarded.

(ii) *Payment for QRTME.* Amounts paid or incurred by the owner (or lessor) of eligible railroad track to another member of the group for QRTME shall be taken into account as QRTME by the owner (or lessor) of the eligible railroad track for purposes of section 45G only to the extent of the lesser of—

(A) The amount paid or incurred to the other member; or

(B) The amount that would have been considered paid or incurred by the other member for the QRTME, if the QRTME was not reimbursed by the owner (or lessor) of the eligible railroad track.

(g) *Effective date*—(1) *In general.* (i) Except as provided in paragraphs (g)(2) and (g)(3) of this section, this section applies to taxable years ending on or after September 7, 2006, and beginning before January 1, 2008.

(ii) The applicability of this section expires on September 7, 2009.

(2) *Application of regulation project REG–142270–05 to pre-effective date.* A taxpayer may apply this section to taxable years beginning after December 31, 2004, and ending before September 7, 2006, provided that the taxpayer applies all provisions in this section to the taxable year.

(3) *Special rules for 2005 returns.* If a taxpayer's Federal income tax return for

a taxable year beginning after December 31, 2004, and ending before September 7, 2006 is filed before October 10, 2006, and the taxpayer is not filing an amended Federal income tax return for that taxable year pursuant to paragraph (g)(2) of this section before the taxpayer's next filed original Federal income tax return, see paragraphs (d)(3)(iv) and (f)(7) of this section for the statements that must be attached to the taxpayer's next filed original Federal income tax return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.45G–1T	1545–
* * * * *	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–14858 Filed 9–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD44

Cape Lookout National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates areas where personal watercraft (PWC) may be used to access Cape Lookout National Seashore, North Carolina. This final rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. Individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

DATES: *Effective Date:* This rule is effective September 8, 2006.

ADDRESSES: Mail inquiries to Superintendent, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the NPS published a regulation (36 CFR 3.24) on the management of PWC use within all units of the national park system (65 FR 15077). The regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except for 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be permitted to continue.

Description of Cape Lookout National Seashore

Cape Lookout National Seashore was established by Congress in 1966 to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. Cape Lookout National Seashore is a low, narrow, ribbon of sand located three miles off the mainland coast in the central coastal area of North Carolina and occupies more than 29,000 acres of land and water from Ocracoke Inlet on the northeast to Beaufort Inlet to the southwest. The national seashore consists of four main barrier islands (North Core Banks, Middle Core Banks, South Core Banks, and Shackleford Banks), which consist mostly of wide, bare beaches with low dunes covered by scattered grasses, flat grasslands bordered by dense vegetation, and large expanses of salt marsh alongside the sound. Congressionally established boundaries include 150′ of water from the mean low waterline on the sound side of all islands. There are no road connections to the mainland or between the islands.

Coastal barrier islands, such as those located in Cape Lookout National Seashore, are unique land forms that provide protection for diverse aquatic habitats and serve as the mainland's first line of defense against the impacts of severe coastal storms and erosion. Located at the interface of land and sea, the dominant physical factors responsible for shaping coastal landforms are tidal range, wave energy, and sediment supply from rivers and older, pre-existing coastal sand bodies. Relative changes in local sea level also profoundly affect coastal barrier island diversity. Coastal barrier islands exhibit the following six characteristics:

- Subject to the impacts of coastal storms and sea level rise.
- Buffer the mainland from the impact of storms.
- Protect and maintain productive estuarine systems which support the nation's fishing and shellfishing industries.
- Consist primarily of unconsolidated sediments.
- Subject to wind, wave, and tidal energies.
- Include associated landward aquatic habitats which the non-wetland portion of the coastal barrier island protects from direct wave attack.

Coastal barrier islands protect the aquatic habitats between the barrier island and the mainland. Together with their adjacent wetland, marsh, estuarine, inlet, and nearshore water habitats, coastal barriers support a tremendous variety of organisms. Millions of fish, shellfish, birds, mammals, and other wildlife depend on barriers and their associated wetlands for vital feeding, spawning, nesting, nursery, and resting habitat.

Shackleford Banks contains the park's most extensive maritime forest as well as wild horses that have adapted to this environment over the centuries. The islands are an excellent place to see birds, particularly during spring and fall migrations. A number of tern species, egrets, herons, and shorebirds nest here. Loggerhead turtles climb the beaches at nesting time.

Purpose of Cape Lookout National Seashore

Cape Lookout National Seashore was authorized on March 10, 1966, by Public Law 89–366. Additional legislation, Public Law 93–477 (October 26, 1974), called for another 232-acre tract of land to be acquired, a review and recommendation of any suitable lands for wilderness designation, and authorized funding for land acquisition and essential public facilities.

The purpose of Cape Lookout National Seashore is to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The national seashore serves as both a refuge for wildlife and a pleasuring ground for the public, including developed visitor amenities.

The mission of Cape Lookout National Seashore is to:

- Conserve and preserve for the future the outstanding natural resources of a dynamic coastal barrier island system;
- Protect and interpret the significant cultural resources of past and contemporary maritime history;
- Provide for public education and enrichment through proactive interpretation and scientific study; and
- Provide for sustainable use of recreation resources and opportunities.

Significance of Cape Lookout National Seashore

Cape Lookout National Seashore is nationally recognized as an outstanding example of a dynamic natural coastal barrier island system. Cape Lookout is designated as a unit of the Carolinian-South Atlantic Biosphere Reserve, United Nations Educational, Scientific and Cultural Organizations (UNESCO) Man and the Biosphere Reserve Program. The park contains:

- Cultural resources rich in the maritime history of humankind's attempt to survive at the edge of the sea; and
- Critical habitat for endangered and threatened species and other unique wildlife including the legislatively protected wild horses of Shackleford Banks.

Authority and Jurisdiction

Under the National Park Service Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act authorizes the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *."

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *" (16 U.S.C. 3).

As with the United States Coast Guard (USCG), NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, derives from the U.S. Constitution. In regard to the NPS, based upon the Property and Commerce Clauses, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." (16 U.S.C. 1a–2(h)). In 1996, the NPS published a final rule (61 FR 35136, July 5, 1996), amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

Motorboats and other watercraft have been in use at Cape Lookout National Seashore since the park was established in 1966. It is unknown when PWC use first began at the national seashore. In compliance with the settlement with Bluewater Network, the national seashore closed to PWC use in April 2002. Personal watercraft are prohibited from launching or landing on any lands, boat ramps or docks within the boundaries of the national seashore. Personal watercraft may not be towed on trailers or carried on vehicles within national seashore boundaries except at the Harker's Island unit. This closure pertains to all of the barrier islands within the national seashore and the waters on the soundside of the islands within 150 feet of the mean low waterline. Outside of the park boundary, PWC use is governed by North Carolina PWC regulations. At present, the areas that were previously used by PWC owners for landing are closed with signs.

Prior to the PWC closure, all areas of the park were open to PWC use. However, the majority of PWC use was concentrated in two areas of the national seashore that receive the heaviest visitor day-use in the park: (1) On the sound-side of South Core Banks at the Lighthouse (from the Lighthouse dock through Barden Inlet and Lookout Bight), and (2) the Shackleford Banks from Wade Shores west to Beaufort Inlet. Personal watercraft use of ocean beaches was rare due to rough surf conditions in the ocean and the hazard of beaching PWC in the ocean surf. Some PWC use occurred along North and South Core Banks from Portsmouth Village at the northern end of the national seashore to the lighthouse. This use was infrequent because of the prevalence of marshes and general lack of sound-side beaches along Core Banks, the large expanse of open water in Core Sound between the barrier islands and mainland North Carolina, and the low population of the adjacent communities in the "down east" as this portion of the national seashore is known locally. At public meetings held in October 2001, several participants indicated they had used their PWC to travel from locations such as Atlantic and Davis to the barrier islands.

The popularity of Cape Lookout and Shackleford Banks where PWC use was concentrated can be attributed to the excellent soundside beaches in these areas, the attraction of the Cape Lookout lighthouse, traditional use of Shackleford Banks, their proximity to major inlets, and their close proximity to the three largest coastal population centers in Carteret County: Atlantic Beach, Morehead City, and Beaufort.

NPRM and Environmental Assessment

On December 29, 2005, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Cape Lookout National Seashore (70 FR 77089). The proposed rule for PWC use was based on alternative B (one of three alternatives considered) in the Environmental Assessment (EA) prepared by NPS for Cape Lookout National Seashore. The EA was open for public review and comment from January 24, 2005 to February 24, 2005. Copies of the EA may be downloaded at *http://www.nps.gov/calo/parkplan.htm.*

The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at Cape Lookout National Seashore to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Seashore's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2003 and considered a 10-year period, from 2003 to 2013.

The EA evaluated three alternatives concerning the use of PWC at Cape Lookout National Seashore. The alternatives considered include:

• *No-Action Alternative:* Do not reinstate PWC use within the national seashore. No special regulation would be promulgated.

• *Alternative A:* Reinstate PWC use as previously managed under a special regulation.

• *Alternative B:* Reinstate PWC use under a special NPS regulation with additional management prescriptions.

Based on the analysis prepared for PWC use at Cape Lookout National Seashore, alternative B is considered the environmentally preferred alternative because it best fulfills park responsibilities as trustee of sensitive habitat; ensures safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attains a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This final rule contains regulations to implement alternative B at Cape Lookout National Seashore.

Summary of Comments

A proposed rule on PWC use in the Cape Lookout National Seashore (Cape Lookout) was published in the **Federal Register** for public comment on December 29, 2005, with the comment period lasting until February 27, 2006. NPS received 1,685 timely written pieces of correspondence regarding the EA and proposed regulation. Of the pieces of correspondence, 5 were from government agencies, 11 were from businesses, conservation groups, or recreation groups, and 1,669 were from unaffiliated individuals. A total of 148 comments supported alternative A, 25 comments supported alternative B, 4 comments opposed alternative B, 1519 comments supported the no action alternative, and 11 comments opposed the no action alternative. Within the analysis, the term "commenter" refers to an individual, organization, or public agency that responded. The term "comments" refers to statements made by a commenter.

General Comments

1. Several commenters suggested that the access restrictions, closures, and boating rules should be applied equally to all motorized vessels, and not just to PWC.

NPS Response: As described under the Scope of the Analysis in the Purpose and Need section of the EA, the focus of the EA is to define management alternatives specific to PWC use. The plan analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives. The goal of the EA was not to determine if these restrictions should also be applied to boats. Cape Lookout will consider subsequent rulemaking to address this issue for other watercraft and if subsequent rulemaking proceeds, that action would be subject to NEPA analysis and public comment.

2. One commenter stated that there is a lack of site-specific data in the EA.

NPS Response: The scope of the EA did not include the conduct of site-specific studies regarding potential effects of PWC use on wildlife species, submerged aquatic vegetation beds, or visitor experience at Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife, submerged aquatic vegetation beds, and visitor experience at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

3. One commenter stated that the current EA does not discuss 40 CFR 1502.22 of the Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) Regulations, which tells agencies that they have to make it clear when information is incomplete or unavailable.

NPS Response: The EA discusses § 1502.22 of the CEQ NEPA Regulations in the Environmental Consequences section under the Summary of Laws and Policies on page 92. The EA mentions in several places that data is unavailable or had not been collected, including soundscapes and wildlife and wildlife habitat sections. Best available data, literature, and consultation with subject matter experts were used to determine impacts, as disclosed in the EA.

4. One commenter stated that any attempt to bar PWC or disparately regulate PWC would transgress NPS' regulatory duties and would be arbitrary and capricious in light of the EA's findings.

NPS Response: Cape Lookout National Seashore was established in 1966. The purpose of Cape Lookout is to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The preferred alternative meets the objectives of the national seashore to a large degree, as well as meeting the purpose and need for action, and therefore is within the legislative and regulatory duties of Cape Lookout National Seashore.

5. One commenter stated that PWC use conflicts with NPS' mission and purpose.

NPS Response: Cape Lookout National Seashore was established to conserve and preserve for public use and enjoyment the outstanding natural, cultural, and recreational values of a dynamic coastal barrier island environment for future generations. The national seashore serves as both a refuge for wildlife and a pleasuring ground for the public, including developed visitor amenities. Under this regulation PWC use is limited to providing a means of transportation to the island for the user to enjoy the natural, cultural, and recreational values of Cape Lookout National Seashore.

6. One commenter stated that the EA relies upon incorrect information regarding PWC numbers in the U.S. and uses outdated data from 2001 to guide its decision making process.

NPS Response: A check of the National Marine Manufacturers Association (NMMA) Web site revealed that indeed, PWC numbers for the years 2000 and 2001 are higher than quoted in the EA. Regardless, these are nationwide PWC numbers that were not used in the impacts analysis. The numbers used in the impacts analysis were park-specific, based on available visitor data and observations by Cape Lookout National Seashore staff.

7. One commenter stated that NPS has miscalculated the population growth rate of PWC.

NPS Response: The numbers used in the impacts analysis were park-specific, based on available visitor data, park ranger counts in 2000 and 2001, and observations by seashore staff. They were not based on USCG data.

8. One commenter is concerned that the current EA is being politically manipulated in order to reauthorize PWC operation.

NPS Response: Due to the increased level of public comment, Cape Lookout reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm*. The results of the in-depth analysis in the EA indicated that impacts range from negligible to moderate for all impact topics, and the NPS chose alternative B as the preferred alternative.

9. One commenter stated that the Proposed Rule should be redrafted to incorporate the ban on PWC that exists outside of NPS General Regulation.

NPS Response: The ban or prohibition that exists at Cape Lookout is the result of NPS General Regulations that were promulgated in 2000 and took effect in 2002. This was a servicewide prohibition and affected all parks without special regulations. This

rulemaking, or special regulation, will open Cape Lookout to PWC use, with restrictions. Only parks with special regulations can allow PWC use.

10. One commenter stated that PWC are designated as Class A boats by the USCG, and are subject to the same rules and registration fees as all other powered craft.

NPS Response: Yes, and the NPS adopts applicable USCG regulations which are found in Title 33 CFR as well as applicable State laws and regulations within whose exterior boundaries a park is located. Therefore PWC are subject to the same rules and registration fees as all other powered craft.

11. One commenter asked why the PWC closure was rescinded in 2001, and why NPS wants to take the proposed action.

NPS Response: Due to the increased level of public comment and congressional interest, Cape Lookout rescinded the 2001 closure to allow the issues and impact topics described in the 2001 Determination to be considered in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm.* As described in the EA, alternative B is the preferred alternative because, with limitations on PWC use and other mitigation, impacts can be minimized and managed.

12. One commenter stated that the spread of exotic species related to PWC operation is overlooked in the EA.

NPS Response: This topic has been addressed in the errata to the EA as an issue that was considered but not further evaluated. After consultation with subject matter experts and available data, no exotic species are known to occur in areas accessible by PWC within Cape Lookout National Seashore.

13. One commenter disagrees with the cumulative impacts analysis.

NPS Response: NPS acknowledges that the area around Cape Lookout National Seashore is being developed and this may result in increased PWC use. However, the EA shows that allowing limited PWC access at Cape Lookout National Seashore, will not result in more than negligible to minor cumulative impact, even when all motor boats are included in the analysis.

14. The EA and rule text should be rewritten to state that all obligations and restrictions would be imposed on the PWC operator, not the PWC equipment. Organization of the rule should also be improved.

NPS Response: The text in the rule, errata to the EA, and the Finding Of No Significant Impact (FONSI) has been clarified to state that the restrictions will be imposed on the PWC operator, not the PWC equipment. Organization of the rule has also been improved and text was clarified.

Comments Regarding Alternatives

15. One commenter stated that this environmental analysis could benefit greatly by constructing an alternatives matrix that shows on one axis the alternatives and on the other axis environmental conditions that might be affected.

NPS Response: Table A: Summary of the Impact Analysis on page v of the EA provides an overview of which resource topics would be affected by each alternative. Alternatives A and B would impact water quality, air quality, soundscapes, shoreline and submerged aquatic vegetation, wildlife, aquatic fauna, threatened and endangered species, visitor use and experience, visitor conflicts and safety, cultural resources, and socioeconomics. Under the no-action alternative, none of the impact topics would be impacted by PWC since they would be banned, but all of the impact topics would be impacted to some capacity because of the cumulative impacts from boats.

16. One commenter stated that the alternative to limit PWC use by season or time of day was considered but not analyzed further. However, it could make a viable alternative because it would "minimize conflicts with other users in congested areas," which could be an important purpose for this action.

NPS Response: Time of day restrictions already exist because North Carolina PWC regulations prohibit the use of PWC from sunset to sunrise and have been adopted by the NPS. Limiting PWC use by season was not considered viable since few defensible reasons were identified to exclude PWCs at one time of year or another. The most obvious reason to limit access by season, for protection of birds and endangered species from access by PWCs, other boats, vehicles and pedestrians, is already managed by general closures. Monitoring of bird nesting areas and implementation of closures is routinely accomplished by the park resource management staff.

17. One commenter stated that the following three sections in the EA, "Unavoidable Adverse Impacts," "Loss in Long-term Availability or Productivity to Achieve Short-term Gain," and "Irreversible or Irretrievable Commitments of Resources," pose some serious difficulties for the environmental impact analysis as a whole.

NPS Response: Additional language has been added on the errata to the EA for the "Unavoidable Adverse Impacts" section to address the no-action alternative. The section "Loss in Long-term Availability or Productivity to Achieve Short-Term Gain" has been removed as per the errata because this section is required in Environmental Impact Statements, but is optional in EAs.

The section "Irreversible or Irretrievable Commitments of Resources" discusses the minor use of fossil fuels to power PWC being an irretrievable commitment of this resource. Considering the very small number of PWC operators that use Cape Lookout National Seashore each year, which is estimated as less than one percent of visitors, the implementation of alternative B would not have more than a minor impact on irretrievable resources. Alternative B was identified as the environmentally preferred alternative because it meets the criteria established by the Council on Environmental Quality and the Department of the Interior (Department Manual) and also meets the purpose, needs, and objectives of this PWC EA.

18. Several commenters stated that alternative B does not merit status as the environmentally preferred alternative and should be rejected because it discriminates against PWC, unreasonably restricts PWC use, jeopardizes the safety of PWC users, motorized boaters and swimmers, and undermines the park's regulatory objectives.

NPS Response: The EA was written to evaluate the appropriateness of PWC use within the National Seashore. The objective of the EA, as described in the "Purpose and Need" Chapter, was to evaluate a range of alternatives and strategies for the management of PWC use in order to ensure the protection of park resources and values, while offering recreational opportunities as provided in the enabling legislation, purpose, mission, and goals. An analysis of personal watercraft use and the impact topics was provided under each alternative. The EA was designed to determine if PWC use, not motorized boat use in general, was consistent with the park's enabling legislation and management goals and objectives.

19. Several commenters are concerned that the preferred alternative may violate the Organic Act by allowing the use of personal watercraft within Cape Lookout, which they believe will impair park resources or result in the derogation of park resources and values.

NPS Response: The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the EA summarizes the three

overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Cape Lookout National Seashore resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

Impairment that is prohibited by the Organic Act and General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

An impairment to a particular park resource or park value may be indicated when the impact reaches the magnitude of "major," as defined by its context, duration, and intensity. For each impact topic, the EA establishes thresholds or indicators of magnitude of impact. For each impact topic, when the intensity approached "major," the park would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment.

For the PWC regulations at Cape Lookout National Seashore the National Park Service has determined in the EA that the preferred alternative would not result in impairment of park resources or values.

20. Several commenters support alternative B.

NPS Response: Comment noted. NPS chose alternative B because it appears to meet the needs of most park visitors while continuing to protect the environment.

21. A commenter stated that the PWC use restrictions as stated in the proposed rule are vague, confusing, and defective from an enforcement standpoint. There is also redundancy in the description.

NPS Response: The description of alternative B states "PWC would be allowed to access these areas * * * by remaining perpendicular to shore and operating at flat wake speed." This means that any other type of use would continue to be prohibited. All PWC use is prohibited in the National Park System by general regulation except as authorized by park specific special regulation. Language in the rule, errata to the EA, and the FONSI has been rewritten to clarify the type of PWC use authorized and locations within the national seashore where it is permitted.

22. One commenter stated that management options such as flat wake zones, set backs, time and date restrictions were considered in the national rule and were determined to be too expensive to enforce and inadequate to protect park system resources.

NPS Response: After analysis as part of the NEPA process, Cape Lookout National Seashore is proposing to implement flat wake restrictions for better protection of park resources and visitor safety. The flat wake restrictions should not be difficult to enforce at Cape Lookout because the restriction will apply to PWC in all locations within the park.

23. One commenter stated that Alternative B undermines NPS's safety objective and endangers PWC users and other park visitors, bans PWC use in some park locations without justification, and severely limits use within the designated use areas, and that the EA overstates the potential impact of PWC use on park resources.

NPS Response: The EA analyzed a variety of impact topics to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives. As a result of this analysis, it was determined that the management prescriptions under alternative B, Reinstate PWC Use with Additional Management Prescriptions, would best protect natural and cultural resources, mitigate PWC safety concerns, provide for visitor health and safety, and enhance overall visitor experience. The plan was designed to determine if PWC use, not motorboat use in general, was consistent with the park's enabling legislation and management goals and objectives.

24. Many commenters support the no-action alternative. These commenters state that the EA provides no basis for overturning the Park Service's 2001 determination to ban PWC operation at Cape Lookout and that the preferred alternative breaks Federal law and fails to address many of the problems associated with PWC operation identified in the 2001 determination. Finally, these commenters believe the EA overlooks important research, reaches conclusions without supporting documentation or scientific evidence, and appears to violate the terms of the court-ordered settlement agreement with Bluewater Network.

NPS Response: A summary of the NPS rulemaking and associated personal watercraft litigation is provided in Chapter 1, Purpose of and Need for Action, Background. NPS believes it has complied with the court order and has assessed the potential impacts of personal watercraft on those resources identified in the settlement agreement, as well as other resources that could be affected. This analysis was done for every applicable impact topic with the best available data, as required by regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff. NPS believes that the EA is in full compliance with the court-ordered settlement and that the rationale for limited use within the national seashore has been adequately analyzed and explained.

Due to the increased level of public comment and congressional interest, Cape Lookout reconsidered the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm*. The results of the in-depth analysis in the EA indicated that potential impacts under Alternative B range from negligible to moderate for all impact topics, and chose Alternative B as the preferred alternative.

25. Some commenters believe the no-action alternative discriminates against PWC operators.

NPS Response: The objective of the EA, as described in the "Purpose and Need" Chapter, was to evaluate a range of alternatives and strategies for the management of PWC use in order to ensure the protection of park resources and values, as provided in the enabling legislation, purpose, mission, and goals.

26. The North Carolina Department of Environment and Natural Resources, Division of Coastal Management (DCM) suggests that a monitoring program be implemented to evaluate whether the adverse environmental effects of implementing the proposed action are, as expected, insignificant.

NPS Response: The restrictions for Cape Lookout are only associated with the area that is within the park boundary. The only water area within the boundary is on the sound side where the boundary is 150 feet from low water. It would be difficult to differentiate any impacts that were due to PWC use outside the park boundary (150-foot zone) compared to use that is inside the park boundary (150-foot zone), since most of the aquatic resources move freely in and out of these areas, except for direct impacts on submerged aquatic vegetation (SAV). In addition, SAV only occurs in one area that is proposed to be reopened to PWC use under alternative B. Marine mammals would also not be likely to use the area within 150-feet from shore because it is too shallow. It would be

difficult to differentiate impacts between PWC use and motorboat use because PWC use is very low compared to motorboat use, and motorboats use both areas inside and outside the 150-foot zone.

27. One commenter suggested reducing the number of access points to those already developed. Specifically, eliminate the following four access points from the regulation: Milepost 11B, Old Drum Inlet, New Drum Inlet, and Power Squadron Spit.

NPS Response: The access points at Milepost 11B, Old Drum Inlet, and New Drum Inlet were chosen because they provide access to the seashore for those people that live in the "down east" area from Davis to Cedar Island. Without including these access points, there would be few opportunities for PWC access from towns north of Davis. These sandy inlets are convenient areas to land a boat or PWC and allow easy access to the ocean. The use of these areas also provides protection to the remaining marshy areas of the sound, where submerged aquatic vegetation is more likely to occur.

Power Squadron Spit was included because it provides access to the southern-most portion of the park, which is a popular day-use area. This area near Lookout Bight consists of a protected sandy beach, and is heavily used by larger boats that utilize PWC or smaller inflatable boats to access the shore.

Comments Regarding Water Quality

28. One commenter stated that, because the EA has not properly accounted for the pace at which the PWC manufacturers are converting to cleaner-running engine technologies that meet the EPA standards, the EA overstates the potential water quality impacts of resuming PWC use.

NPS Response: The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in California Air Resources Board (CARB) (1998) and Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2013 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats also are expected to be negligible. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

29. One commenter stated that the EA's analysis is based on faulty premises that reflect worst case conditions.

NPS Response: The estimates of personal watercraft use and emissions are based on the best information available at the time of preparation of the EA and are meant to be conservative (i.e., protective of the environment). By using conservative input assumptions in estimating impact to water quality, the probability of underestimating impacts is minimized.

The evaporation rate for benzene (half-life of approximately 5 hours at 25 °C) is based on information presented in EPA (2001) and in Verschuren (1983). Because impacts to water quality were determined to be negligible before any discussion or application of this evaporation rate, it was not discussed in the impact assessments of the alternatives.

As stated in Appendix A of the EA, the concentration of benzo(a)pyrene can be up to 2.8 mg/kg (or 2.07 mg/L) (Gustafson *et al.* 1997). Because this concentration could be found in the gasoline used in Cape Lookout, it was used to be protective of the environment. It is not an unrealistic assumption. Annual sales of personal watercraft (200,000 units) are mentioned on page 7 of the EA. However, the text directs the reader to table 1 which shows that ownership declined after 1995. The discussion of national trends is not germane to the estimate of PWC use in the national seashore since the numbers of personal watercraft and hours of use are based on observations by park staff (see page 102 of the EA).

In summary, if changes in evaporation rates, concentrations of gasoline constituents, sales of personal watercraft, and rates of replacement of older personal watercraft were made as suggested, the conclusions of negligible impacts from personal watercraft would not change, because "negligible" is the lowest impact level that can be used in the EA (see page 106). However, these conclusions would no longer be considered as conservative and could be challenged by other parties.

30. One commenter believes the EA ignores sales trends and relies on outdated statistics and assumptions, which inflate PWC sales and exaggerate PWC emissions.

NPS Response: Annual sales of personal watercraft (200,000 units) are mentioned on page 6 of the EA. However, the text directs the reader to table 1, which shows that ownership declined after 1995. The discussion of national trends is not germane to the estimate of PWC use in the national seashore since the numbers of personal watercraft and hours of use are based on observations by park staff (see page 102 of the EA) and not national trends.

If national sales of personal watercraft and rates of replacement of older personal watercraft were considered, the conclusions for impacts to water quality from personal watercraft would still be negligible.

31. One commenter stated that most PWC manufacturers have changed to 4-cycle engines, which do not mix oil with the gasoline.

NPS Response: The assumption of all PWC using 2-stroke engines in 2003 is recognized as conservative. It is protective of the environment and follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. Emission rates were assumed to be reduced by 8 percent in 2003 in accordance with the EPA's estimate of hydrocarbon reduction (see page 104 of the EA). Despite these conservative estimates, impacts to water quality from PWC are judged to be negligible for all gasoline constituents, all areas, and all alternatives evaluated.

32. One commenter stated that there is some confusion on irreversible or irretrievable commitments of resources should the proposed action be implemented.

NPS Response: Agreed, there is confusion regarding the definitions of irreversible and irretrievable, but the confusion does not extend to the Cape Lookout EA. The National Environmental Policy Act (NEPA),

Section 102(2)(C)(v), does not distinguish between the two terms but instead lumps them together: "Any irreversible and irretrievable commitments * * *" and many EAs and EISs also simply lump the two terms together. While the two terms in question are not defined in NEPA or in the National Park Service Director's Order #12 (DO–12), they are defined in the National Park Service Handbook that accompanies DO–12 as follows: "Irreversible impacts are those effects that cannot be changed over the long term or are permanent. An effect to a resource is irreversible if it (the resource) cannot be reclaimed, restored, or otherwise returned to its condition before the disturbance * * * An irretrievable commitment of resources refers to the effects to resources that, once gone, cannot be replaced." It is important to not worry about the semantics of these terms and instead be thorough in the disclosure to the public of any long-term, permanent effects to the park resources.

The significance of personal watercraft using fossil fuel at Cape Lookout National Seashore (as it may affect air and water quality) has not been underestimated. In fact, the potential for impacts on these resources is quantitatively evaluated in the EA. The results indicate that PWC impacts to water quality and to air quality are negligible or nonexistent for all alternatives considered. These impacts could be termed inconsequential, especially in the context of other motorboats that outnumber personal watercraft 10 to 1 at the national seashore (see Table 15 of the EA).

33. One commenter stated that the water quality analysis does not fully account for the rapid rate that unburned gasoline emitted from PWC evaporates from the water.

NPS Response: Impacts to human health and the environment would be negligible for all gasoline constituents, all alternatives, and all areas. The term "negligible" is the lowest (least significant impact threshold) term available to describe impacts in the EA (see page 106). Because all impacts to water quality were judged to be negligible, the effect of evaporation was not discussed in detail in the results. However, the effect of evaporation/volatilization of gasoline constituents is discussed in two locations under "Methodology and Assumptions." These processes are mentioned in paragraphs 5 and 7 on page 103 of the EA. Volatilization of gasoline constituents (BTEX, methyl tertiary-butyl ether (MTBE), and petroleum aromatic hydrocarbons (PAHs)) also is discussed in Appendix A: Approach to Evaluating Surface Water Quality Impacts.

Comments Regarding Air Quality

34. One commenter stated that NPS does not sufficiently account for the rapid engine conversion that is occurring and improperly overlooks the emissions reductions that the PWC companies have already achieved.

NPS Response: A conservative approach was used in the analysis, since the numbers of PWCs already converted to four-stroke engines are not known. In addition, the EPA model takes into account the reduction in emissions over time. Even with the conservative approach, the analysis for alternative B presented in the EA indicates that current PWC use at Cape Lookout National Seashore results in negligible impacts to air quality.

35. One commenter stated that, while the EA correctly concludes that the short- and long-term human health impact from PWC emissions of hydrocarbons (HC) and nitrogen oxides (NO_X) under alternatives A and B would be negligible, NPS nevertheless overstates actual emissions levels for these constituents.

NPS Response: It is agreed that the relative quantity of HC + NO_X are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

For consistency and conformity in approach, NPS has elected to rely on the assumptions in the 1996 Spark Ignition Engine Rule which is consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative, compared to actual emissions.

36. One commenter stated that the EA's use of a study by Kado *et al.* is outdated, and the EA inaccurately uses the results of this study.

NPS Response: The criteria for analysis of impacts from PWC to human health are based on the National Ambient Air Quality Standards (NAAQSs) for criteria pollutants, as established by the EPA under the Clean Air Act, and on criteria pollutant annual emission levels. This methodology was selected to assess air quality impacts for all NPS EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of total hydrocarbons, which are assessed because they are the focus of the EPA's emissions standards directed at manufacturers of spark ignition marine gasoline engines. Neither peak exposure levels nor National Institute for Occupational Safety and Health (NIOSH) nor Occupational Safety and Health Administration (OSHA) standards are included as criteria for analyzing air quality related impacts except where short-term exposure is included in a NAAQS.

The Kado Study presented the outboard engine air quality portion of a larger study described in Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study (CARB 2001). In the CARB report, results from both outboards and personal watercraft (2-stroke and 4-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was 2-stroke carbureted outboards and personal watercraft having the highest emissions, and 4-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO_X emissions to air- 2-stroke carbureted outboards and personal watercraft had the lowest NO_X emissions, while the 4-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

37. One commenter stated that a proper PAH analysis, using the analytical approach set forth in the Lake Mead Report, refutes unsubstantiated claims by PWC opponents that PAH emissions from PWC operating in the Cape Lookout National Seashore will endanger human health.

NPS Response: The EPA data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that these data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA NONROAD Model, which was used to estimate emissions.

However, the level of detail included in the Sierra Research report has not been carried into the EA for reasons of consistency and conformance with the model predictions. Most states use the EPA NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with state programs and with the methods of analysis used for other similar NPS assessments, NPS has elected not to base its analysis on focused research

such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC + NO_X are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis. For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 Spark Ignition Marine Engine Rule, which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative, compared to actual emissions.

38. One commenter believes that the Sierra Research emissions analysis should be used in the air quality analysis.

NPS Response: The EPA data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that the Sierra Research data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA NONROAD Model, which NPS used to estimate emissions. However, the level of detail included in the Sierra Research report was not carried into the EA for reasons of consistency and conformance with the model predictions. Most states use the EPA NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with state programs and with the methods of analysis used for other similar NPS assessments, NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC plus NO_X are a very small proportion of the county-based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis. For consistency and conformity in approach, NPS has elected to rely on the assumptions in the 1996 Spark Ignition Marine Engine Rule, which are consistent with the widely used NONROAD emissions estimation model. The outcome is that estimated emissions from combusted fuel may be more conservative compared to actual emissions.

Comments Regarding Soundscapes

39. One commenter stated that in the 2005 EA, NPS concludes that PWC operation would produce negligible to minor short-term impacts upon the park's soundscape. NPS provides no new evidence for the EA's latest noise conclusions, which directly contradicts the 2001 determination.

NPS Response: In the 2005 EA impacts to the soundscape in the preferred alternative were evaluated using operational restrictions such as requiring PWC to travel at a flat wake speed and limiting access to specific locations. With these restrictions impacts were determined to be adverse, short term, negligible to minor, depending upon location. The 2001 determination was made using unrestricted conditions that were in effect prior to the 2002 prohibition.

40. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals. PWC typically exhaust above the water at the air/water transition area. Consequently, most PWC sound is transmitted through the air and not the water.

NPS Response: PWC exhaust is below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have greater than negligible adverse impacts on fish, and the EA does not state that PWC noise adversely affects aquatic fauna.

41. One commenter questioned the PWC noise levels that were used in the analysis.

NPS Response: A correction has been included in the errata to the EA to indicate that one PWC would emit 68 to 76 A-weighted dB at 82 feet. Based on the PWC noise levels from the Glen Canyon study, two PWC would emit 66 to 77 dB at 82 feet, 65 to 75 dB at 100 feet, and 59 to 69 dB at 200 feet. The noise levels of two PWC traveling together would be less than the NPS noise limit of 82 dB at 82 feet for all alternatives. Ambient sound levels at Cape Lookout National Seashore vary due to the wide range of land cover types and visitor and other activities within and near the national seashore. In addition to intensity, other aspects of PWC noise were assessed, including changes in pitch. The operation of PWC 50 feet from shore traveling at a flat wake speed would have minor adverse affects on the soundscape. In most locations, except in high use areas, natural sounds would prevail and motorized noise would be very infrequent or absent.

42. One commenter stated that the steps North Carolina has taken to limit boating noise will mitigate the potential impacts of PWC use on the park's soundscapes.

NPS Response: Comment noted. Impacts to soundscapes under alternative B are negligible to minor, depending on location.

43. Several comments stated that the EA's findings overstate the potential sound impacts of PWC use and do not include any documented complaint data about PWC noise.

NPS Response: Comment noted. Impacts to soundscapes under alternative B are negligible to minor, depending on location. The EA states that the level of sound impact associated with PWC use varies based on location, time of day, and season. The EA also states that sound impacts associated with PWC use would be most prevalent in quieter areas. Analysis of potential impacts of PWC use relating to sound was based on best available data, input from park staff, and the results of analyses using that data.

44. One commenter stated that the EA exaggerates PWC's propensity to become airborne.

NPS Response: NPS agrees that many PWC do not leave the water when being operated. When required to operate at flat wake speed in Cape Lookout National Seashore it is highly unlikely that any PWC will leave the water. Impacts to soundscapes from PWC under alternative B range from negligible to minor, depending on the location within the park.

45. One commenter stated that the PWC manufacturers have made significant progress in reducing PWC noise through technological innovations.

NPS Response: NPS concurs that ongoing and future improvements in engine technology and design would likely further reduce noise emitted from PWC. Even without the improvements the EA found impacts to soundscapes under alternative B are negligible to minor, depending on the location within the park.

46. One commenter stated that state legislation entitled the "National Marine Manufacturers Association Model Noise Act" establishes muffler requirements and maximum noise levels for PWC and other motorized boats, so noise disturbances would be minimized.

NPS Response: NPS concurs that ongoing and future improvements in engine technology and design would likely further reduce noise emitted from PWC. However, based on location and time, ambient noise levels at the national seashore can range from negligible to moderate and improved technology resulting in a reduction of noise emitted from PWC would not significantly change impact thresholds.

Comments Regarding Shoreline and Submerged Aquatic Vegetation

47. A commenter stated that because PWC lack an exposed propeller, they

can't damage seagrasses in shallow waters. Furthermore, the natural forces at Cape Lookout have a greater impact on vegetation than PWC use.

NPS Response: PWC do not have an exposed propeller but they do use an engine that directs a substantial amount of water towards the bottom at a high velocity. PWC can operate in waters less than a foot deep and have the potential of disturbing the sediment and submerged aquatic vegetation in shallow water areas. Disturbance of submerged aquatic vegetation beds diminishes their ecological value and productivity, affecting the entire ecosystem. As PWC are frequently operated in shallow areas in a repetitive manner, impacts on submerged aquatic vegetation beds can be severe. Natural forces may at times have a greater impact but the NPS allows such to occur without interference.

48. A commenter stated that allowing PWC operators to access shallow areas near the Cape Lookout Environmental Education Center dock would greatly disturb the underwater substrate and shoreline.

NPS Response: The 10 designated access areas, which include the area near the Cape Lookout Environmental Education Center dock, were chosen to avoid marshes and high-congestion beach areas. Indirect impacts from PWC use to shoreline vegetation would occur but would be limited to the designated access areas and would therefore be negligible to minor. Most of the access areas do not contain submerged aquatic vegetation beds, so PWC operation in these areas would have little potential to adversely impact this habitat. Additionally, the flat-wake speed restriction would minimize the potential for PWC to damage submerged aquatic vegetation beds through collision or uprooting and would reduce sediment resuspension and its detrimental effects.

Comments Regarding Wildlife and Wildlife Habitat

49. One commenter stated that there are no documented cases of deliberate harassment or collisions with wildlife by PWC users and there is no evidence that PWC use disturbs wildlife along the shoreline.

NPS Response: There is a potential for collision with or disturbance of aquatic wildlife species. The determination of potential for impacts to wildlife associated with PWC use is based on the assessment of several potential stressors including potential collision; noise; disruption of feeding, nesting, and resting activities; sediment suspension; emissions, etc. The flat wake requirement will reduce the level of PWC disturbance in the restricted areas and in nearby marshes. This reduced speed level and the requirement to travel perpendicular to the shoreline in designated access areas is expected to have short-term, negligible to minor, direct and indirect adverse impacts on aquatic wildlife species and habitat.

50. One commenter stated that the EA cites only anecdotal accounts, in which park staff supposedly observed PWC flushing terns and other bird species, as support for its position that PWC use is more disruptive to wildlife than other vessels.

NPS Response: The scope of the EA did not include the conduct of site-specific studies regarding potential effects of PWC use on wildlife species at Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data. The EA does not state that shorebirds were observed being flushed from nests in the park.

51. A commenter believes that PWC are no more disruptive than other forms of boating activity. Studies by Dr. James Rodgers of the Florida Fish and Wildlife Conservation Commission have shown that PWC are no more likely to disturb wildlife than any other form of human interaction.

NPS Response: Some research indicates that PWC are no more apt to disturb wildlife than are small outboard motorboats; however, disturbance from both PWC and outboard motor boats does occur. Dr. Rodgers recommends that buffer zones be established for all watercraft, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. The shoreline restrictions limit access for PWC to 10 locations under alternative B and require them to operate at a flat wake speed as an added precaution. Impacts to wildlife and wildlife habitat under all the alternatives were judged to be negligible to minor from all visitor activities.

52. One commenter believes the Everglades Report has been wrongly used in the wildlife analysis.

NPS Response: The reference to the Everglades Report at page iii of the EA provides background regarding past actions taken by NPS with respect to PWC use. The EA states that "After studies in Everglades National Park showed that PWC use resulted in damage to vegetation, adversely impacted shorebirds, and disturbed the life cycles of other wildlife, NPS prohibited PWC use by a special regulation at the park in 1994." This EA did not rely on the Everglades Report as a basis for assessing potential impacts to park resources associated with PWC use.

53. One commenter stated that the EA puts forth a conflicting position on the adequacy of new regulations to protect the park environment and wildlife, as well as the resources available to adequately enforce the NPS' new rules.

NPS Response: The NPS agrees that a total prohibition would be easier to enforce. However, enforcement would also be required under the no-action alternative. The seashore is fully aware that this new regulation will require short-term changes and reallocations of assets and resources, with an increase in education and enforcement. However, this effort will generally need to be focused at popular boating use areas that are already the focus of enforcement activity. Enforcement of the April 22, 2002, prohibition of PWC required an increased focus on education and PWC enforcement during routine patrols at a limited number of popular use areas. This education and enforcement effort became successful in about two boating seasons.

The majority of seashore users are law abiding and sensitive to the special values of seashore waters and lands. An active education program backed by a reasonable enforcement effort should, in a few seasons, educate the PWC user to the requirements of the new regulation. After an initial period of adjustment to the new regulations, the small number of PWC users who encounter seashore waters should be knowledgeable enough to abide by the law, and the initial need for focused attention on PWC operators will diminish. Additional water presence by park rangers and education are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

54. One commenter stated that the EA reaches a different conclusion regarding the appropriateness of PWC, compared to the 2001 determination.

NPS Response: Due to an increased level of public comment, Cape Lookout reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm.* The results of the in-depth analysis in the EA indicated that alternative B, which provided for limited access at flat wake speeds, would create acceptable impacts that ranged from negligible to moderate for all impact topics. Alternative B was chosen as the preferred alternative.

55. One commenter stated that the preferred alternative violates the Marine Mammal Protection Act (MMPA), which requires Federal agencies to prevent the "take" of marine mammals. Slow moving boats, even ones operating at flat wake speed, can violate the MMPA prohibition on harassment.

NPS Response: The EA states that implementing the preferred alternative would be expected to have short-term, negligible to minor, direct and indirect impacts to aquatic wildlife and habitats. The EA states that flat wake zoning prescriptions and the implementation of ten designated access areas would minimize potential for adverse impacts.

56. One commenter stated that the EA fails to adequately investigate the impact of the current PWC ban on biological migration patterns.

NPS Response: The scope of the EA did not include the conduct of surveys to determine potential effects of the current PWC ban on biological use patterns in Cape Lookout National Seashore. Analysis of potential impacts of PWC use on wildlife at the national seashore was based on best available data, input from park staff, and the results of analysis using that data.

Comments Regarding Visitor Use and Experience

57. One commenter stated that the EA overlooks the impact of reauthorizing PWC operation and its impact upon visitor use patterns. NPS should have conducted a visitor use survey over the past two years to measure public support for the current PWC closures.

NPS Response: The comment is correct in stating that no new visitor use surveys have been conducted since 1993. However, NPS received over 6,000 letters and emails on the issue since the initial PWC closure in March 2001. To suggest the seashore is not current on the opinions of the public on PWC is not an accurate statement concerning the NEPA and rulemaking process.

58. One commenter stated that the national accident figures cited in the document are dated and potentially misleading.

NPS Response: The factors described in the comment are recognized. However, these factors are unlikely to fully explain the large difference in percentages (personal watercraft are only 7.5% of registered vessels, yet they are involved in 36% of reported accidents). In other words, PWC are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor relative to other motorboats at the national seashore.

59. One commenter stated that the EA cites North Carolina state and county accident data instead of park-specific data. Furthermore, PWC users comprise only 1% of the total number of visitors to Cape Lookout National Seashore; therefore the number of PWC in the park will be relatively small and will not create unique or disproportionate safety risks.

NPS Response: Although only one PWC-related injury has been reported at Cape Lookout, much of the waters in the area are outside of park boundaries and many incidents are likely not reported to any agency. PWC speeds, wakes, and operations near other users can pose hazards and conflicts, especially to canoeists and sea kayakers. As stated in the EA, PWC have historically operated for longer periods of time in the heavily used areas of the park, including the soundside of Shackleford Banks and the cove at the Cape Lookout lighthouse, increasing the opportunities for conflicts or accidents. Limiting PWC use in these areas, coupled with flat wake speed requirements, would reduce conflicts between PWC and other users.

60. One commenter stated that by restricting PWC use to ten designated areas, alternative B concentrates PWC use in several popular areas of the park, which increases the likelihood of potential conflict with other visitors. Alternative B's restrictions do not apply to other motorized vessels. The PWC-only flat wake zone will create serious safety hazards for PWC users, and should be extended to all motorized craft within park waters.

NPS Response: The 10 designated access areas were chosen to avoid marshes and high-congestion beach areas. Implementation of a flat wake zone will reduce potential impacts associated with high speed use in near shore areas, as compared to use without the speed restriction. When vessels, other than PWC, enter park waters, which extend into the sound 150 feet, they normally operate at reduced speeds as they prepare to anchor or dock, so they are traveling at speeds similar to those required for PWCs. Vessels maneuvering in congested waters are generally safer at slower speeds.

61. Commenters are concerned with the assumption that PWC will not adversely impact public safety and that a majority of PWC users operate their craft in a lawful manner. However, in 2001 the NPS reported that PWC use "pose[d] unacceptable risks" to the safety of other visitors.

NPS Response: Due to an increased level of public comment, Cape Lookout reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm.* The results of the in-depth analysis in the EA indicated that alternative B, which provided for limited access at flat wake speeds would create acceptable impacts that ranged from negligible to moderate for all impact topics. Alternative B was chosen as the preferred alternative. Alternative B also provides more enforcement and education for PWC users.

62. A commenter stated that documented visitor satisfaction when PWC use was permitted was rated very good to excellent. Furthermore, today's PWC owner typically uses the craft for family-oriented outings.

NPS Response: NPS agrees that some PWC operators are better educated and are not reckless with their machines, and that many trips are family-oriented. However, PWC use does vary, and many operators still use the machines for "thrill," including stunts, wake jumping, and other more risky exercises. Some users can still create disturbances or safety concerns, especially if children are operating the vessel. Under alternative B, NPS is providing access to the park so that PWC users can enjoy Cape Lookout National Seashore beaches and other natural or cultural resources, but is restricting the use of PWCs in park waters to prohibit the wave jumping and other similar behavior.

63. Several commenters stated that alternative B is inconsistent with NPS' goal of avoiding the creation of additional enforcement requirements, and that there are not enough enforcement officials to keep PWC violations in check.

NPS Response: Both the no-action alternative and alternative B requires enforcement action. Cape Lookout National Seashore is fully aware that this new regulation will require short-term changes and reallocations of assets and resources, with an increase in education and enforcement. However, this effort will need to focus on popular boating use areas that are already the focus of enforcement activity. Enforcement of the April 22, 2002, ban of PWC at Cape Lookout National Seashore required increased focus on education and PWC enforcement during routine patrols at a limited number of popular use areas. This education and enforcement effort was successful in two boating seasons.

The majority of national seashore users are law abiding and sensitive to the special values of seashore waters

and lands. An active education program backed by a reasonable enforcement effort should, in a few seasons, educate the PWC user to the requirements of the new regulation. After an initial period of adjustment to the new regulations, the small number of PWC users who encounter national seashore waters should be knowledgeable enough to abide by the law, and the initial need for focused attention on PWC operators will diminish. Additional water presence and education are proven methods of protecting resources for the future enjoyment of all visitors, with the end result of enhancing the visitor experience.

Comments Regarding Visitor Conflict and Safety

64. One commenter stated that the EA reaches many conclusions regarding the impact of PWC upon Cape Lookout resources and wildlife that are directly contradicted by the 2001 determination and previous NPS testimony.

NPS Response: Due to the increased level of public comment and congressional interest, Cape Lookout National Seashore reanalyzed the issues and impact topics described in the 2001 Determination in more detail in the EA. The 2001 Determination can be viewed at: *http://www.nps.gov/calo/parkplan.htm*. In the 2001 determination PWC use was evaluated without any operational or access restrictions and therefore the reports differ in results. The results of the in-depth analysis in the EA indicated that impacts under alternative B range from negligible to moderate for all impact topics, and the NPS chose alternative B as the preferred alternative. Under alternative B, PWC would only be allowed in ten areas of the park in order to facilitate PWC access to certain sections of Shackleford Banks, South Core Banks, and North Core Banks. PWC must remain perpendicular to the shore and operate at flat wake speed, which would limit safety and noise issues from PWC.

65. Commenters have concerns about PWC operators following too closely and riding too close to the shoreline, both of which put people at risk for serious injury.

NPS Response: In the preferred alternative, PWC will only be allowed in the ten areas within the park specifically for landing purposes. PWC must remain perpendicular to shore and operate at flat wake speed. These restrictions would reduce the potential for conflicts with other vessels.

66. One commenter believes that the proposed rule caters to a minority of PWC users at the expense of the majority of the park visitors who favor a PWC ban.

NPS Response: The proposed rule would support visitor enjoyment by allowing limited access by PWC users while accommodating other visitors and meeting resource management objectives.

Comments Regarding Cultural Resources

67. One commenter stated that the EA overstates PWC's potential impact on cultural resources.

NPS Response: The EA was focused on the analysis of impacts from PWC use. PWC can make it easier to reach some remote areas, compared to hiking to these areas, but the NPS agrees that the type of impacts to cultural resources from any users of remote areas of the park would be similar if they can reach these areas.

Comments Regarding Socioeconomics

68. One commenter stated that the EA does not investigate the economic impact that lifting the PWC ban would have upon businesses that are dependent upon the conservation of wildlife and their habitat.

NPS Response: Page 170 of the EA states that the primary group that would incur costs under the preferred alternative is park visitors who do not use PWC and whose experiences would be negatively affected by PWC within the park. However, because PWC users account for a very small fraction of economic activity in the region, it is very unlikely that there will be any measurable incremental impacts on the region's economy. Continued PWC use within the park under the preferred alternative would have short-term, minor adverse impacts on wildlife species and their habitats, and is unlikely to impact the conservation of wildlife in and near the park.

69. One commenter stated that the proposed rule fails to mention the economic impacts on the PWC-related businesses in the area. The comment also mentions a recently published economic study that discusses the economic impact of banning PWC in Cape Lookout National Seashore.

NPS Response: NPS reviewed the Trade Partnership study, which concludes that PWC sales grew steadily through 1995, and have declined dramatically since then. The study blames this decline in sales on the PWC bans at National Parks. While the PWC ban at some National Park units may have contributed slightly to decline in PWC sales, NPS disagrees with the study's conclusion that the ban is the primary reason for the decline in sales. PWC use occurred in only 32 of the 87 park units that allow motorized boating. These 32 park units comprise a very small percentage of the total amount of waterways in the United States that can accommodate PWC. A decline in PWC sales can be attributed to many other reasons, including economic reasons, perceptions about the machines, and limitations by other public entities. In fact, at least 34 states have either implemented use restrictions or considered regulating PWC use and operation.

The economic analysis report quoted in the comment (*Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore,* MACTEC Engineering 2005) concludes that the proposed rule is not expected to reduce any of the local area's PWC-related businesses' profit margins or reduce the competitiveness of PWC rental and retail businesses. The report also concludes that small increases in revenue are projected under the proposed rule, relative to the no-action alternative, for firms selling and renting PWCs to Cape Lookout visitors.

Changes to the Final Rule

Several non-substantive changes have been made to the rule language in response to comments on the NPRM. First, the rule was rewritten to clarify the type of PWC use prohibited and locations within the national seashore where it is permitted. In addition, the phrase "recreational use" has been deleted. Also, the text in the rule has been clarified to state that the restrictions will be imposed on the PWC operator, not the PWC equipment. Organization of the rule has also been improved. See the discussion above under Comment Numbers 14 and 21.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has completed the report "Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore" (MACTEC Engineering, December 2005). This document may be viewed on the

park's Web site at: *http://www.nps.gov/calo/parkplan.htm.*

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The NPS published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and NPS policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Economic Analysis of Management Alternatives for Personal Watercraft in Cape Lookout National Seashore" (MACTEC Engineering, December 2005). This document may be viewed on the park's Web site at: *http://www.nps.gov/calo/parkplan.htm.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The NPS analyzed this rule in accordance with the criteria of the National Environmental Policy Act and prepared an EA. The EA was available for public review and comment from January 24, 2005, to February 24, 2005. A Finding of No Significant Impact (FONSI) was signed on July 7, 2006. These documents are available at *http://www.nps.gov/calo/parkplan.htm* or may be requested by telephoning (252) 728–2250. Mail inquiries should be directed to park headquarters: Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC 28531.

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) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedure Act

This rule allows use of PWC in Cape Lookout National Seashore under specified conditions. Because current regulations do not allow use of PWC at all, this rule relieves a restriction on the public. For this reason, and because NPS wishes to allow the public to take advantage of the new rules as soon as possible, this final rule is effective upon publication in the **Federal Register**, as allowed by the Administrative Procedure Act at 5 U.S.C. 553(d)(1).

The proposed rule was published in the **Federal Register** (70 FR 77089) on December 29, 2005, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b).

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the NPS amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Add new § 7.49 to read as follows:

§ 7.49 Cape Lookout National Seashore.

(a) Personal watercraft (PWC) may be operated within Cape Lookout National Seashore only under the following conditions:

(1) PWC must be operated at flat-wake speed;

(2) PWC must travel perpendicular to shore;

(3) PWC may only be operated within the seashore to access the following sound side special use areas:

(i) North Core Banks:

Access	Location
(A) Ocracoke Inlet	Wallace Channel dock to the demarcation line in Ocracoke Inlet near Milepost 1.
(B) Milepost 11B	Existing sound-side dock at mile post 11B approximately 4 miles north of Long Point.
(C) Long Point	Ferry landing at the Long Point Cabin area.
(D) Old Drum Inlet	Sound-side beach near Milepost 19 (as designated by signs), approximately ½ mile north of Old Drum inlet (adjacent to the cross-over route) encompassing approximately 50 feet.

(ii) South Core Banks:

Access	Location
(A) New Drum Inlet	Sound-side beach near Milepost 23 (as designated by signs), approximately ¼ mile long, beginning approximately ½ mile south of New Drum Inlet.
(B) Great Island Access	Carly Dock at Great Island Camp, near Milepost 30 (noted as Island South Core Banks-Great Island on map).

(iii) Cape Lookout:

Access	Location
(A) Lighthouse Area North	A zone 300 feet north of the NPS dock at the lighthouse ferry dock near Milepost 41.
(B) Lighthouse Area South	Sound-side beach 100 feet south of the "summer kitchen" to 200 feet north of the Cape Lookout Environmental Education Center Dock.
(C) Power Squadron Spit	Sound-side beach at Power Squadron Spit across from rock jetty to end of the spit.

(iv) *Shackleford Banks:*

Access	Location
(A) West End Access	Sound-side beach from Whale Creek west to Beaufort Inlet, except the area between the Wade Shores toilet facility and the passenger ferry dock.

(b) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: August 25, 2006.

David M. Verhey,

Acting Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 06–7502 Filed 9–7–06; 8:45 am]

BILLING CODE 4310–XR–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–2

RIN 1215–AB53

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Equal Opportunity Survey

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The Office of Federal Contract Compliance Programs (OFCCP) is publishing a final rule rescinding the Equal Opportunity Survey (EO Survey) requirement in order to more effectively focus enforcement resources and eliminate a regulatory requirement that fails to provide value to either OFCCP enforcement or contractor compliance. This rule allows OFCCP to better direct its resources for the benefit of victims of discrimination, the government, contractors, and taxpayers.

DATES: *Effective Date:* September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Background

On January 20, 2006, OFCCP published a Notice of Proposed Rulemaking (NPRM), proposing to rescind a rule requiring designated nonconstruction contractors to prepare and file an EO Survey with OFCCP. 71 FR 3374. Created in 2000, the EO Survey was intended to further the goals of Executive Order 11246, as amended. The Executive Order requires that Federal Government contractors and subcontractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin." Section 202(1). Affirmative action under the Executive Order means more than passive nondiscrimination; it requires that contractors take affirmative steps to identify and eliminate impediments to equal employment opportunity. The affirmative steps include numerous recordkeeping obligations designed to assist the contractor, in the first instance, and also OFCCP in monitoring the contractor's employment practices.

The EO Survey contains information about personnel activities, compensation and tenure data, and certain information about the contractor's affirmative action program. OFCCP recordkeeping rules require contractors to maintain information necessary to complete the EO Survey, although not in the format called for by the survey instrument. *See* 65 FR 26100

(May 4, 2000). The specific objectives of the EO Survey were:

(1) To improve the deployment of scarce federal government resources toward contractors most likely to be out of compliance;

(2) To increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's regulatory reform efforts, thereby allowing better resource allocation; and

(3) To increase compliance with equal opportunity requirements by improving contractor self-awareness and encourage self-evaluations.

See 65 FR 68039 (Nov. 13, 2000); *see also* 65 FR 26101 (May 4, 2000).

OFCCP has carefully analyzed the extent to which the EO Survey has accomplished its stated objectives. This analysis included two studies that focused on the predictive ability of the EO Survey. The first study, the Bendick & Eagan Report,[1] analyzed whether the pilot EO Survey results could be used to predict whether a contractor would have findings of non-compliance. The Bendick & Eagan Report did not demonstrate that the EO Survey is a good predictor of noncompliance [2] because as the Report acknowledged, data problems and other methodological issues prevented Bendick & Eagan from conducting a full-scale analysis of the pilot EO Survey's predictive power. Although the report stated that the EO Survey results might in the future be a way of finding contractors that are not in compliance, the report identified four "handicaps" that allowed it to present "only a preliminary examination" of the data's ability to differentiate between non-compliant and compliant establishments.[3]

The second study, the Abt Report,[4] analyzed whether EO Survey data could be used to develop a model to more effectively target those contractors engaging in systemic discrimination. The following summary of the key findings of the Abt Report was presented in the NPRM (71 FR 3374):

> Abt found the model's predictive power to be only slightly better than chance. Screening on the basis of the model produced large numbers of false positives, that is, the model predicted numerous instances of systemic discrimination in the sample where OFCCP identified none. Specifically, using a cutoff for the probability that an establishment discriminates near the overall rate, the model suggests that 637 out of the 1,888 establishments in the study discriminate, yet only 42 (6.5%) of these are true positives. Thus, of 637 establishments that would be classified by the EO Survey results as suspected of having systemic discrimination, 93% would be false positives. Abt Report at 33. Even at a higher cutoff rate, where only 143 establishments are inspected, 127 were found to have no systemic discrimination, so the false positive rate remains high at 89% (*i.e.*, 127/143).
>
> Furthermore, the EO Survey model wrongly classifies a significant portion of true discriminators as non-discriminators, and thus would not target them for compliance evaluations. If the 637 establishments were chosen for review on the basis of the EO Survey model, 1,251 establishments would not have been reviewed. This group of 1,251 predicted by the EO Survey to lack discriminators would, in fact, have contained 21 of the 63 cases (33%) of systemic discrimination. Under the higher cutoff rate, about 75% of the establishments (47 contractors) that were found to have systemic discrimination would not have been reviewed under the EO Survey model.[5]

Based on the results of the studies, and the evaluation of new initiatives implemented by OFCCP to accomplish the same objectives of the EO Survey but in different ways,[6] OFCCP concluded that the EO Survey failed to meet its objectives, and proposed removing the EO Survey requirement from covered contractors' obligations under the Executive Order. The preamble to the proposed rule discusses in depth the results of the studies and the reasons for OFCCP's proposal to rescind the EO Survey. 71 FR 3374–78.

OFCCP received a total of 2,736 comments on the NPRM. Of those, 1,707 comments (62%) supported the proposal to discontinue the EO Survey and 1,029 comments (38%) opposed the proposed rule. Most of the comments focused on (1) The Abt Report; (2) the alleged intrinsic value of the EO Survey; and/or (3) the implications of rescinding the EO Survey.

After considered review of the comments, OFCCP concludes that the objectives of the Executive Order 11246 program can be better accomplished through means other than the EO Survey, and publishes this final rule to rescind the EO Survey filing requirement. There are no differences between the proposed rule and the final rule.

II. Discussion of the Comments

A. Comments on the Abt Report

Many of the commenters who support the proposal to rescind the EO Survey cited the Abt Report and the conclusions that OFCCP drew from it. For example, the Silicon Valley Industry Liaison Group stated:

> [I]t is clear to our member companies that the EO Survey has no internal value to the company * * *. Abt Associates, indicated that the EO Survey does not accomplish what it was constructed to do: find systemic discrimination. * * * In the Jan. 20, 2006 Proposed Rule, OFCCP states "that the EO Survey misdirects valuable enforcement resources and does not meet any of its three objectives set out in the November 13, 2000 preamble." Since the EO Survey lacks efficacy and has no internal value to the contractor, we applaud the Agency for its recommendation to withdraw its use.[7]

Likewise, the U.S. Chamber of Commerce stated, "The Abt study—an impartial, comprehensive and statistically sound assessment of the value of the Survey—provides a sound regulatory basis for OFCCP to eliminate the Survey and search for new ways to select establishments for audit." [8] Noting the Abt Report's findings concerning the false positive and false negative rate generated by the EO Survey data, the National Association of Manufacturers commented:

> Simply stated, any system that targets compliant contractors for audit, thus punishing those employers striving to comply with their affirmative action and non-discrimination obligations, while allowing non-compliant contractors to avoid detection, utterly fails to serve any legitimate regulatory or enforcement purpose and should be eliminated. Indeed, continuing a system that consciously targets a significant

[1] The Bendick & Eagan Report was produced by Bendick & Eagan Economic Consultants, Inc., and was entitled *The Equal Opportunity Survey: Analysis of a First Wave of Survey Responses* (September 2000) (It was referred to in the NPRM as the Bendick Report, but is referred to here as the Bendick & Eagan Report to distinguish it from the comment submitted by Dr. Marc Bendick on March 2, 2006).

[2] The Executive Summary to the Bendick & Eagan Report concluded that the EO Survey "can enhance the efficiency and effectiveness in OFCCP's monitoring of contractors' compliance with Executive Order 11246," but later acknowledges that its report provides "only an exploratory, rather than a full-scale analysis of the Survey's predictive power." Bendick & Eagan Report at i–ii. The Bendick & Eagan Report did find "preliminary positive indications of predictive power," which suggest that "predictors based on the EO Survey are likely *eventually* to demonstrate substantial power." (Bendick & Eagan Report at 25) (emphasis added). The exploratory nature of its analysis, however, prevented a definitive finding on any correlation between predictive variables, generated from the EO Survey, and determinations of noncompliance.

[3] Bendick & Eagan Report at 18–27.

[4] The Abt Report was produced by Abt Associates of Cambridge, Massachusetts and was entitled *An Evaluation of OFCCP's Equal Opportunity Survey.*

[5] Abt Report at 33–35. *See also* NPRM at 71 FR 3375–76.

[6] For an explanation of these initiatives, see the discussion in Section C below.

[7] Silicon Valley Industry Liaison Group (SVILG) March 17, 2006 letter. The SVILG comprises one of the largest liaison groups in the country with 272 members, including many leading high-tech, bio-tech and other major employers in Northern California.

[8] Crowell & Moring LLP March 28, 2006 letter at 4–5 (representing the U.S. Chamber of Commerce).

number of compliant contractors violates fundamental principles of due process.[9]

Conversely, many commenters who support retention of the EO Survey suggest that the Abt study is flawed, and thus no valid inferences regarding the EO Survey's predictive power can be drawn from the Abt study.[10] For example, the Florida Federation of Business and Professional Women's Clubs, Inc. stated:

> The proposal to eliminate the EO Survey cites the findings from a research consultant. However, the consultant's analysis was based upon a skewed sample because contractors who did not respond or provided questionable information were not included.[11]

The National Women's Law Center noted:

> OFCCP attempts to justify its proposal with findings from the study it commissioned by Abt Associates. Essentially, OFCCP concludes that the Survey's predictive power is little better than chance, and produces so many false positives and false negatives as to be virtually useless in targeting those contractors that have engaged in systemic discrimination. However, neither these nor any other conclusions about the EO Survey's predictive power can be validly drawn from the Abt study, because the study sample given to Abt by OFCCP, and on which these conclusions are based, was hopelessly skewed and unrepresentative of the contractor community.[12]

Given the significance of the Abt study, the commenters' major critiques of the study are addressed below. For presentation purposes, these critiques have been grouped into three areas:

1. The Abt study should have been based upon a larger group of federal contractors.
2. The sample used by Abt was skewed.
3. The Abt study inappropriately focused on systemic discrimination, rather than all violations.

1. The Abt Study Should Have Been Based Upon a Larger Group of Federal Contractors

Some of the comments in opposition to the proposal maintain that the Abt study is flawed because it was not based upon a larger group of federal contractors. Other commenters focused on the decline in the number of EO Surveys OFCCP distributed each year. For example, the Leadership Conference on Civil Rights stated:

> The EO Survey's distribution was dramatically reduced—from 50,000 contractors to 10,000—thus undermining the reach of the instrument and raising questions about OFCCP's commitment to carry out the intent of the law. Further, to our knowledge, the data collected through the EO Survey has never been used by OFCCP for targeting of compliance reviews.[13]

In contrast, Maly Consulting LLC suggested that OFCCP should not have sent out any EO Surveys before OFCCP did "a complete job to determine its viability."[14]

OFCCP acknowledges that the number of EO Surveys sent out declined. In fact, the NPRM specifically notes that "OFCCP mailed 53,000 EO Surveys between December 2000 and March 2001, 10,000 in December 2002, 10,000 in December 2003, and 10,000 in December 2004." (71 FR 3375) The reason for this decline was noted in the January 2003, OFCCP notice in the **Federal Register** seeking a two-year extension of the Paperwork Reduction Act clearance (68 FR 4797) and the NPRM to this final rule. That is:

> Time constraints and a number of data problems affected an earlier pilot study of the EO Survey data [the Bendick & Eagan Report] in such a way so as not to be able to assess the Survey's predictive power. To perform a study that is not limited by these obstacles, OFCCP has engaged an outside contractor to study the Survey data. The contractor will assess data from the EO Survey submissions as part of its study. * * * OFCCP requests a two-year extension of PRA authorization for the EO Survey, involving 10,000 EO Surveys per year. The two-year extension will permit OFCCP to complete the ongoing study of the EO Survey. Ten-thousand Surveys is the number the outside contractor needs to assess the Survey's reliability for finding employers that discriminate against their employees.[15]

Without a complete validation study of the utility of the EO Survey, it would not have been useful to send EO Surveys to the broader contractor community. Indeed, it was logical and consistent with the Paperwork Reduction Act to send only a sufficient number of EO Surveys to develop the predictive model and to fully test and validate the EO Survey.

Regarding the Abt study, the limiting factor was not the number of EO Surveys sent out but rather the number of compliance evaluations that could be completed. As the Bendick & Eagan Report noted, one of the Bendick & Eagan Report's methodological shortcomings was its inability to compare compliance evaluations with EO Survey results.[16] Undertaking such a comparison was one of the essential goals of the Abt study. Regardless of the number of EO Surveys, OFCCP expected to be able to conduct only 2,250 compliance reviews for the study. Thus, it was expected that only about 2,250 EO Surveys could be linked to completed compliance evaluations. This linkage is crucial to the study because without it there is no possibility of modeling the data on the EO Survey to a systemic discrimination outcome.

Based on the 2,250 estimate, Abt determined that about 10,000 EO Surveys would have to be sent out. (This is the number that was sent out in December 2002, 2003 and 2004.) As detailed in Chapter 2 of the Abt Report, the selection of the establishments was done in the following manner:

> The target population consisted of a subset of the 95,961 establishments with EEO–1 contractor records for FY2000. The subset excluded the following categories:
> - Establishments that were sent EO Surveys the previous year.[17]
> - Establishments that the OFCCP reviewed within the last two years (FY2001 and FY2002).
> - Establishments associated with a parent company for which the OFCCP has approved a Functional Affirmative Action Program.
> - Any establishment that had the same parent company as an establishment that had asserted that the OFCCP lacked jurisdiction (for reasons that comprised five categories).
> - A small number of establishments that had very questionable records.
> - Establishments that were among the 6,863 to which EO Surveys were sent in April 2000, in connection with the pilot study.
> - All establishments of two large companies that have traditionally contested jurisdiction and were not sent EO Surveys on the previous round.
>
> The resulting subset contained 26,451 establishments. A sample of approximately 10,000 establishments was drawn from this sampling frame, according to an allocation among a detailed set of strata.[18]

The strata were based upon three factors: region, industry and establishment size. The details of the strata are presented on page 4 of the Abt Report. Page 5 of the Abt Report presents the number of establishments in each stratum:

> Because of the random rounding in the allocation procedure, the actual total sample

[9] Fortney & Scott, LLC March 27, 2006 letter at 4 (representing the National Association of Manufacturers).

[10] Leadership Conference on Civil Rights March 20, 2006 letter at 2.

[11] Florida Federation of Business and Professional Women's Clubs, Inc. March 21, 2006 letter.

[12] National Women's Law Center March 28, 2006 letter at 3–4.

[13] Leadership Conference on Civil Rights March 20, 2006 letter at 2.

[14] Maly Consulting LLC March 27, 2006 letter at 2.

[15] 68 FR 4797, 4798 (2003). *See also* NPRM at 71 FR 3375.

[16] Bendick & Eagan Report at 20–21.

[17] In addition to mininizing the burden on a single contractor, this avoided the problem cited in the Bendick & Eagan Report of contaminating the EO Survey data by conducting compliance evaluations prior to collection of EO Survey responses.

[18] Abt Report at 3.

size was 10,018 establishments. The actual sample was obtained by selecting a simple random sample of establishments from each of the 276 final strata. * * * The subsample [for review] was selected in three parts, an initial sample of 3,300 and two supplementary samples (of 1,000 and 2,100, respectively), as experience with the reviews led to revisions in the initial assumptions. Thus, the total size of the subsample was 6,400.

The 6,400 random review subsample was reported in footnote 2 on page 3375 of the NPRM. As was also reported in that note:

Of these 6,400, only 3,723 establishments responded to the EO Survey. Of these 3,723, only 2,651 had data that allowed OFCCP to complete a compliance evaluation. Thus, OFCCP completed about 2,651 compliance evaluations. However, of the 2,651, a significant number (763) had missing or incoherent data on the EO Survey, and were not used in the study. Ultimately the study focused on 1,888 cases that had completed compliance reviews and had reliable EO Survey data.

The number of completed evaluations on contractors that returned the EO Survey (2,651) actually exceeded OFCCP's original goal of completing 2,250 evaluations for the study by almost 18%. Moreover, the 3,618 establishments that were not "used" by Abt [19] could not have an impact on the results of their analysis because the original 10,018 establishments (both the 6,400 review subsample and the 3,618 non-review subsample) were drawn in a random fashion.

If EO Surveys had been sent out to all establishments with EEO–1 contractor records for FY2000, OFCCP still would have only been able to complete about 2,651 compliance evaluations. Thus, it is unlikely that sending the EO Survey to more contractors would have altered the results of the study. On the contrary, the approach of sending out the minimum number of EO Surveys necessary to conduct a statistically valid study not only reduced the burden on federal contractors but also minimized the burden on OFCCP and its resources. The selection strategy utilized by Abt produced a representative sample of federal contractors while avoiding the contamination issues mentioned in the Bendick & Eagan Report. In sum, an adequate number of establishments were sent the EO Survey.

2. The Sample Used by Abt Was Skewed

The second major criticism of the Abt Report concerned whether the sample it used was representative. Despite the efforts by Abt to produce a representative sample of Federal contractors for the study, several commenters opposing the proposal maintain that the Abt study was flawed because it did not use the data from all of the contractors who were sent the EO Survey. For example, the National Women's Law Center stated:

The integrity of OFCCP's sample was compromised from the beginning. Any contractor that refused to respond to the EO Survey (10%), asserted that OFCCP lacked jurisdiction (27%), or went out of business (5%) was simply dropped from the sample. * * * Another 15% of the contractors were dropped from the sample because they had submitted responses to the Survey that contained internal inconsistencies too extreme to address with "suitable cleaning." As a result, *more than half* of the original sample of 10,000 contractors was dropped before the study even began and before Abt built its model of predictive power. Ultimately, the study sample was whittled down to 1,888 contractors for whom Abt had both a Survey containing adequate data and the results from a CR conducted by OFCCP.[20]

Similarly, the Bendick Comment stated:

[T]his OFCCP conclusion is not justified by the *Abt Report* because the sample of employers OFCCP provided to Abt was not appropriate for the study of the Survey's predictive power. The sample consisted of 2,226 firms for which both a compliance audit and a Survey response was available. If the employer refused to answer the EO Survey or provided only apparently-incorrect data, then that firm was simply dropped from the sample. Firms which *were* not included in the sample totaled 3,352 of 6,400 firms which could have been included in the study. That is, 52.4%—more than half—of firms were omitted from the data before Abt began its analysis.[21]

Numerous commenters, including American Federation of Government Employees, Local 12, AFL–CIO, echoed the following sentiment:

The proposal to eliminate the EO Survey cites the findings from a research consultant. However, the consultant's analysis was based on a skewed sample because contractors who did not respond or provided questionable information were not included. Earlier research by a different consultant concluded that the very contractors who did not comply with the EO Survey in the first place were more likely to be in violation of the law.[22]

To address these concerns about the Abt sample, it is necessary, as a preliminary matter, to examine the composition of the 6,400 establishments that were sent the EO Survey and in the review subsample used by Abt. Table B presented in Appendix E of the Abt Report provides a breakdown of the 6,400 establishments in the review subsample selected by Abt.

Of the 6,400 contractors sent EO Surveys and in the subsample used by Abt, 2,004 were either out of business or asserted that they did not have to respond (*e.g.*, they were not federal contractors with at least 50 employees). These establishments were excluded from the analysis because it would have been difficult and an inefficient use of resources to include them in the model. It would have been nonsensical, if not impossible, for OFCCP to complete compliance evaluations on the 330 establishments who were out of business. Further, including the small number of establishments that claimed they didn't have to respond to the EO Survey, but should have in the Abt study, could not have significantly skewed the results of the analysis given they were also randomly selected.

Of the remaining 4,396 contractors, 3,723 (about 85%) responded to the EO Survey with data that either passed the initial OFCCP check with an "OK" status or submitted data that generated an "edit condition report." However, OFCCP had not completed compliance evaluations on all of these contractors. As stated in the NPRM, OFCCP completed compliance evaluations on only 2,651 of the contractors that responded to the EO Survey with data (about 71% of 3,723). This represented the pool of available matches of EO Survey data and systemic discrimination determinations.

As was discussed in the NRPM, after further evaluating the data, Abt focused on the set of 1,888 cases that had completed compliance reviews and

[19] Abt Report, Appendix E, Table A.

[20] National Women's Law Center March 20, 2006 letter at 4.

[21] Dr. Marc Bendick March 2, 2006 comment at 3 (footnote omitted) (emphasis in original) (hereinafter "Bendick Comment"). The Bendick Comment also asserted that the 2000 Bendick & Eagan Report "found exactly the reverse of what the [NPRM] says it found," pointing specifically to the NPRM's statement that the Bendick & Eagan Report "failed to find a correlation between the predictive variables, generated by the EO Survey, and determinations of noncompliance." *Id.* at 2 (citing 71 FR 3374). Despite the 2006 Bendick Comment, the 2000 Bendick & Eagan Report specifically stated: "The EO Survey data collected in the April 2000 wave does not offer circumstances in which the full predictive power of the survey can be revealed. Four handicaps are important to note. * * * Considering these four circumstances, this report presents only a preliminary examination of the ability of selected variables drawn from the EO survey to differentiate establishments likely to have non-compliance findings from those not likely to have such outcomes." Bendick & Eagan Report at 20–23. In the EO Survey NPRM, OFCCP acknowledged that "data problems prevented Bendick from conducting a full-scale analysis of the pilot EO Survey's predictive power. The report stated that the EO Survey results might in the future be a way of finding contractors that discriminate, but the pilot EO Survey did not." 71 FR 3374–75 (citing Bendick & Eagan Report at 18–27).

[22] American Federation of Government Employees, Local 12, AFL–CIO March 17, 2006 letter at 1.

what Abt considered reliable EO Survey data. The results of Abt's analysis of these cases were presented in the NPRM. *See* 71 FR 3375 n. 2 and Abt Report, Appendix E, Table B.

Before the report was finalized, OFCCP asked Abt to analyze the data with "relaxed" edits due to this very concern that the cases being omitted from the analysis would bias the results. Appendix E presents Abt's findings with the relaxed edits and, "The result, in brief, was that [Abt] emerged with the same four predictor variables. The coefficients were somewhat different, but not greatly so. The qualitative interpretation is pretty much the same." [23]

Based upon this analysis, OFCCP concluded that Abt's data quality standards did not have a significant impact on the results of the study. In short, OFCCP concluded that excluding those establishments from the sample which Abt ultimately analyzed would not have changed Abt's conclusion regarding the predictive power of the EO Survey.

There remains a group of 673 non-respondents out of the subsample of 6,400, or 10.5%. The supposition by many commenters is that this omitted group contains a high portion of noncompliant contractors. Such speculation cannot be verified. In fact, there could be any number of reasonable explanations for the number of non-respondents. For example, contractors may have been unable to properly complete the EO Survey or simply may not have returned it to OFCCP.[24] Moreover, one could just as easily speculate that the non-respondents are not under the jurisdiction of OFCCP and chose to ignore the EO Survey. Whatever the reason, because the review subsample was randomly drawn, the relatively low non-response rate is unlikely to have a statistically significant impact on the results of the Abt Report.

Finally, some commenters who argue for retaining the EO Survey cite the difference in the results of the Bendick & Eagan and Abt reports as evidence that the Abt Report is flawed. For example, the Bendick Comment stated:

> In the sample studied by Abt, only 3.0% of firms were found out of compliance (engaged in systemic discrimination). In the sample analyzed in the *Bendick Report*, 38.4% of the firms surveyed were found out of compliance. Thus, the data set Abt analyzed was clearly not representative of all federal contractors.[25]

The reason for this difference is not because the Abt Report is flawed or skewed, but because the Abt Report appropriately focused on systemic discrimination, which is the focus of OFCCP's enforcement strategy, while the Bendick & Eagan Report studied non-compliance in its broadest sense, of which systemic discrimination is only one part. Directly comparing the results of the two studies is not really appropriate and can be misleading.[26] Since systemic discrimination violations are a subset of the types of non-compliance that OFCCP finds in its reviews, and the most harmful to workers, it is not at all surprising that the rate of systemic discrimination in the sample used by Abt is lower than the rate of non-compliance in the sample used by Bendick & Eagan, which included both a wide variety of paperwork violations and systemic discrimination violations.

In short, the sample Abt used was appropriate, statistically valid, and did not skew the results.

3. The Abt Report Inappropriately Focused on Systemic Discrimination, Rather Than All Violations

The third major criticism of the Abt Report was its focus on systemic discrimination. Several commenters who support retaining the EO Survey assert that the Abt Report inappropriately focused on systemic discrimination, rather than all violations. They believe that by focusing only on systemic discrimination, the study underestimated the true benefit of the EO Survey. A typical example of this comment is that from Schaeffer and Schaeffer LLC:

> OFCCP expressed its intent during the formal rulemaking in 2000 when the agency said that the data in all three parts of the EO Survey were intended "*to provide indicators of potential compliance problems for which further inquiry may be appropriate.*" OFCCP also stated "The survey responses do not prove that a problem exists, but rather are used as an indicator to guide OFCCP compliance evaluations." * * * While OFCCP's emphasis on systemic compensation discrimination is a very positive development in many respects for which the agency should be commended, the question remains whether it is the proper standard for the EO Survey to meet.[27]

The National Women's Law Center emphasized, "Systemic discrimination may be OFCCP's enforcement focus, but it is not the sum total of OFCCP's legal mandate nor the EO Survey's only purpose. This cordoning off of the Survey's scope itself may bias the Abt study's findings." [28]

Systemic discrimination is indeed the proper standard for the EO Survey to measure. OFCCP's mission is based on the underlying principle that employment opportunities generated by Federal dollars should be available to all Americans on an equitable and fair basis. To fulfill this mission, it is OFCCP's stated policy to focus on increasing outreach efforts and targeting systemic discrimination in order to make better use of its resources. This policy has proven to be very effective. For example, in September 2004, OFCCP secured $5.5 million in salary adjustments and other financial remedies for 2,021 current and former female employees of a major financial institution who had been subjected to illegal compensation discrimination. This was OFCCP's fourth largest case in terms of monetary recovery, and was the first systemic compensation discrimination case to be filed in a quarter century. In FY 2005, OFCCP recovered a record $45.2 million for 14,761 American workers who had been subjected to unlawful employment discrimination—a 56 percent increase over recoveries in FY 2001.

Central to this policy is scheduling and focusing OFCCP's compliance evaluations on those cases most likely to result in findings of systemic discrimination and the recovery of make whole relief for victims of discrimination. It has long been widely recognized that compliance evaluations consume significant resources, that OFCCP can only conduct evaluations on a portion of all federal contractors, and that a large portion of the evaluations conducted do not result in findings of systemic discrimination.[29] Therefore, it

[23] Abt Report, Appendix E, at 1–2.

[24] In a related comment, the U.S. Chamber of Commerce observed: "Many Survey responses had to be disregarded due to clearly erroneous data, demonstrating the difficulties that employers had in providing accurate information." Crowell & Moring LLP March 28, 2006 letter at 4 (representing the U.S. Chamber of Commerce).

[25] Bendick Comment at 3 (footnote omitted).

[26] The National Women's Law Center acknowledges that a comparison of the findings of the Bendick & Eagan Report and Abt Report may not be appropriate, but submits that it should have led OFCCP to question the Abt sample: "This comparison of noncompliance rates may not be an apples-to-apples comparison because of the narrow scope of violations OFCCP used in framing its study and in conducting [compliance reviews] * * *. Still, the dramatic difference in rates of noncompliance found through OFCCP's [compliance reviews] should have led OFCCP, at a minimum, to question the representativeness of the sample it was using." National Women's Law Center March 28, 2006 Letter at 5, n. 22. It should be noted that OFCCP did review the sample and methodology used by Abt and determined it to be statistically valid.

[27] Schaeffer and Schaeffer LLC March 28, 2006 letter at 4–5 (emphasis in original).

[28] National Women's Law Center March 28, 2006 letter at 4, n. 14.

[29] *See, e.g.*, Bendick Comment at 5.

is crucial to OFCCP's policy that the evaluations that are conducted be better targeted. Since OFCCP is focusing its compliance evaluations on systemic discrimination and, as noted by Schaeffer and Schaeffer, the stated purpose of the EO Survey was to provide an indication when further inquiry may be appropriate,[30] it was appropriate for the Abt Report to focus on cases of systemic discrimination rather than generally on all types of non-compliance (including, largely, affirmative action program paperwork requirements).

Some commenters also cite the Bendick & Eagan Report to show that the EO Survey has value. For example, National Employment Lawyers Association stated:

> The Bendick study found a correlation between the predictive variables generated by the EO Survey and determinations of non-compliance. That report examined 31 predictive variables and found 28 of them (90.4%) to have some predictive power, including 11 (35.5%) in which the predictive power was "statistically significant." [31]

Aside from the data issues discussed on pages 20 to 23 of the Bendick & Eagan Report, OFCCP has determined that the report's use of the broad term "non-compliance" instead of systemic discrimination inflates the predictive power of the variables. Since it was never OFCCP's intention to issue violations solely based upon the EO Survey, OFCCP is required to follow-up the EO Survey results with a compliance evaluation to actually make a finding of "non-compliance." The correlation of the broad definition of non-compliance used in the Bendick & Eagan Report with the predictor values in the EO Survey would do little to advance OFCCP's goal of targeting systemic discrimination and recovering make whole relief for those who suffered from discrimination. On the contrary, by including other violations in the definition of non-compliance, this approach would divert resources from investigating the potential cases of systemic discrimination toward cases involving just paperwork violations. The Bendick Comment acknowledges that "OFCCP resources permit only a very small proportion of federal contractors to be reviewed each year—at the time the *Bendick Report* was completed, less than 4 percent of contractors each year." [32] Thus, it is critical to OFCCP's enforcement strategy that these resources be used efficiently to protect workers actually harmed by discrimination, remedy that discrimination, and bring violators into compliance.

4. Conclusion

After careful consideration of these comments, OFCCP continues to believe that the Abt Report is statistically sound and supports its conclusion that the EO Survey data does not, in any meaningful way, improve OFCCP's ability to target for review those contractors engaging in systemic discrimination.

B. Comments on the Alleged Intrinsic Value of the EO Survey

The second major area discussed by commenters is the alleged intrinsic value of the EO Survey. This view, as articulated by the Leadership Conference on Civil Rights is that "Even if the data collected [on the EO Survey] does not automatically prove discrimination, it provides a picture of a contractor's workforce that otherwise would not be available. It is the potential for this increased level of scrutiny that provides the incentive for contractor self-examination." [33] By contrast, the National Association of Manufacturers "heartily endorses elimination of the EO Survey as an overly burdensome, expensive, and wholly ineffective regulatory requirement that unnecessarily duplicates other equal employment opportunity ("EEO") and affirmative action reporting obligations." [34]

The main points raised by supporters of the EO Survey about its alleged intrinsic value are:

1. The EO Survey is the only reliable method to collect compensation data.
2. The EO Survey enhances the tiered review process.
3. The EO Survey facilitates effective self-evaluations by federal contractors.

1. The EO Survey Is the Only Reliable Method to Collect Compensation Data

The concern that the EO Survey is the only reliable method to collect compensation data was expressed by numerous commenters, including the National Employment Lawyers Association, which stated:

> The Notice indicates that if the EO Survey is discontinued, OFCCP will use the EEO–1 data to predict the likelihood of whether a contractor will be found out of compliance. Although EEO–1 counts are useful, the data from the EO Survey are even more useful. * * * The EO Survey also contains compensation data that EEO–1 counts do not provide. Eliminating the EO Survey would jettison an extremely useful tool for identifying discrimination.[35]

The Unitarian Universalist Association of Congregations suggested that the compensation data on the EO Survey is useful to OFCCP for targeting purposes:

> The EO Survey is a particularly important tool because it, for the first time, would provide OFCCP with pay data from all federal contractors every two years. That information could be used by OFCCP to help identify unequal pay practices, and better target its limited enforcement resources.[36]

While the EO Survey collects data on compensation by EEO–1 category, the Abt Report indicates that the data have no relation to the determination of systemic discrimination and contrary to these assertions is not a useful tool for enforcement purposes. The proponents of the EO Survey apparently believe that the mere collection of this data will have some beneficial effect. However, there is no evidence that the specific compensation data collected by the EO Survey can be used to predict compensation discrimination. Rather, the data is collected in such a raw and aggregate form that it cannot be used to compare similarly situated employees, and thus has negligible value in predicting compensation discrimination. The U.S. Chamber of Commerce agreed with OFCCP's assessment of the predictive value of the compensation data collected by the EO Survey:

> [T]he compensation data required by the Survey, submitted on an EEO–1 category basis, fails to provide any information useful to OFCCP in identifying contractors appropriate for audit. Because the data is reported on a broad EEO–1 category basis, the OFCCP cannot use the data to assess the compensation of similarly-situated employees. The data likewise cannot be subjected to a valid statistical analysis, and the Survey ignores the myriad non-discriminatory factors that may impact compensation. Indeed, any methodology that could be employed with respect to compensation data generated by the Survey would be wholly at odds with the draft guidance issued by OFCCP in November 2004 regarding systemic analyses of compensation.[37]

Even if there were some small marginal utility to EO Survey compensation data, the minimal benefit of the data would be outweighed by the

[30] Schaeffer and Schaeffer LLC March 28, 2006 letter at 4–5.

[31] National Employment Lawyers Association March 20, 2006 letter at 2.

[32] Bendick Comment at 5.

[33] Leadership Conference on Civil Rights March 20, 2006 letter at 3.

[34] Fortney & Scott March 27, 2006 letter at 2 (representing the National Association of Manufacturers).

[35] National Employment Lawyers Association March 20, 2006 letter at 3.

[36] Unitarian Universalist Association of Congregations March 20, 2006 letter.

[37] Crowell & Moring LLP March 28, 2006 letter at 3 (representing the U.S. Chamber of Commerce).

burden on the contractor to complete the EO Survey, and on OFCCP to process and use the EO Survey. Moreover, the obligation to expend resources to complete the EO Survey could discourage contractors from conducting a more thorough and useful evaluation of their personnel data. The necessity to collect and process EO Survey data could divert scarce OFCCP resources from more vigorously enforcing equal employment laws in a more effective manner.

OFCCP believes that remedying compensation discrimination is important to its mission. But the EO Survey fails as a means of targeting it. As previously discussed, the Abt Report demonstrated that using the EO Survey for targeting would direct compliance officers away from contractors who are discriminating. In addition, the EO Survey would direct them—93% of the time—to contractors who are not discriminating.

Further, the EO Survey is not the only source of compensation data available to OFCCP. First, OFCCP collects compensation data pursuant to Item 11 of the Scheduling Letter sent out to contractors selected for a compliance evaluation. The compensation data collected at initial desk audit stage is vastly superior to EO Survey compensation data. The data collected at the desk audit is more refined than the EO Survey data and is also specifically tailored to the contractor's job groups. In contrast, the EO Survey data is collected by EEO–1 category, which are likely too aggregate and result in the grouping of dissimilar jobs. As demonstrated by the Abt Report, studying the differences in pay averages for aggregate-level employee groups, which is the only type of compensation analysis the EO Survey data permits, is not even predictive of compensation discrimination. Finally, the desk audit data is likely to be more current and accurate, due to the interaction between the compliance officer and the contractor. In contrast to the computer program-based EO Survey, during a desk audit, a compliance officer reviews the compensation data, and can inquire about issues with the data, thus providing the contractor with the opportunity to correct any erroneous data submissions.

In addition to the compensation data produced at the desk audit, other tools are available for pay assessments. Each Federal contractor is required by regulation to conduct a compensation self-analysis as part of its mandated affirmative action plan. *See* 41 CFR 60–2.17(b)(3). Certain covered contractors are required, pursuant to 41 CFR 60–2.1 to create and annually update an Affirmative Action Program evaluating the impact of all of their employment practices, including compensation, on women and minorities and to correct any problems identified.

In sum, the EO Survey is not reliable and it is not the only means available for collecting such data. OFCCP collects compensation data as part of the desk audit process, and contractors are required to collect such data as part of its affirmative action obligations. The Paperwork Reduction Act specifically requires that the data collected have utility. 44 U.S.C. 3506(c)(3)(A). It does not appear that the EO Survey meets this threshold. It is unnecessary to maintain the EO Survey to collect compensation data, as other tools accomplish the same purpose, with better results for the agency.

2. The EO Survey Enhances the Tiered Review Process

Some commenters assert that the EO Survey enhances OFCCP's tiered review process. For example, the AFL–CIO stated:

> The EO Survey enhances the effectiveness of the tiered-review system by enabling OFCCP to more accurately determine which level or type of compliance review is appropriate for a particular contractor. * * * [T]he tiered-review program is designed to ensure that the agency bases its level of review of a contractor on the likelihood of uncovering substantive violations, as determined at the early stages of review. Thus, is it [sic] essential that those early-stage targeting determinations are as accurate as possible, and the initial data collected by the EO Survey helps ensure that accuracy by providing essential information about each contractor in a format intended for such targeting. Based on that information, the agency can then more accurately decide what level of review would be a most effective expenditure of its resources, be it an off-site review of contractor records, targeted on-site reviews at a contractor's facility that focus on specific issues, or full-scale on-site reviews that concentrate on multiple issues. Without the EO Survey, the agency is less able to decide what level of review is most appropriate, and risks expending resources on a level of review inappropriate for that contractor.
>
> * * * * *
>
> OFCCP contends that it can better build upon the tiered-review process through use of new procedures such as Active Case Management (used in connection with desk audit reviews) and proposed standards for identifying systemic compensation discrimination * * * [H]owever, these procedures would seem to factor into the tiered-review process only *after* the initial selection stages. The EO Survey would accordingly surpass these procedures in terms of its capacity to build upon the tiered-review process by identifying contractors with systemic pay discrimination issues before deciding what level of review to conduct. * * * Thus, not only is the EO Survey an effective tool for research management, but the alternatives proposed by [OFCCP] are wholly inadequate.[38]

As discussed above, the EO Survey data is not useful in the selection process. And it is precisely at those early-stage targeting determinations that the AFL-CIO deemed "essential" that the EO Survey fails. Nor is its data useful in the tiered review process.[39]

The desk audit data is collected at the initial stages of the compliance review process and can be used to determine the appropriate level or type of review, as it is presented in a more timely, accurate, detailed, and less-aggregated form than the EO Survey data. Under its Active Case Management (ACM) procedures, OFCCP opens a larger number of reviews than in the past, uses automated statistical methods, and ranks and prioritizes establishments for a full review based on the probability that discrimination would be uncovered during a more in-depth review. OFCCP closes cases during the desk audit if no statistical indicators are found that imply the presence of discrimination and thereby warrant further attention. More resources are then focused on full scale compliance evaluations of establishments where statistical indicators of systemic discrimination are found. In other words, using the ACM procedures and desk audit data is far superior in the tiered review process than using the EO Survey data.

Furthermore, as discussed in the EO Survey NPRM, the findings of the Abt Report support OFCCP's conclusion that the EO Survey does not enhance the tiered-review process: "[B]ecause the EO Survey has limited utility in predicting which contractors are engaged in systemic discrimination, it follows that EO Survey data would have limited utility in predicting whether and how the selected contractors are discriminating." 71 FR 3377. In sum, the aggregate nature of the data collected in the EO Survey, along with OFCCP's review of the Abt Report, demonstrate that the EO Survey does not enhance the tiered review process.

3. The EO Survey Facilitates Effective Self-Evaluations by Federal Contractors

Some of the commenters opposed to the proposed rule assert that the very process of responding to the EO Survey can cause federal contractors to perform

[38] AFL–CIO March 28, 2006 letter at 7–9 (emphasis in original).

[39] Assuming even minimal utility, such utility is outweighed by the cost to OFCCP to send out, process, input, and use the EO Survey data.

self-evaluations, which will reduce discrimination without the need of a direct action by OFCCP. For example, the Leadership Conference on Civil Rights stated:

> By requiring contractors to report information they already are obligated to maintain, the EO Survey aims to give contractors greater incentive to undertake regular self-analysis—or self-audits—without placing a heavy resource burden on OFCCP. Encouraging such proactive self-audits helps promote contractor compliance with existing legal obligations without adding on new responsibilities. * * *[40]

Similarly, the American-Arab Anti-Discrimination Committee stated:

> Particularly with respect to pay inequities based on race or gender, the EO Survey created documentation of pay data that allowed employees complaining of pay inequities to precisely pinpoint such inequities, while also allowing employers to point to their EO Survey responses to counter allegations of pay inequities. Without the EO Survey, the task of identifying problem employers becomes more difficult, and discrimination problems can only be addressed retroactively, after the harm has been done and via an often prohibitively expensive and time-consuming process.[41]

The effectiveness of the EO Survey in promoting self-evaluations, however, is undermined by EO Survey data itself, which is presented in such an aggregate form that it cannot be used to identify discrimination. As previously explained, the data gathered by the EO Survey include information, in summary form, about personnel activities, compensation and tenure data, and information about the contractor's affirmative action program. None of this information alone is sufficient to indicate discrimination or the lack thereof in any contractor establishment. The data is aggregated, which makes it virtually impossible to determine whether similarly situated employees or applicants are treated equally.

Commenters noted the lack of utility of EO Survey data in performing self-evaluations. Morgan, Lewis & Bockius LLP stated:

> Because the EO Survey does not group similarly situated employees and includes no data regarding employees' qualifications or the qualifications of any position, no analysis of EO Survey data will satisfy the referenced legal standards for assessing unlawful discrimination. With respect to grouping of employees, the EO Survey aggregates positions into general EEO–1 occupational categories such as Officials and Managers and Professionals. The EEO–1 occupational categories do not only contain employees who are similarly situated in terms of hiring, promotions, compensation, and termination decisions, but countless other non-similarly situated categories * * *. In addition to comparing dissimilar employees, the EO Survey does not capture any data on applicants' or employees' qualifications. Because the EO Survey data does not group similarly situated employees and fails to address qualifications, it does not serve as a useful basis for conducting a self-evaluation of personnel practices to ensure nondiscrimination. * * *[42]

Specifically referencing compensation self-analyses, the U.S. Chamber of Commerce, as described previously, noted that the data is reported on a broad EEO–1 category basis, which OFCCP cannot use to assess the compensation of similarly-situated employees and that the data cannot be subjected to a valid statistical analysis. The U.S. Chamber of Commerce also stated that the EO Survey ignores the myriad non-discriminatory factors which may affect compensation.[43] Indeed, the EO Survey compensation data cannot be used to comply with OFCCP's new voluntary guidelines for performing compensation self-evaluations. *See Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination*, 71 FR 35114 (June 16, 2006) ("Voluntary Guidelines"). Specifically, EO Survey compensation data is reported in EEO–1 category groupings, whereas the Voluntary Guidelines require contractors to group employees who are similarly situated, which means they perform similar work and occupy positions which are similar in responsibility level, and similar in the skills and qualifications involved in the positions. 71 FR 35120. The compensation data, as reported on the EO Survey, cannot satisfy the standards of the Voluntary Guidelines.[44]

The "similarly situated" standard is also used in the recently published *Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination*, 71 FR 35124 (June 16, 2006) ("Systemic Standards"). The Systemic Standards are standards OFCCP uses in investigating potential systemic compensation discrimination. These Systemic Standards will make OFCCP more effective at rooting out systemic pay discrimination.

Some commenters who support the proposed rulemaking stated that the EO Survey is not an effective self-evaluation tool or that there are more effective means to induce contractors to perform self-evaluations. For example, the Equal Employment Advisory Council (EEAC) asserts that based on its own survey: "[T]he EO Survey simply does not 'provide contractors with a useful tool for self-evaluation,' evidenced by the fact that *96% of all establishments responding to a survey conducted by EEAC reported that 'completing the Survey was not useful in monitoring company EEO and affirmative action compliance.'*"[45] Morgan, Lewis & Bockius LLP states that Title VII, and its potential to result in punitive damages liability, is a more effective incentive for self-evaluation than the EO Survey.[46]

Other commenters point to OFCCP's recent initiatives as more effective inducements for self-evaluation. For example, the American Bakers Association stated:

> ABA supports the premise of the EO Survey as it requires baking companies who have federal contracts to take affirmative steps to identify and eliminate impediments to equal employment opportunity. However, the Survey imposes a significant administrative burden on ABA members who are required to complete the EO Survey. * * * Any beneficial role that the EO Survey was intended to provide through reinforcement of contractor obligations has, in recent years, been accomplished through other agency initiatives. For example, outreach seminars and workshops, recommendations as to self-evaluation methods, and enhanced reference (and instructional) material on the OFCCP Web site all have contributed greatly to the awareness of contractors and their ability to access the important information relevant to their programs.[47]

Likewise, the National Association of Manufacturers stated, "[We] support OFCCP's continuing efforts to provide accessible compliance resources, particularly through its website, which are far more effective in assisting federal contractors in mastering their

[40] Leadership Conference on Civil Rights March 20, 2006 letter at 3.

[41] American-Arab Anti-Discrimination Committee March 20, 2006 letter at 1–2.

[42] Morgan, Lewis & Bockius LLP March 27, 2006 letter at 4–5. Morgan, Lewis further claims that remedying perceived disparities resulting from an analysis of the EO Survey data may cause contractors to inadvertently violate Title VII. *Id.* at 5–6.

[43] Crowell & Moring LLP March 28, 2006 at 3 (representing the U.S. Chamber of Commerce).

[44] The broad EEO–1 category groupings under the EO Survey will also not be useful for OFCCP when it investigates compensation discrimination, as the groupings are too aggregate to satisfy the "similarly situated" standard.

[45] EEAC March 21, 2006 letter at 7 (emphasis in original).

[46] Morgan, Lewis & Bockius, LLP March 27, 2006 letter at 6.

[47] American Bakers Association March 13, 2006 letter at 1–2. It also stated that numbers of false positives and false negatives generated by the EO Survey demonstrate that the EO Survey has minimal benefit in improving contractor self-awareness and encouraging self-awareness. *Id.*

compliance obligations than expending time and resources on completing a non-useful EO Survey." [48]

Indeed, as detailed in the NPRM, OFCCP has significantly increased its compliance assistance efforts in recent years to heighten contractors' awareness of their equal opportunity obligations and to encourage self-evaluations through methods other than the EO Survey. OFCCP's compliance assistance includes over 1,000 regular compliance assistance seminars and workshops conducted throughout the country every year, and an extensive amount of compliance assistance material has been updated and added to OFCCP's Web page since 2001.[49]

OFCCP compliance assistance materials include guidance about performing contractor self-analyses. For example, OFCCP has made available a sample affirmative action program on its Web page, as well as a link to Census data that provides contractors with easy access to statistical data on the availability of women and minorities in particular occupational categories and geographic areas. This Census data helps contractors to develop required availability analyses.

Furthermore, as previously described, OFCCP has recently developed and published the Voluntary Guidelines that contractors can use to evaluate their compensation practices. 71 FR 35114. Pursuant to OFCCP regulations (41 CFR 60–2.17(b)(3)), covered contractors must evaluate their compensation system(s) to determine whether there are disparities based on gender, race or ethnicity. The Voluntary Guidelines are intended to provide suggested techniques for complying with this compensation self-evaluation requirement.

In sum, the EO Survey is an ineffective method of promoting self-evaluations, as the data on the EO Survey is too aggregated to permit meaningful self-analyses. Further, in recent years OFCCP has implemented more effective program initiatives for encouraging thorough and meaningful self-analyses by contractors.

4. Conclusion

OFCCP has concluded that the value of the EO Survey alleged by many commenters does not justify its continued use. The EO Survey data is not reliable or useful in targeting enforcement resources. Other more effective methods for collecting and analyzing compensation data exist. The EO Survey does not enhance the tiered review process. More meaningful self-analyses by contractors are being encouraged through other means. OFCCP has initiated more promising compliance assistance and enforcement programs that have resulted in more vigorous and efficient enforcement of equal employment opportunity laws.

C. Rescinding the EO Survey Sends a Negative Message and Indicates That the Department of Labor Is Not Serious in Opposing Discrimination

Many commenters supporting the retention of the EO Survey assert that rescinding the EO Survey sends a negative message and indicates that the Department of Labor is not serious about enforcement of equal employment opportunity laws.[50]

Rescission of the EO Survey requirement should not be viewed in any way as demonstrating a lack of commitment to equal employment opportunity. To the contrary, OFCCP is deeply committed to improving the enforcement of equal employment opportunity laws by developing and implementing the most effective enforcement tools to identify and remedy discrimination.[51] It is precisely because of this commitment to effective enforcement that OFCCP is discontinuing the use of the EO Survey, a tool that failed to meet its objectives and often misidentified violators.

As previously described, in FY 2005, OFCCP recovered a record $45.2 million for 14,761 American workers who had been subjected to illegal employment discrimination—a 56 percent increase over recoveries in FY 2001. In two recent hiring discrimination cases against a major manufacturing plant and a dairy, OFCCP obtained substantial relief, including $1.17 million back pay and 69 jobs. OFCCP remains vigilant, and within recent months, sued another major manufacturing facility, alleging hiring discrimination against women. In the area of compensation discrimination, in September 2004, OFCCP secured $5.5 million in salary adjustments and other financial remedies for 2,021 current and former female employees of a major financial institution who had been subjected to illegal compensation discrimination. This was the first systemic compensation discrimination case filed in a quarter century.

In addition, OFCCP has instituted many initiatives, demonstrating its commitment to equal employment opportunity. As previously described, OFCCP recently published in the **Federal Register** two final documents regarding compensation discrimination, the Systemic Standards and the Voluntary Guidelines. The Systemic Standards establish, for the first time, a uniform OFCCP procedure for investigating systemic compensation discrimination. 71 FR 35124. The Voluntary Guidelines provide contractors, for the first time, with suggested techniques for complying with 41 CFR 60–2.17(b)(3), which requires contractors to analyze their compensation systems to determine if there are race-, gender- or ethnicity-based disparities. 71 FR 35114. Furthermore, OFCCP has, for the first time, established an Office of Statistical Analysis, staffed by Ph.D. statisticians in the national office and in several of the regions, that has facilitated the investigation and resolution of compensation and other types of discrimination cases.

OFCCP has been and continues to be committed to ensuring the vigorous enforcement of equal employment opportunity laws. OFCCP is demonstrating that commitment by developing the most effective enforcement tools and abandoning ineffective tools to focus agency resources on the most effective and efficient methods to ensure equal opportunity for all.

D. Conclusion

As discussed previously, the EO Survey had three major objectives:

(1) To improve the deployment of scarce federal government resources toward contractors most likely to be out of compliance;

(2) To increase agency efficiency by building on the tiered-review process already accomplished by OFCCP's

[48] Fortney & Scott, LLC March 26, 2006 letter at 6 (representing the National Association of Manufacturers).

[49] In FY2005, OFCCP developed and made available to contractors on its Web page an *elaws* advisory. The *elaws* advisory is an interactive electronic tool that permits contractors to determine whether they are covered by the laws enforced by OFCCP and, if so, identifies their specific obligations. The OFCCP Web page contains extensive guidance about complying with OFCCP's laws, including a copy of the OFCCP compliance manual, OFCCP directives, compliance guides, and responses to frequently asked questions. OFCCP has established a National Office telephone help desk and an e-mail mailbox contractors can use to obtain specific compliance information tailored to their individual needs.

[50] *See, e.g.*, American Federation of State, County and Municipal Employees March 28, 2006 letter at 1; National Organization for Women March 21, 2006 letter at 1.

[51] Numerous Asian-American groups and individuals requested that OFCCP perform "an Asian-specific analysis on the collected data to understand the strongly perceived and statistically proven discrimination against Asian American[s]." *See, e.g.*, Michelle Chen March 16, 2006 letter. As previously described, the EO Survey data is not useful for performing meaningful comparisons between similarly-situated individuals, and thus would not permit an accurate Asian-specific analysis.

regulatory reform efforts, thereby allowing better resource allocation; and

(3) To increase compliance with equal opportunity requirements by improving contractor self-awareness and encourage self-evaluations.

See 65 FR 68039 (Nov. 13, 2000); *see also* 65 FR 26101 (May 4, 2000).

OFCCP has carefully analyzed to what extent the EO Survey has achieved these objectives. Based on the results of two studies, and careful review and consideration of the public comments, and the development of other OFCCP initiatives to accomplish the EO Survey's objectives, OFCCP has concluded that maintaining the EO Survey has no utility to OFCCP or to contractors.[52] In fact, valuable enforcement resources are misdirected through the use of the EO Survey. Further, the lack of utility of the EO Survey, the contractors' burden of completing the EO Survey, and the burden to OFCCP to collect and process EO Survey data that will yield such a poor targeting system are too significant to justify its continued use.

III. Overview of the Rule

OFCCP has concluded that the EO Survey has failed to provide the utility anticipated when the regulation was promulgated in 2000, and consequently does not provide sufficient programmatic value to be maintained as a requirement. In light of the failure of the EO Survey as an enforcement tool, OFCCP concludes that it is no longer of value to accomplish the objectives it was designed to address. OFCCP has developed, and will continue to develop, other more useful and cost effective methods to accomplish these objectives. Therefore, OFCCP has determined that continued use of the EO Survey cannot be justified and eliminates this regulatory requirement as no longer of value to OFCCP. Elimination of this requirement allows OFCCP to focus more effectively its enforcement resources to further the overall goal of the OFCCP program to promote and ensure equal opportunity for those employed or seeking employment with Government contractors. 41 CFR 60–1.1.

[52] Numerous commenters, including the National Women's Law Center, claim that the estimated 21 hours necessary to complete the EO Survey is not burdensome. National Women's Law Center March 28, 2006 letter at 6. Conversely, other commenters contend that OFCCP greatly underestimated the amount of time necessary to complete the EO Survey. *See, e.g.*, Fortney & Scott LLC March 27, 2006 letter at 5 (representing National Association of Manufacturers). Given the lack of utility in the EO Survey, any hours spent on the EO Survey would be burdensome.

OFCCP is eliminating the requirement under Section 60–2.18 that nonconstruction federal contractors file the EO Survey. OFCCP removes Section 60–2.18 from part 60–2. Elimination of the EO Survey requirement will not affect any other regulatory obligation to collect and maintain information or any other recordkeeping or nondiscrimination requirement. *See, e.g.*, 41 CFR 60–1.7, 60–1.4, 60–1.12(a), 60–2.1, 60–2.10, and 60–2.17.

IV. Authority

Authority: E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

V. Regulatory Procedures

A. Paperwork Reduction Act

The rule eliminates an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The Equal Opportunity Survey was reviewed and approved by OMB under OMB No. 1215–0196. The EO Survey burden is estimated to be 21 hours per respondent. (The EO Survey does not impose any recordkeeping requirements since the information required for the EO Survey comes from the records contractors are required to retain by 41 CFR Part 60.) Based upon an estimated 10,000 respondents per year, the rule would reduce the total burden by 210,000 hours per year (*i.e.*, 21 hours times 10,000 respondents).

In the NPRM, OFCCP estimated the annual cost reduction to the respondents based on Bureau of Labor Statistics' 2004 National Compensation Survey, which listed the hourly average wages for executive, administrative, and managerial as $36.22 and the hourly average wages for administrative support as $14.21. For the burden estimates provided in the final rule, OFCCP estimated the annual cost reduction based on the Bureau of Labor Statistics' 2006 National Compensation Survey, which lists the hourly average wages for executive, administrative, and managerial as $31.58 and the hourly wages for administrative support as $14.62. OFCCP then multiplied these figures by 1.4 to account for fringe benefits to arrive at an annual hourly cost of $44.21 for executive, administrative, and managerial and the hourly average wages for administrative support as $20.47. As for the 2000 final rule, OFCCP estimates that for the EO Survey, 25% of the burden hours will be executive, administrative, and managerial and 75% will be administrative support.

OFCCP has calculated the total estimated annualized cost of the EO Survey as follows:

- Executive, Administrative, and Managerial: 210,000 × 0.25 × $44.21 = $2,321,130.
- Administrative Support: 210,000 × 0.75 × $20.47 × $3,224,025.
- Total Estimated Annual Reduction in Respondent Costs × $5,545,155.

Thus, OFCCP estimates that the elimination of the EO Survey will reduce the costs for the respondents by almost $5.5 million each year.

In addition, the distribution, collection, and processing of the EO Survey has cost an average of $356,000 per year and this does not account for the cost of validating the data, nor any of the time spent by OFCCP personnel working on the EO Survey.

B. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rulemaking is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has determined that this rulemaking is not "economically significant" as defined in section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. As was discussed above in Section A, OFCCP estimates that the elimination of the EO Survey will reduce the costs for respondents by $6 million each year. Therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

C. Small Business Regulatory Enforcement Fairness Act

The Department has concluded that the rule is not a "major" rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the Department has determined that the rule

will not likely result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Executive Order 13132

OFCCP has reviewed the rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

E. Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local, or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

List of Subjects in 41 CFR Part 60–2

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government contracts, and Labor.

Signed at Washington, DC, this 1st day of September, 2006.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

Text of Rule

■ In consideration of the foregoing the Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor, amends part 60–2 of Title 41 of the Code of Federal Regulations as follows:

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

■ 1. The authority citation for part 60–2 continues to read as follows:

Authority: E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501.

§ 60–2.18 [Removed and Reserved]

■ 2. Remove and reserve § 60–2.18.

[FR Doc. E6–14922 Filed 9–7–06; 8:45 am]
BILLING CODE 4510–CM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 210, 213, 215, and 219

RIN 0750–AF36

Defense Federal Acquisition Regulation Supplement; Limitations on Tiered Evaluation of Offers (DFARS Case 2006–D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2006. Section 816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts.

DATES: *Effective date:* September 8, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 7, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D009, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D009 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Deborah Tronic, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy to implement Section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 816 requires DoD to prescribe guidance on the use of tiered evaluation of offers for contracts and for task or delivery orders under contracts. The guidance must include a prohibition on the use of tiered evaluation of offers unless the contracting officer (1) has conducted market research in accordance with Part 10 of the Federal Acquisition Regulation; (2) is unable, after conducting market research, to determine whether or not a sufficient number of qualified small businesses are available to justify limiting competition for the contract or order; and (3) includes in the contract file a written explanation of why the contracting officer was unable to make the determination.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule 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.*, because the rule relates to market research and documentation requirements performed by the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D009.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist

to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 816 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 816 requires DoD to prescribe guidance prohibiting the use of tiered evaluation of offers unless the contracting officer has complied with certain market research and documentation requirements. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 202, 210, 213, 215, and 219

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 202, 210, 213, 215, and 219 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202, 210, 213, 215, and 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS

■ 2. Section 202.101 is amended by adding a definition of "Tiered evaluation of offers" to read as follows:

202.101 Definitions.

* * * * *

Tiered evaluation of offers, also known as *cascading evaluation of offers*, means a procedure used in negotiated acquisitions, when market research is inconclusive for justifying limiting competition to small business concerns, whereby the contracting officer—

(1) Solicits and receives offers from both small and other than small business concerns;

(2) Establishes a tiered or cascading order of precedence for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

PART 210—MARKET RESEARCH

■ 3. Section 210.001 is revised to read as follows:

210.001 Policy.

(a) In addition to the requirements of FAR 10.001(a), agencies shall—

(i) Conduct market research appropriate to the circumstances before—

(A) Soliciting offers for acquisitions that could lead to a consolidation of contract requirements as defined in 207.170–2; or

(B) Issuing a solicitation with tiered evaluation of offers (Section 816 of Public Law 109–163); and

(ii) Use the results of market research to determine—

(A) Whether consolidation of contract requirements is necessary and justified in accordance with § 207.170–3; or

(B) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business or, for a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract. If the contracting officer cannot determine whether the criteria are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109–163).

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 4. Section 213.106–1–70 is added to read as follows:

213.106–1–70 Soliciting competition—tiered evaluation of offers.

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR part 19.

(b) Consideration shall be given to the tiers of small businesses (*e.g.*, 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) Before issuing a solicitation with a tiered evaluation of offers—(1) The contracting officer shall conduct market research, in accordance with FAR part 10 and part 210, to determine—

(i) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109–163).

PART 215—CONTRACTING BY NEGOTIATION

■ 5. Subpart 215.2 is added to read as follows:

Subpart 215.2—Solicitation and Receipt of Proposals and Information.

215.203–70 Requests for proposals—tiered evaluation of offers.

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR part 19.

(b) Consideration shall be given to the tiers of small businesses (*e.g.*, 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) Before issuing a solicitation with a tiered evaluation of offers—

(1) The contracting officer shall conduct market research, in accordance with FAR part 10 and part 210, to determine—

(i) Whether the criteria in FAR part 19 are met for setting aside the acquisition for small business; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting competition under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria in paragraph (c)(1) of this section are met, the contracting officer shall include a written explanation in the contract file as to why such a determination could not be made (Section 816 of Public Law 109–163).

PART 219—SMALL BUSINESS PROGRAMS

■ 6. Section 219.1102 is amended by adding paragraph (c) to read as follows:

219.1102 Applicability.

* * * * *

(c) Also, do not use the price evaluation adjustment in acquisitions that use tiered evaluation of offers, until a tier is reached that considers offers from other than small business concerns.

■ 7. Subpart 219.13 is added to read as follows:

Subpart 219.13—Historically Underutilized Business Zone (HUBZone) Program

219.1307 Price evaluation preference for HUBZone small business concerns.

(a) Also, do not use the price evaluation preference in acquisitions that use tiered evaluation of offers. until a tier is reached that considers offers from other than small business concerns.

[FR Doc. E6–14896 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 236, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update an organization name and reference numbers.

DATES: *Effective Date:* September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *Section 204.805.* Reflects the change in name of the "General Accounting Office" to the "Government Accountability Office".
- *Section 236.602–1.* Updates a reference to a paragraph of the Federal Acquisition Regulation.
- *Section 252.225–7023.* Updates a DFARS reference within a contract clause.

List of Subjects in 48 CFR Parts 204, 236, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 204, 236, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.805 [Amended]

■ 2. Section 204.805 is amended in paragraph (2), in the second sentence, by removing "General Accounting" and adding in its place "Government Accountability".

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.602–1 [Amended]

■ 3. Section 236.602–1 is amended in paragraph (a), in the first sentence, by removing "5.205(c)" and adding in its place "5.205(d)".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7023 [Amended]

■ 4. Section 252.225–7023 is amended as follows:

■ a. By revising the clause date to read "(SEP 2006)"; and

■ b. In paragraph (b)(2), by removing "225.7020–3" and adding in its place "225.7010–3".

[FR Doc. E6–14906 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

[DFARS Case 2003–D044]

Defense Federal Acquisition Regulation Supplement; Acquisition Planning

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text on acquisition planning. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0302; facsimile (703) 602–0350. Please cite DFARS Case 2003–D044.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

This final rule is a result of the DFARS Transformation initiative. The DFARS changes—

- Increase the dollar thresholds for preparation of written acquisition plans;
- Update acquisition planning requirements for consistency with changes to the DoD 5000 series publications;
- Delete unnecessary text relating to contract administration and class justifications for other than full and open competition;
- Clarify requirements for funding of leases; and
- Delete text addressing the contents of written acquisition plans. Text on this subject has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

DoD published a proposed rule at 70 FR 54693 on September 16, 2005. DoD received no comments on the proposed rule and has adopted the proposed rule as a final rule, with minor editorial changes at 207.103(h) and 207.471(c).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal DoD requirements for acquisition planning.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

207.102 [Removed]

■ 2. Section 207.102 is removed.

■ 3. Section 207.103 is revised to read as follows:

207.103 Agency-head responsibilities.

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $10 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $50 million or more for all years or $25 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms "final buy out" and "one-time buy" refer to a single contract that covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(e) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (d)(i)(A) and (B) of this section on a program basis. Other acquisition plans may be written on either a program or an individual contract basis.

(g) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h) For procurement of conventional ammunition, as defined in DoDD 5160.65, Single Manager for Conventional Ammunition (SMCA), the SCMA will review the acquisition plan to determine if it is consistent with retaining national technology and industrial base capabilities in accordance with 10 U.S.C. 2304(c)(3) and Section 806 of Public Law 105–261. The department or agency—

(i) Shall submit the acquisition plan to the address in PGI 207.103(h); and

(ii) Shall not proceed with the procurement until the SMCA provides written concurrence with the acquisition plan. In the case of a non-concurrence, the SCMA will resolve issues with the Army Office of the Executive Director for Conventional Ammunition.

207.104 [Removed]

■ 4. Section 207.104 is removed.

■ 5. Section 207.105 is revised to read as follows:

207.105 Contents of written acquisition plans.

In addition to the requirements of FAR 7.105, planners shall follow the procedures at PGI 207.105.

■ 6. Section 207.471 is amended by revising paragraphs (b) and (c) to read as follows:

207.471 Funding requirements.

* * * * *

(b) DoD leases are either capital leases or operating leases. See FMR 7000.14–R, Volume 4, Chapter 7, Section 070207.

(c) Use procurement funds for capital leases, as these are essentially installment purchases of property.

[FR Doc. E6–14907 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AF34

Defense Federal Acquisition Regulation Supplement; Prohibition on Acquisition From Communist Chinese Military Companies (DFARS Case 2006–D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006. Section 1211 prohibits DoD from acquiring United States Munitions List items from Communist Chinese military companies.

DATES: *Effective date:* September 8, 2006.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 7, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D007, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D007 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds DFARS policy and a contract clause to implement Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 1211 prohibits DoD from acquiring goods or services, through a contract or a subcontract with a Communist Chinese military company, if the goods or services being acquired are on the munitions list of the International Trafficking in Arms Regulations (the United States Munitions List at 22 CFR Part 121). Section 1211 also provides for certain exceptions and waiver authority.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule 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.*, because the rule affects only those entities that are a part of the industrial base of the People's Republic of China or that are owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D007.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). Section 1211 prohibits DoD from acquiring goods or services from a Communist Chinese military company, if the goods or services being acquired are on the United States Munitions List maintained by the Department of State. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Sections 225.770 through 225.770–5 are added to read as follows:

225.770 Prohibition on acquisition of United States Munitions List items from Communist Chinese military companies.

This section implements Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163). See PGI 225.770 for additional information relating to this statute, the terms used in this section, and the United States Munitions List.

225.770–1 Definitions.

As used in this section—

(a) *Communist Chinese military company* and *United States Munitions List* are defined in the clause at 252.225–7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

(b) *Component* means an item that is useful only when used in conjunction with an end item (22 CFR 121.8).

(c) *Part* means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of design use (22 CFR 121.8).

225.770–2 Prohibition.

Do not acquire supplies or services covered by the United States Munitions List (USML) (22 CFR part 121), through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML.

225.770–3 Exceptions.

The prohibition in 225.770–2 does not apply to supplies or services acquired—

(a) In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;

(b) For testing purposes; or

(c) For the purpose of gathering intelligence.

225.770–4 Identifying USML items.

(a) Before issuance of a solicitation, the requiring activity shall notify the contracting officer in writing whether the items to be acquired are covered by the USML. The notification shall identify any covered item(s) and shall provide the pertinent USML reference(s) from 22 CFR Part 121.

(b) The USML includes defense articles and defense services that fall into 21 categories. Since not all USML items are themselves munitions (*e.g.*, protective personnel equipment, military training equipment), the requiring activity should consult the USML before concluding that an item is or is not covered by the USML.

225.770–5 Waiver of prohibition.

(a) The prohibition in 225.770–2 may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this subsection determines that a waiver is necessary for national security purposes.

(b) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this subsection:

(1) The Under Secretary of Defense (Acquisition, Technology, and Logistics).

(2) The Secretaries of the military departments.

(3) The Component Acquisition Executive of the Defense Logistics Agency.

(c) The official granting a waiver shall notify the congressional defense committees within 30 days after the date of the waiver.

■ 3. Section 225.1103 is amended by adding paragraph (4) to read as follows:

225.1103 Other provisions and clauses.

* * * * *

(4) Unless an exception in 225.770–3 applies, use the clause at 252.225–7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.225–7007 is added to read as follows:

252.225–7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

Prohibition On Acquisition of United States Munitions List Items From Communist Chinese Military Companies (SEP 2006)

(a) *Definitions.* As used in this clause—

Communist Chinese military company means any entity that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China; or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

United States Munitions List means the munitions list of the International Traffic in Arms Regulation in 22 CFR Part 121.

(b) Any supplies or services covered by the United States Munitions List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List.

(End of clause)

[FR Doc. E6–14895 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

48 CFR Parts 237 and 252

[DFARS Case 2005–D007]

Defense Federal Acquisition Regulation Supplement; Training for Contractor Personnel Interacting With Detainees

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005. Section 1092 requires that DoD contractor personnel who interact with detainees receive training regarding the applicable international obligations and laws of the United States.

DATES: *Effective Date:* September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 52032 on September 1, 2005, to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 1092 requires DoD to prescribe policies to ensure that DoD contractor personnel interacting with detainees receive training regarding the international obligations and laws of the United States applicable to the detention of personnel. One industry association submitted comments on the interim rule. A discussion of the comments is provided below.

1. Comment: Definitions

The respondent recommended addition of a definition of the term "personnel interacting with detainees" in section 237.171–2, consistent with the definition in the contract clause.

DoD Response. Section 237.171–2 of the final rule includes a definition of "personnel interacting with detainees" as well as a definition of "combatant commander," since that term is also used within 237.171.

2. Comment: Policy

a. *Clarification of the Role of Combatant Commander.* The respondent recommended clarification of four separate and distinct responsibilities of the combatant commander: Develop the training curriculum; determine and provide an appropriate place for the training; conduct the training; and issue a training receipt. The respondent provided a proposed rewrite of 237.171–3(a) and (b) to address these responsibilities.

DoD Response. DoD has revised 237.171–3(a) and (b) to clarify responsibilities as follows:

• Paragraph (a) introductory text—DoD has replaced the phrase "individuals detained by DoD on behalf of the U.S. Government" with the word "detainees" for consistency with the terminology used throughout the rule. DoD has not adopted the respondent's recommendation to further amend 237.171–3 to more specifically describe the contracts that are subject to the rule's requirements, since the clause prescription at 237.171–4 adequately describes the criteria for application of the policy.

• Paragraph (a)(1)—DoD has clarified that the training will be provided by the Government. DoD has not adopted the respondent's recommendation to state that the training will be conducted by U.S. Government personnel, since the training might be conducted by a Government contractor.

• Paragraph (a)(2)—DoD has revised the requirement for contractor personnel to "Acknowledge receipt of the training" to a requirement for contractor personnel to "Provide a copy of the training receipt document to the contractor." Although the law requires that the Commander of detention facilities provide training and documented receipt of receiving training, it also requires that each contract in which contractor personnel will interact with detainees include a requirement that such contractor personnel have received training, and documented acknowledgement of receiving training. Taken alone, this second requirement might be interpreted to mean that the contractor personnel must document acknowledgement of receiving training. It is more reasonable, in view of the first requirement, to interpret the law to mean that the contractor personnel must receive the documented acknowledgement of receiving training from the training provider. The receipt generated may not require any acknowledgement as a condition for issuance. The receipt itself represents an acknowledgement that the training was received. Further, it may not be U.S. Government personnel that issue the receipt. For example, the receipt might be automatically issued upon completion of a computer-hosted training module.

• Paragraph (b)—DoD has revised paragraph (b) to clarify that the combatant commander will "arrange for" the training (rather than "provide" the training). The combatant commander most likely will not be the specific person performing the training. DoD considers it unnecessary for the DFARS to specify that the training is to be determined appropriate by the combatant commander or that the combatant commander determines the geographic location of the training. This is implied in the concept of Government-provided training that is arranged by the combatant commander. Furthermore, location may not be an issue, as in the case of computer-based training.

b. *PGI Guidance/DoD Policy Memorandum.* The respondent stated that the interim rule directed the reader to PGI 237.171–3(c) for additional guidance, but does not actually provide guidance, only a copy of the memorandum issued by the Secretary of Defense. The respondent recommended inclusion of specific relevant guidance or deletion of the reference.

DoD Response. The reference at DFARS 237.171–3(c) has been deleted. However, the policy memorandum has been retained in PGI for informational purposes.

c. *Standardized Training.* The respondent recommended that the final rule, PGI, or additional departmental guidance provide standardized training, based on the belief that there is a core of training that should be the same everywhere, with the addition of appropriate training to accommodate variations in religious, social, and national customs applicable to a particular facility or detainee.

DoD Response. It is outside the scope of authority of the DFARS and PGI to require a common core of training. The Secretary of Defense has assigned the responsibility for development of training to the combatant commanders. Furthermore, it may be impracticable to require combatant commanders to have identical, standardized training. Each combatant commander should have the prerogative and flexibility to decide what training is appropriate for the command.

d. *Standardized Format for Training Certificates.* The respondent recommended that the final rule or PGI provide a standardized format for the training certificate and a standard form for acknowledgement (not a certification).

DoD Response. DoD does not agree that a standard training certificate is necessary, since preparation of a certificate should be a relatively simple task to be accomplished in conjunction with development of the appropriate training. Neither the interim nor the final DFARS rule includes a requirement for certification by contractor employees, and the final rule excludes the interim rule requirement for acknowledgement by contractor personnel. Contractor personnel need only provide the training receipt to the contractor.

e. *Transferability of Training.* The respondent recommended that the final rule provide policy guidance that would permit a geographic combatant commander to waive the training requirement for any contractor employee who has already received appropriate training within the past year, including policy addressing the transferability of training, even if at a different facility within a single combatant commander's area of responsibility or when there may be a different combatant commander. This is intended to facilitate cross-utilization of contractor employees.

DoD Response. If the contractor employee has documented receipt of training within the past year, it is at the discretion of the combatant commander whether this training is adequate for the particular area and facility to which the employee has transferred. The transferability of training could vary significantly, depending on individual circumstances.

f. *Allowability of Costs.* The respondent recommended that the final rule address the policy that contractor and employee expenses incurred in making the employee available for and taking the Government-provided training is an allowable cost on cost-reimbursement contracts.

DoD Response. It is unnecessary to specifically identify these contractor training costs as allowable. FAR Part 31 adequately sets forth the cost principles on allowability of costs.

3. Contract Clause

a. *Responsibilities of Combatant Commander.* The respondent had the same concerns regarding clarification of the responsibilities of the combatant commander that have been addressed in the discussion of Comment 2.a. above.

b. *Arranging Training.* The respondent was concerned that the ability to execute this contractual obligation is outside the control of the contractor, and recommended that the contracting officer be required to arrange the training.

DoD Response. The combatant commander will arrange for the training to be provided, and the contractor must make its employees available to receive the training. It would be impractical for the contracting officer to become involved in scheduling the required training. For efficiency, this responsibility should be shared by the combatant commander organization and the contractor.

c. *Acknowledging Training.* The respondent considered the requirement for the contractor to arrange for its personnel to acknowledge receipt of the training to be unclear and confusing, was concerned that the text at DFARS 237.171–3 imposes the acknowledgement requirement only on the employee, and recommended that DoD rely on company practices to get the information to the contractor.

DoD Response. DoD has removed the acknowledgment requirement from the final rule and has replaced it with a requirement for contractor retention of the training receipt for a specified period. It is the responsibility of the contractor to impose the requirement on its employees and to implement procedures for ensuring that training receipts are provided by employees.

d. *Record Retention.* The respondent did not object to a record retention requirement, but considered that the requirement should be imposed only on the contractor, not on the contractor employee. In addition, the respondent recommended an alternative record retention period of 3 years after all work on the contract has been performed.

DoD Response. DoD has included the recommended changes in the final rule.

e. *Flowdown.* The respondent had concerns about requirements for flowdown of the clause to subcontracts, and the responsibility of the prime contractor versus the responsibility of the subcontractor.

DoD Response. The language in paragraph (c) of the contract clause is the standard language used in FAR/DFARS clauses requiring flowdown to subcontractors. Paragraph (c) requires the contractor to include the "substance" of the clause in its subcontracts. This wording allows the contractor to adjust the terminology appropriately to reflect the relationship between the contractor and its subcontractor. The clause does not require that subcontractors flow the paperwork up to the prime contractor.

f. *Waiver Authority.* The respondent recommended a policy that provides temporary waiver authority to the contracting officer or the geographic combatant commander if training cannot be developed in a timely manner in advance of contractor personnel interacting with detainees, in order to meet contract requirements.

DoD Response. The law does not require advance training, but it should be strongly encouraged. Therefore, DoD has amended paragraph (b)(2)(i) of the contract clause to require training "as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training."

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Government will provide the training required by the rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 237 and 252, which was published at 70 FR 52032 on September 1, 2005, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Sections 237.171–2 and 237.171–3 are revised to read as follows:

237.171–2 Definition.

Combatant commander, detainee, and *personnel interacting with detainees,* as used in this section, are defined in the clause at 252.237–7019, Training for

Contractor Personnel Interacting with Detainees.

237.171–3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171–3(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read "(SEP 2006)"; and

■ b. In paragraphs (b)(18) and (c)(2) by removing "(SEP 2005)" and adding in its place "(SEP 2006)".

■ 4. Section 252.237–7019 is amended by revising the clause date and paragraphs (b) and (c) to read as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

As prescribed in 237.171–4, use the following clause:

Training For Contractor Personnel Interacting With Detainees (SEP 2006)

* * * * *

(b) *Training requirement.* This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will arrange for training to be provided to contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will arrange for a training receipt document to be provided to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause—

(1) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(2) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171–3(b).]

(3) The Contractor shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that may require subcontractor personnel to interact with detainees in the course of their duties.

* * * * *

[FR Doc. E6–14897 Filed 9–7–06; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060314069–6069–01; I.D. 083106A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area II Scallop Access Area to Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Closed Area II Scallop Access Area (CAII) to scallop vessels until February 28, 2007. This closure, effective 0001 hours on September 6, 2006, is based on a determination by the Regional Administrator, Northeast Region, NMFS (RA), that scallop vessels are projected to catch the yellowtail flounder (YT) bycatch total allowable catch (TAC) for CAII by September 6, 2006. Upon closure, scallop vessels are prohibited from being in CAII until February 28, 2007. This action is being taken to prevent the scallop fleet from exceeding the YT TAC allocated to CAII during the 2006 fishing year in accordance with the regulations implemented under the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of CAII to all scallop vessels is effective 0001 hr local time, September 6, 2006, until February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Commercial scallop vessels fishing in scallop access areas are allocated 9.8 percent of the annual YT TACs established in the Northeast (NE) Multispecies FMP. Given current fishing effort by scallop vessels in CAII, the RA has made a determination that the CAII YT TAC is projected to be taken by September 6, 2006. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** notice notifies scallop vessel owners that, effective 0001 hours on September 6, 2006, scallop vessels are prohibited from being in CAII until February 28, 2007.

If a vessel with a limited access scallop permit has an unused trip(s) into CAII closed by the YT TAC, it will be allocated 5.4 additional open areas DAS for each unused trip. If a vessel has an unused compensation trip(s), it will be allocated additional open area DAS based on estimated catch rates for CAII. The conversion rate from access area DAS to open area DAS for CAII is 0.45 per open area DAS. An access area DAS is equal to 682 kg (1,500 lb). A separate letter will be sent to notify vessel owners of their allocations for unused complete and/or compensation trips in CAII.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes CAII to scallop vessels until February 28, 2007. The regulations at 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii) require such action to ensure that scallop vessels do not

take more YT than set aside for the scallop fishery. CAII opened for the 2006 fishing year on June 15, 2006. Data indicating the scallop fleet has taken, or is projected to take, all of CAII YT TAC has only recently become available. To allow scallop vessels to continue to take trips in CAII during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more YT than allocated to the scallop fleet. Excessive YT harvest from CAII would result in excessive fishing effort on the Georges Bank YT stock, where tight effort controls are critical for the rebuilding program. Should excessive fishing effort occur, future management measures may need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rule making is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: September 1, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–7513 Filed 9–5–06; 3:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 174
Friday, September 8, 2006

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH53

Sugar Program Definitions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Credit Corporation (CCC) is soliciting comments and views on whether to revise the regulations at 7 CFR part 1435 for the purpose of regulating the marketing of sugar derived from imported beet thick juice.

DATES: Comments on this rule must be submitted by November 7, 2006 to be assured consideration.

ADDRESSES: CCC invites interested persons to submit comments on this advanced notice of proposed rule. Comments may be submitted by any of the following methods:

E-mail: Send comments to *sugar@wdc.usda.gov.*

Mail: Submit comments to: Director, Dairy and Sweeteners Analysis Group (DSAG), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW., Washington, DC 20250–0516.

Fax: Submit comments by facsimile transmission to (202) 690–1480.

Hand Delivery or Courier: Deliver comments to the above address.

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

Comments may be inspected in the Office of the Director, DSAG, FSA, USDA, Room 3752–S South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this advanced notice of proposed rule is available on the DSAG Web site at *http://www.fsa.usda.gov/ao/epas/dsa.htm.*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146, or via e-mail at *barbara.fecso@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Generally, the Department of Homeland Security, Customs and Border Protection (Customs) is responsible for implementation of those statutes that regulate the importation of items into the United States, including the importation of sugar and sugar containing products. Included in these responsibilities is the collection of duties on sugar and sugar containing products. In contrast, the Department of Agriculture's (USDA) Commodity Credit Corporation (CCC) is responsible for the implementation of domestic programs that regulate the marketing of sugar derived from sugar beets and sugarcane under the Agricultural Adjustment Act of 1938 (the 1938 Act). While Customs and USDA both engage in activities with respect to sugar and sugar containing products, the definitions used by both agencies are not the same in all respects. As discussed more fully below, some parties believe that USDA should revise the manner in which these provisions of the 1938 Act are administered, primarily to foreclose what they perceive to be inequities that result, in part, from the differences in the treatment of a product generally referred to as "thick juice." "Thick juice" as used in this document refers to a product that is derived from sugar beets by concentrating purified sugar beet juice through evaporation prior to the crystallization phase in the production of refined sugar from sugar beets. Ultimately, "thick juice" is further refined and is, in most cases, refined to a point that it is considered refined sugar, for example, sugar of the type purchased in the grocery store for table use.

Thick juice is not the only imported sugar product defined differently by USDA and Customs. Cane syrup and molasses are analogous products to beet thick juice but these products are produced during sugarcane processing. Imported cane syrup and molasses yield about 30,000 tons of refined sugar per year, compared to about 35,000 tons of refined sugar from imported sugar beet thick juice.

With respect to the importation of Canadian thick juice at entry into the United States for purposes of levying applicable duties, Customs does not consider this product sugar and, therefore, it is subject to a duty of 0.00 cents per pound under 1702.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Likewise, Customs also does not consider imported cane syrups and cane molasses products sugar and, therefore, applies a duty of 0.00 cents per pound under 1703.10.3000 of the HTSUS. Also subject to a duty of 0.00 cents are sugar beets imported into the United States under 1212.91.0000 of the HTSUS. Conversely, sugar, which does not include thick juice, cane syrup, or molasses imported from Canada, or elsewhere (other than Mexico), that exceeds the "duty free" quantity allocated to each country each year by the United States is subject to a duty of 16.669 cents per pound under 1701.99.5000 of the HTSUS. Each year (on a fiscal year basis) the United States specifies the quantity of sugar that may enter the United States from each country at a "duty free," or a substantially reduced duty, consistent with the obligations of the United States under World Trade Organization (WTO) commitments, and obligations under regional agreements, such as the North American Free Trade Agreement (NAFTA), or bilateral trade agreements. Those quantities that enter at no duty, or the reduced duty, are referred to as "in quota" quantities and other entries above those quantities are referred to as "out of quota" amounts.

The Farm Security and Rural Investment Act of 2002 amended the 1938 Act to provide for a very strict marketing regime that would be in place for each of the 2002 through 2007 crop years. See 7 U.S.C. 1359aa *et seq.* Under this regime, processors of sugar beets and sugarcane are limited in the amount of sugar that they may market for human consumption, without the imposition of a penalty, based upon formulae in the 1938 Act. With respect to cane sugar, only sugar derived from domestically produced sugarcane is subject to these provisions. Any cane sugar that enters

the United States as either "in quota" or "out of quota" sugar is, clearly, not domestically produced and hence, not subject to these provisions.

Conversely, sugar derived from imported sugar beets is subject to such restrictions. This differentiation in treatment is required by section 359b(b)(1) of the 1938 Act which provides, in part, that: "By the beginning of each crop year, the Secretary shall establish for that crop year appropriate allotments under section 359c for the marketing by processors of sugar processed from sugar beets and from domestically produced sugarcane * * *" 7 U.S.C. 1359bb(b)(1).

Taking into consideration the provisions of section 359b(b)(1), there is no basis, in the view of USDA, to subject sugar derived from imported cane syrup or molasses to the domestic sugar allotment provisions of that Act. Thus, although both imported sugarcane and sugar beet intermediary products are circumventing strict Federal regulatory control, the law gives USDA no discretion to regulate the imported cane intermediary products, cane syrup, and molasses.

With respect to sugar beets, CCC is currently administering this provision by treating the first sale of domestically produced thick juice as the point of the first marketing of sugar that is contained in this product. Accordingly, a U.S. entity that processes sugar beets to a point that thick juice is produced but elects to stop further processing of that product into refined sugar and, instead, sells that product to another entity has marketed sugar for the purposes of administering the domestic allotment provisions of the 1938 Act. Thus, this marketing is charged against the processor's allocation.

Similarly, CCC has viewed the first sale of sugar that is contained in thick juice produced by a Canadian processor as occurring when the product is sold in Canada to a buyer. To the extent that such product is further refined in Canada or in the United States, this thick juice, or the refined sugar made from it, has not been subject to provisions of the 1938 Act.

A portion of the domestic sugar industry has requested that CCC make the marketing of sugar produced from imported thick juice subject to the provisions of the 1938 Act that restrict the marketings of sugar by sugar beet processors. These interests make two arguments to support their position that such marketings of sugar derived from imported thick juice should be counted against an individual processor's marketing allocation: (1) Sugar produced from imported sugar beets is charged against a processor's allocation, and (2) the sale of domestically-produced thick juice is charged against a processor's allocation.

Before proceeding to consideration of whether this proposal should be adopted, as adoption of this proposal will affect not only those entities who are currently importing thick juice into the United States but also all entities subject to marketing allotments, CCC is seeking information from interested parties on their views of the impacts of such action. CCC specifically seeks the views of these parties on the following issues:

1. Imported "thick juice" is a source of sugar in the United States and, thus, CCC reduces the Overall Allotment Quantity (OAQ) determined under the 1938 Act to account for this supply. If such imports were curtailed in total, CCC would increase the OAQ and divide the OAQ between the sugarcane and sugar beet sectors as provided in that Act; sugarcane processors, in aggregate, would receive 45.65 percent of this increase and sugar beet processors 54.35 percent. Is this a desirable result?

2. Is it equitable to regulate the sale of sugar derived from imported sugar beet thick juice, when USDA is prohibited, by statute, from regulating the sale of refined sugar derived from its cane counterparts, cane syrup, and cane molasses?

3. As opposed to a total curtailment of the importation of "thick juice," CCC believes that it is more likely that any entity that is currently engaged in such imports and further processing will avail themselves of the provisions of the 1938 Act that allow a new entrant to the market for sugar derived from sugar beets to obtain a marketing allocation based upon their actions in processing this product over the past several years. This means that the sugar beet sector's 54.35 percent of the OAQ would be distributed among a larger number of beet processors. Previously, CCC has denied an entity's request for an allocation under these new entrant provisions based upon the determination by CCC that the entity was not processing sugar beets or related products, but simply engaged in the further refinement of sugar. Is this a desirable result?

4. To the extent a rationale is developed by CCC, should CCC regulate the sale of sugar derived from imported sugar beet products, including thick juice, by considering these products to be a feedstock in the production of sugar and not a type of sugar as currently provided for in 7 CFR 1435.2? By making this change, sugar derived from these imported products would be charged against the processor's allocation when the product is marketed. But, domestically-produced thick juice has been considered to be sugar for purposes of administration of the domestic sugar allotment program by CCC and not a feedstock. Accordingly, is there a rational basis to consider imported thick juice to be a feedstock and to consider domestically-produced thick juice as sugar, and is such rationale consistent with the obligations of the United States under WTO and NAFTA commitments, specifically those WTO provisions dealing with issues of national treatment?

5. Should CCC redefine both domestically-produced and imported thick juice to be a feedstock in the production of sugar and not sugar for purposes of administering the 1938 Act? CCC believes, that under this approach, entities that further refine thick juice will avail themselves of the new entrant provisions of the domestic sugar allotment program in order to obtain a marketing allocation. This would likely diminish the marketing allocations of existing holders of marketing allocations because the quantity of domestic thick juice is significantly larger than the quantities of imported thick juice. Furthermore, this approach of changing the definition of domestically-produced thick juice from a type of sugar to a feedstock used in the production of sugar could be problematic in that CCC may need to adjust the marketing history of some of, or all of, those entities that produce refined beet sugar.

Signed in Washington, DC, on August 4, 2006.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–14881 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142270–05]

RIN 1545–BE90

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 45G of the Internal Revenue Code relating to the railroad track maintenance credit determined for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year. The temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 7, 2006. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, January 9, 2007, at 10 a.m. must be received by December 8, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142270–05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be sent electronically, via the IRS Internet site at *http://www.irs.gov.regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142270–05). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Winston H. Douglas, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly D. Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 7, 2006. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this notice of proposed rule making are in § 1.45G–1T(d). This information is required to verify the assignments of railroad track miles made under section 45G(b). This information will be used by the Service for examination purposes. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting: 1,375 hours.

The estimated annual burden per respondent varies from 1 hour to 4 hours, depending on individual circumstances, with an estimated average of 2.5 hours.

Estimated number of respondents: 550.

Estimated frequency of responses: Annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.G. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 45G of the Internal Revenue Code (Code). The temporary regulations contain rules for claiming the railroad track maintenance credit for qualified railroad track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers during the taxable year. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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 also has 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, January 9, 2007, beginning at 10 a.m. in the auditorium of the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706. Due to building security procedures, visitors must enter at the main front entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics

to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 8, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Winston H. Douglas, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

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 part 1 continues to read as follows:

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

Par. 2. Section 1.45G–0 is added to read as follows:

§ 1.45G–0 Table of contents for the railroad track maintenance credit rules.

[The text of this proposed section is the same as the text of § 1.45G–0T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.45G–1 is added to read as follows:

§ 1.45G–1 Railroad track maintenance credit.

[The text of this proposed section is the same as the text of § 1.45G–1T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–14856 Filed 9–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AB51

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to amend its civil penalty regulations to increase penalty amounts and to implement new requirements of the Mine Improvement and New Emergency Response (MINER) Act of 2006 amendments to the Mine Safety and Health Act of 1977 (Mine Act). In addition, MSHA is proposing to revise procedures for proposing civil monetary penalties to improve the efficiency and effectiveness of the civil penalty process. These changes are intended to induce greater mine operator compliance with the Mine Act and MSHA's safety and health standards and regulations, thereby improving safety and health for miners.

DATES: MSHA must receive comments on or before October 23, 2006. MSHA will hold six public hearings on September 26, 2006, September 28, 2006, October 4, 2006, October 6, 2006, October 17, 2006, and October 19, 2006. Details about the public hearings are in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Comments must be clearly identified with as such and may be sent to MSHA by any of the following methods:

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

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB51" in the subject line of the message.

(3) *Telefax:* (202) 693–9441. Include "RIN 1219–AB51" in the subject.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Stop by the 21st floor and sign in at the receptionist's desk.

Docket: Comments can be accessed electronically at *www.msha.gov* under the "Rules and Regs" link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

MSHA maintains a listserv that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe to the listserv, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

Hearings: Locations of the public hearings are in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA. 1100 Wilson Blvd, Room 2350, Arlington, Virginia 22209–3939, *silvey.patricia@dol.gov* (e-mail), (202) 693–9440 (voice), or (202) 693–9441 (telefax).

SUPPLEMENTARY INFORMATION:

Outline:

I. Public Hearings

MSHA will hold six public hearings on the proposed rule. The hearings will begin at 9 a.m., and will be held on the following dates and locations:

Date	Location	Phone
September 26, 2006	Mine Safety and Health Administration, 1100 Wilson Blvd, 25th Floor, Conference Room, Arlington, Virginia 22209.	(202) 693–9440
September 28, 2006	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd., North Birmingham, Alabama 35203.	(205) 324–5000
October 4, 2006	Hilton Salt Lake City Center, 255 South West Temple, Salt Lake City, Utah 84101.	(801) 238–2999
October 6, 2006	Hilton St. Louis Airport, 10330 Natural Bridge Road, St. Louis, Missouri 63134 ...	(800) 314–2117
October 17, 2006	Charleston Marriott Town Center, 200 Lee Street East, Charleston, West Virginia 25301.	(304) 345–6500
October 19, 2006	Pittsburgh Airport Marriott, 777 Aten Road, Coraopolis, Pennsylvania 15108	(412) 490–6602

Requests to speak at a hearing should be made at least five days prior to the hearing dates. Requests to speak may be made by telephone (202–693–9440), telefax (202) 693–9441, or mail (MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Rm. 2350, Arlington, Virginia 22209–3939). Any unallocated time at the hearings will be made available to persons making same-day requests to speak.

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to a hearing panel. Speakers will be assigned in the order in which their requests are received. Speakers and other attendees may present written information or other articles to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Formal rules of evidence and cross examination will not apply. The presiding official may limit presentations and exclude irrelevant or unduly repetitious material and questions to ensure the orderly progress of the hearings.

Transcripts of the hearings will be included in the rulemaking record. Copies of the transcripts will be available to the public, and can be viewed at *http://www.msha.gov*.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Comments must be received at MSHA no later than October 23, 2006.

II. Background

A. General

The Mine Act requires MSHA to issue citations or orders to mine operators for any violations of a mandatory health or safety standard, rule, order, or regulation promulgated under the Mine Act. Upon issuing a citation, the Secretary's authorized representative (inspector) specifies a time for the violation to be abated. If the operator does not abate the condition within the allowed time, the inspector may extend the time to abate or issue an order requiring all persons to be withdrawn from the area affected by the violation until the violation is abated. The Mine Act further requires assessment of civil monetary penalties for violations. Sections 105 and 110 of the Mine Act provide for the assessment of these penalties. The following six criteria in section 110(i) of the Mine Act are used to assess civil monetary penalties:

(1) The appropriateness of the penalty to the size of the business of the operator charged;

(2) The operator's history of previous violations;

(3) Whether the operator was negligent;

(4) The gravity of the violation;

(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(6) The effect of the penalty on the operator's ability to continue in business.

MSHA proposes a civil penalty assessment for each violation. Upon receipt of the proposed assessment, the mine operator or other person has 30 days to contest the assessment before the Federal Mine Safety and Health Review Commission (Commission), an independent adjudicatory agency established under the Mine Act. A proposed assessment that is not contested within 30 days becomes a final order of the Commission by operation of law and will not be subject to review by any court or agency. A proposed assessment that is contested before the Commission is reviewed by the Commission *de novo*.

B. Rulemaking History

On May 30, 1978, MSHA published its first final rule pertaining to the proposed assessment of civil penalties under the Mine Act for both coal mines and metal and nonmetal mines (47 FR 22286). The maximum civil penalty that MSHA could assess under the Mine Act at that time was $10,000.

The 1978 rule consisted of a two-tiered system of assessing proposed penalties under either a regular assessment or a special assessment. Since 1978, MSHA has revised its civil penalty regulations in 30 CFR part 100 essentially to: (1) Add a single penalty assessment provision; (2) change the assessment process to conform to a court order concerning history of violations; (3) increase penalty amounts due to legislative action; and (4) change penalty amounts and processes due to other compelling circumstances.

Under the existing regulations, MSHA proposes penalties using a three-tiered process: (1) Regular assessments; (2) single penalty assessments; and (3) special assessments. The maximum civil penalty assessment is $60,000. The single penalty assessment is $60. The maximum daily civil penalty which may be assessed for failure to correct a violation within the time permitted is $6,500 and the maximum penalty for smoking or carrying smoking materials underground is $275.

III. Discussion and Analysis of Proposed Changes to Part 100

A. General Discussion

MSHA is proposing to revise its procedures for assessing proposed civil penalties to update and increase penalties for violations of the standards and regulations promulgated under the Mine Act and to implement new civil penalty requirements in the MINER Act (Pub. L. 109–236). These new requirements address civil penalties related to prompt incident notification, and flagrant and unwarrantable violations. In accordance with MINER Act requirements, citations and orders issued on or after June 16, 2006, will be subject to the minimum penalties specified in the Act for violations involving failure to promptly notify MSHA within 15 minutes and unwarrantable failure.

The intended purpose of civil penalties under the Mine Act is to "convince operators to comply with the Act's requirements." (S. Rep. No. 181, 95th Cong., 1st Sess. 45 (1977),

reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 633 (1978)). The Congress intended that the imposition of civil penalties would induce mine operators to be proactive in their approach to mine safety and health, and take necessary action to prevent safety and health hazards before they occur. In this proposal, the Agency is strengthening the civil penalty assessment regulations which will be an important tool in the reduction of fatalities and improvement in miner safety and health.

Under MSHA's existing procedures, a civil penalty can be assessed under the single penalty provision, the regular assessment provision, or the special assessment provision. The single penalty provision is applied to most violations that are not reasonably likely to result in a reasonably serious injury or illness (non-Significant and Substantial, or non-S&S) and that are abated in a timely manner, provided the operator does not have an excessive history of violations. The single penalty assessment is currently $60.

The regular assessment is used to address most S&S violations, i.e., those that are reasonably likely to result in a reasonably serious injury or illness. Under the regular assessment provision, penalty points are assigned based on five statutory criteria: Operator's size, history, negligence, demonstrated good faith towards abatement, and the gravity of the violation. The total points are then converted into a dollar amount. The resulting amount constitutes the proposed penalty unless, under the sixth statutory criterion, the operator shows that the penalty would adversely affect its ability to continue in business. Currently, the minimum regular assessment is $72 and the maximum regular assessment is $60,000 for each violation.

Under the existing rule, MSHA reviews eight categories of violations for special assessment—those associated with fatalities as well as those associated with other aggravating circumstances. These are violations that MSHA believes, because of the particular circumstances surrounding the violation, should not be processed as a single penalty or regular assessment. The maximum special assessment is currently $60,000.

MSHA reviewed the history of violations and penalty assessments at mines which have experienced fatal accidents recently. At these mines, MSHA found repeated violations of several standards for which the $60 single penalty was assessed. MSHA also reviewed violations at all mines. The number of citations for violations of MSHA's standards and regulations has been on the rise since 2003. Specifically, the number of all violations assessed increased from 103,404 in 2003 to 116,731 in 2005. The number of violations that received a single penalty assessment increased from 69,078 in 2003 to 75,394 in 2005; the number of violations that received a regular assessment increased from 32,608 in 2003 to 37,968 in 2005; and the number of violations that received a special assessment increased from 1,718 in 2003 to 3,369 in 2005.

MSHA is proposing to revise the civil penalty assessment process so that proposed penalties will increase proportionately to increases in operator size, history, and negligence and the gravity or seriousness of the violation. To accomplish this, the proposed rule would:

(1) Reformulate the existing process of assigning points under the regular assessment provision;

(2) Add a provision in an operator's history addressing repeat violations;

(3) Delete the existing single penalty assessment provision;

(4) Revise the penalty conversion table by increasing the dollar value of each point assigned under the regular assessment provision;

(5) Remove the limit on types of violations that MSHA will review for possible special assessment by removing the list of specific categories;

(6) Shorten the time allowed to request a conference; and

(7) Implement new requirements of the MINER Act.

MSHA is proposing to delete the single penalty assessment provision. MSHA has reevaluated the single penalty provision and believes that the proposed rule reflects a more appropriate and effective approach to achieving the congressional purpose with respect to civil monetary penalties.

MSHA is proposing to implement new penalty requirements in the MINER Act for prompt incident notification and flagrant violations in § 100.5.

MSHA is proposing a new provision in § 100.4 to implement MINER Act requirements related to unwarrantable failure penalties. This provision sets minimum penalties for any citation or order issued under § 104(d) of the Mine Act.

The proposed changes are intended to induce greater mine operator compliance with the Mine Act and MSHA's safety and health standards, thereby improving safety and health for miners. The proposed changes are described in more detail in the following section-by-section analysis.

B. Section-by-Section Analysis

1. Scope and Purpose (§ 100.1)

Existing § 100.1 would not change.

2. Applicability (§ 100.2)

Existing § 100.2 provides that the criteria and procedures in this part apply to all "evaluations and proposed assessments of civil penalties." The proposed rule would remove the word "evaluations" because the process of proposing assessments includes evaluations. This proposed section contains no substantive changes.

3. Determination of Penalty; Regular Assessment (§ 100.3)

a. General (§ 100.3(a)). Existing § 100.3 establishes the formula to apply the statutory criteria to violations that are not processed under the existing single penalty assessment (§ 100.4) or special assessment (§ 100.5) provisions. This formula is an administrative mechanism used by MSHA to determine the appropriate penalty by applying the statutory criteria to particular facts surrounding a violation. Existing § 100.3(a) lists the criteria described in §§ 105(b)(1)(B) and 110(i) of the Mine Act. The proposed rule makes several editorial changes for clarification and ease of reading, but makes no substantive changes to this section.

b. Appropriateness of the penalty to the size of the operator's business (§ 100.3(b)). Existing § 100.3(b) contains five tables assigning penalty points for size of coal mines, controlling entities of coal mines, metal and nonmetal mines, controlling entities of metal and nonmetal mines, and independent contractors. The size of coal mines and their controlling entities is measured by the amount of coal production. The size of metal and nonmetal mines and their controlling entities is measured by the number of hours worked. The size of independent contractors is measured by the total number of hours worked by the independent contractors at all mines regardless of the commodity being mined.

Existing § 100.3(b) assigns up to 10 penalty points for the size of mines or independent contractors based on a scale which consists of 11 levels. In addition, up to 5 penalty points are assigned for the size of the controlling entity of a coal mine or a metal or nonmetal mine.

MSHA is proposing editorial changes to § 100.3(b) to make the provision easier to read. MSHA is also proposing to clarify the existing provision by

adding a statement concerning the way size of coal mines and metal and nonmetal mines is determined. The existing provision only states how the size of an independent contractor is determined. There are no proposed changes to the point table addressing the size of controlling entities.

MSHA is proposing to increase the number of penalty points based on the operator's size. Tables III–1, III–2, and III–3 show both the existing and proposed point schedules. The maximum number of penalty points for size would increase from 10 to 20 to assure that the amount of the penalty is an appropriate economic inducement of future compliance by the operator. The proposed point increase is based on MSHA's analysis of existing size data for coal operators, metal and nonmetal operators, and independent contractors.

According to the 2005 data, nearly half of the existing coal mines had annual tonnage of up to 15,000 tons. Slightly more than half of the existing metal and nonmetal mines had fewer than 10,000 annual hours worked. About half of independent contractors had fewer than 10,000 annual hours worked at all mines. Consistent with existing § 100.3(b), MSHA proposes that coal mines with an annual tonnage of up to 15,000 tons, metal and nonmetal mines with fewer than 10,000 hours worked, and independent contractors with fewer than 10,000 hours worked at all mines would all receive 0 penalty points for this criterion.

Under the proposal, the remaining coal mines, i.e., those with annual tonnage levels above 15,000 tons; the remaining metal and nonmetal mines, i.e., those with annual hours worked above 10,000; and the remaining independent contractors, i.e., those with annual hours worked at all mines above 10,000, would receive twice as many penalty points as under the existing rule, up to a maximum of 20.

The proposed size schedule would result in penalties that are, on average, more than twice as high at the smallest (one to five employees) coal mines than at metal and nonmetal mines of similar size and over four times higher at coal mines in the five to 19 employee size range than similar sized metal and nonmetal mines.

The proposed point structure in paragraph (b) is designed so that higher penalties would be computed for larger operations. This proposal is consistent with the Mine Act's requirement to consider the size of the operation when assessing penalties. MSHA believes penalties assessed under the existing regulations are often too low to be an effective deterrent for noncompliance at some of the largest operations.

The proposal, like the existing rule, places greater emphasis on size of the mine than on size of the controlling entity in assigning penalty points. The Agency solicits comments on whether, in considering the size of the operator, greater weight should be placed on the size of the controlling entity.

TABLE III–1.—SIZE OF COAL MINE: ANNUAL TONNAGE OF MINE

Annual tonnage of mine	Existing penalty points	Proposed penalty points
0 to 15,000	0	0
Over 15,000 to 30,000	1	2
Over 30,000 to 50,000	2	4
Over 50,000 to 100,000	3	6
Over 100,000 to 200,000	4	8
Over 200,000 to 300,000	5	10
Over 300,000 to 500,000	6	12
Over 500,000 to 800,000	7	14
Over 800,000 to 1.1 million	8	16
Over 1.1 million to 2 million	9	18
Over 2 million	10	20

TABLE III–2.—SIZE OF METAL AND NONMETAL MINE: ANNUAL HOURS WORKED AT MINE

Annual hours worked at mine	Existing penalty points	Proposed penalty points
0 to 10,000	0	0
Over 10,000 to 20,000	1	2
Over 20,000 to 30,000	2	4
Over 30,000 to 60,000	3	6
Over 60,000 to 100,000	4	8
Over 100,000 to 200,000	5	10
Over 200,000 to 300,000	6	12
Over 300,000 to 500,000	7	14
Over 500,000 to 700,000	8	16
Over 700,000 to 1 million	9	18
Over 1 million	10	20

TABLE III–3.—SIZE OF INDEPENDENT CONTRACTOR: ANNUAL HOURS WORKED AT ALL MINES

Annual hours worked at all mines	Existing penalty points	Proposed penalty points
0 to 10,000	0	0
Over 10,000 to 20,000	1	2
Over 20,000 to 30,000	2	4

TABLE III–3.—SIZE OF INDEPENDENT CONTRACTOR: ANNUAL HOURS WORKED AT ALL MINES—Continued

Annual hours worked at all mines	Existing penalty points	Proposed penalty points
Over 30,000 to 60,000	3	6
Over 60,000 to 100,000	4	8
Over 100,000 to 200,000	5	10
Over 200,000 to 300,000	6	12
Over 300,000 to 500,000	7	14
Over 500,000 to 700,000	8	16
Over 700,000 to 1 million	9	18
Over 1 million	10	20

c. History of previous violations (§ 100.3(c)). Existing § 100.3(c) bases the operator's violation history on the number of violations received in a preceding 24-month period for which a civil penalty has been paid or finally adjudicated. For production operators, penalty points are calculated using the average number of violations per inspection day (VPID). For independent contractors, penalty points are calculated using the annual average number of violations at all mines in a preceding 24-month period. The proposal would add the phrase "or have become final orders of the Commission" in the second sentence of this paragraph. The proposal would retain MSHA's intent that only violations which have become final be included in an operator's history.

MSHA is proposing three several substantive changes to existing § 100.3(c). First, MSHA is proposing that violation history include two components: (1) Paragraph (c)(1) would address the total number of violations; and (2) paragraph (c)(2) would address the number of repeat violations of the same standard. Second, an operator's or independent contractor's history of violations would be based on a preceding 15-month period rather than a 24-month period. This change would apply to both components—overall history and repeat violations—of history. Third, MSHA is proposing to change the point tables for overall history and to add a new point table addressing repeat violations of the same standard. Finally, MSHA is proposing to revise the calculation that addresses the overall history of an independent contractor.

MSHA is proposing to reduce the 24-month review period to a 15-month review period because the agency believes that a period of 15 months would more accurately reflect an operator's current state of compliance. This change would provide MSHA with sufficient data to appropriately determine an operator's compliance record, including any trend, even for mining operations that are inspected on a less frequent basis. This change would provide an incentive for improving safety and health to an operator that has a deteriorating safety and health record in the recent past.

Proposed § 100.3(c)(1) addresses the overall history of production operators and independent contractors. MSHA would continue to assign penalty points for production operators based on the number of assessed violations per inspection day. MSHA is proposing to increase the points assigned to the five highest levels of the VPID table. The highest level would be assigned the maximum of 25 points. MSHA is proposing to increase penalty points starting from the "over 1.3 to 1.5" level or mid-level of the VPID table because MSHA believes that operators of mines with a VPID in the mid- and upper levels show the least concern for compliance with the Mine Act and MSHA safety and health standards and regulations. Higher penalties for such operators may encourage them to comply with the Mine Act's requirements.

Under proposed § 100.3(c)(1), production operators with fewer than 10 assessed violations in a preceding 15-month period would not receive points. This proposed provision is similar to existing § 100.4(b) pertaining to excessive history. The proposed provision takes into consideration small mines that may receive a low number of inspection days in a preceding 15-month period. In such small operations, even though the total number of violations may be low, the VPID could easily be greater than the highest 2.1 VPID level. These small operations, however, are not necessarily the ones which MSHA is targeting in this aspect of the history criterion, since such a record may not reflect systemic problems of noncompliance. MSHA believes that these small operators should not receive points under this aspect of this criterion.

Under proposed § 100.3(c)(1), the number of violations for independent contractors would no longer be based on the average number of assessed violations per year at all mines as it is under existing § 100.3(c). The number of violations for independent contractors would be based on the total number of assessed violations at all mines during a preceding 15-month period. Since the Agency proposes to reduce the history time period from 24 to 15 months, this eliminates the need for an annual average. MSHA estimates that this change may result in a *de minimis* increase in the average assessment issued to independent contractors. The proposed point table reflects this change. MSHA solicits comments on this proposed approach to determining violation history for independent contractors, i.e., whether an annualized average should continue to be used. For independent contractors, MSHA is proposing to increase the number of penalty points for the levels starting with "over 30 to 35" and above and to increase the maximum number of points for this aspect of the history criterion from 20 to 25. MSHA believes that independent contractors with a greater number of violations in the preceding 15-month period show the least concern for compliance with the Mine Act and MSHA safety and health standards and regulations. MSHA intends that this aspect of the history criterion would serve as greater inducement for such operators to comply with the Mine Act and MSHA's safety and health standards and regulations. MSHA therefore proposes to increase the points for the upper five levels of the number of violations. See tables III–4 and III–5 for a comparison of the existing and proposed penalty point scales for production operators and independent contractors, respectively.

TABLE III–4.—PRODUCTION OPERATOR'S OVERALL HISTORY OF VIOLATIONS: AVERAGE NUMBER OF VIOLATIONS PER INSPECTION DAY

Violations per inspection day	Existing penalty points	Proposed penalty points
0 to 0.3	0	0
Over 0.3 to 0.5	2	2
Over 0.5 to 0.7	4	4
Over 0.7 to 0.9	6	6
Over 0.9 to 1.1	8	8
Over 1.1 to 1.3	10	10
Over 1.3 to 1.5	12	13
Over 1.5 to 1.7	14	16
Over 1.7 to 1.9	16	19
Over 1.9 to 2.1	18	22
Over 2.1	20	25

TABLE III–5.—INDEPENDENT CONTRACTOR'S OVERALL HISTORY OF VIOLATIONS

Number of violations	Existing penalty points	Proposed penalty points
0 to 5	0	0
Over 5 to 10	2	2
Over 10 to 15	4	4
Over 15 to 20	6	6
Over 20 to 25	8	8
Over 25 to 30	10	10
Over 30 to 35	12	13
Over 35 to 40	14	16
Over 40 to 45	16	19
Over 45 to 50	18	22
Over 50	20	25

Proposed § 100.3(c)(2) would add a new component to the history criterion: Repeat violations of the same standard. The number of repeat violations of the same standard in a preceding 15-month period would be part of the operator's history of violations. For the purpose of determining repeat violations, each citable standard would be considered a separate "standard." Repeat violations of the same standard would include only assessed violations of the relevant standard that are paid or finally adjudicated, or became final orders of the Commission. For example, previous assessments for violations of § 75.202(a) would not be included in the repeat history for a violation of § 75.202(b). Similarly, previous assessments for violations of § 56.14101(a)(1) would not be included in the repeat history for a violation of § 56.14101(a)(2). MSHA requests comments on this approach to determining repeat violations. In addition, MSHA solicits comments on whether, in determining penalty points for repeat violations of the same standard, the Agency should factor in the number of inspection days during which the repeat violations were cited. MSHA also solicits comments on whether only S&S violations should be considered in determining repeat violations of the same standard.

A maximum of 20 penalty points could be assigned using this new component of the history criterion. MSHA is proposing this new provision because the Agency believes that operators who repeatedly violate the same standard may indicate an attitude which has little regard for getting to the root cause of violations of safe and healthful working conditions. The Agency believes that these operators show a lack of commitment to good mine safety and health practices by letting cited and corrected hazardous conditions recur.

The analysis of assessments for the 15-month period from January 1, 2005, through March 31, 2006 reveals that 698 of the 10,227 mines with violations each had at least six violations of the same standard. Furthermore, 99 of the 698 mines had more than twenty violations of the same standard during the 15 month period. MSHA believes that the Agency needs to adjust its civil penalty structure so that the penalties can more appropriately serve as a deterrent to this type of behavior, thereby resulting in greater compliance and more effective mine safety and health.

Under proposed § 100.3(c)(2), an operator with five or fewer repeat violations of the same standard in a preceding 15-month period would not receive penalty points. MSHA believes that that this new component of the history criterion should be applied to those operators who violate the same standard with a certain degree of repetition. Under the proposal, operators could receive a maximum of 20 penalty points for this aspect of the history criterion. MSHA believes that this new proposal will encourage greater operator compliance with the Mine Act and MSHA's safety and health standards and regulations, which is consistent with Congress' intent.

Penalty points proposed to be assigned to the number of repeat violations of the same standard are presented in Table III–6.

TABLE III–6.—NEW TABLE ADDRESSING REPEAT VIOLATIONS OF THE SAME STANDARD

Number of violations	Penalty points
5 or fewer	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	14
19	16
20	18
More than 20	20

d. Negligence (§ 100.3(d)). Existing § 100.3(d) provides for evaluating the degree of negligence involved in a violation under 5 categories: No negligence, which means that the operator exercised diligence and could not have known of the violative condition or practice; low negligence, which means that the operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances; moderate negligence, which means that the operator knew or should have known of the violative condition or practice, but there are mitigating circumstances; high negligence, which means the operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances; and reckless disregard, which means the operator displayed conduct which exhibits the absence of the slightest degree of care. An increased number of penalty points is assigned to the higher levels of negligence. The maximum number of points for negligence is 25 under existing § 100.3(d).

Proposed § 100.3(d) would retain the existing five levels of negligence, but would increase the maximum number of penalty points from 25 to 50 so that more penalty points would be assigned to operators who exhibit increasingly higher levels of negligence, i.e., a lack of care towards protection of miners from safety and health hazards. Under the proposed table, points for no negligence and low negligence would not change. Penalty points assigned under the three highest levels of negligence would increase more rapidly than under the existing regulation. Moderate negligence would add 20 points rather than 15 points as under the existing regulation; high negligence would add 35 points rather than the 20 points under the existing regulation; and reckless disregard would add 50

points rather than 25 points as under the existing regulation.

Table III–7 compares penalty points in existing and proposed § 100.3(d).

TABLE III–7.—NEGLIGENCE

Categories	Existing penalty points	Proposed penalty points
No negligence	0	0
(The operator exercised diligence and could not have known of the violative condition or practice.)		
Low negligence	10	10
(The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)		
Moderate negligence	15	20
(The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)		
High negligence	20	35
(The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)		
Reckless disregard	25	50
(The operator displayed conduct which exhibits the absence of the slightest degree of care.)		

e. Gravity (§ 100.3(e)). Existing § 100.3(e) uses three factors to measure the gravity of a violation:(1) Likelihood of occurrence of an event, (2) severity of injury or illness if the event occurred or were to occur, and (3) the number of persons potentially affected if the event occurred or were to occur. A maximum of 10 penalty points may be assigned from each of the three factors, for a maximum of 30 points for the gravity criterion.

Proposed § 100.3(e) would retain the three measures of gravity, but would change the number of penalty points assigned for each. The maximum number of points assigned for likelihood of occurrence of an event would increase from 10 to 50, the maximum number of points assigned for severity of injury or illness would increase from 10 to 20, and the maximum number of points assigned for the number of persons potentially affected would increase from 10 to 18. In addition, the number of categories in the Persons Potentially Affected Table would increase from 7 to 11. The total points that could be assigned for the gravity criterion would increase from 30 to 88.

MSHA is proposing to adjust the number of penalty points that may be assigned under the gravity criterion to focus attention on the more serious mine safety and health hazards. MSHA believes that the penalty points in the proposed gravity tables will result in mine operators placing greater emphasis on correcting the more serious violations because they pose the greatest safety and health risk to miners. The proposal distinguishes the less serious violations so that they would receive an appropriate penalty under the regular assessment formula. Existing § 100.3(e) has also been reworded for easier reading. Tables III–8 through III–10 show both the existing and the proposed penalty points for likelihood, gravity, and persons potentially affected.

TABLE III–8.—LIKELIHOOD

Likelihood of occurrence	Existing penalty points	Proposed penalty points
No likelihood	0	0
Unlikely	2	10
Reasonably likely	5	30
Highly likely	7	40
Occurred	10	50

TABLE III–9.—SEVERITY

Severity of injury or illness if the event occurred or were to occur	Existing penalty points	Proposed penalty points
No lost work days	0	0
(All occupational injuries and illnesses as defined in 30 CFR part 50 except those listed below.)		
Lost work days or restricted duty	3	5
(Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)		
Permanently disabling	7	10
(Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)		
Fatal	10	20
(Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)		

TABLE III–10.—PERSONS POTENTIALLY AFFECTED

Number of persons potentially affected if the event occurred or were to occur			
Existing scale	Existing points	Proposed scale	Proposed points
0	0	0	0
1	1	1	1
2	2	2	2
3	4	3	4
4 to 5	6	4	6
6 to 9	8	5	8
More than 9	10	6	10
		7	12
		8	14
		9	16
		10 or more	18

f. Demonstrated good faith of the operator in abating the violation (§ 100.3(f)). Existing § 100.3(f) allows for a 30% reduction in the amount of a regular assessment where the operator abates the violation within the time set by the inspector. When the operator does not abate the violation within the time set by the inspector, 10 penalty points are assigned.

Proposed § 100.3(f) would decrease the amount of the reduction from 30% to 10% where an operator abates a violation within the time set by the inspector. MSHA believes this is a more appropriate reduction because operators are required by law to timely abate violations.

MSHA is also proposing to delete the existing provision which assigns ten additional penalty points where an operator does not abate the violation within the specified time period. The Mine Act provides two sanctions for failure to correct violations within the time set by the inspector: § 104(b) requires a withdrawal order, which effectively shuts down production in the area affected, and § 110(b) allows assessment of a daily penalty.

MSHA has reviewed the civil penalty assessment data for the last several years and believes that the proposed 10% good faith reduction is a more appropriate credit for mine operators who promptly correct hazardous conditions.

g. Penalty conversion table (§ 100.3(g)). Existing § 100.3(g) provides the penalty conversion table used to convert total penalty points to a dollar amount. The existing dollar amounts range from $72 to $60,000, and correspond to penalty points ranging from 20 or fewer to 100.

Under the proposed penalty conversion table, MSHA would retain the statutory maximum penalty of $60,000, but would establish a new minimum penalty of $112. The proposed dollar amounts would correspond to penalty points ranging from 60 or fewer to 140.

The proposed penalty conversion table is derived by combining two methods of converting points to dollars. There is a lower section (from 60 or fewer to 133 points) and an upper section (above 133 points) of the proposed conversion table. The proposed table starts at $112 when the number of points is 60 or fewer. Each additional point above 60 up to 133 causes the dollar value to increase by a fixed 8.33%. The dollar value assigned for 133 points is $38,387. Above 133 points the dollar value increases by approximately $3,070 for each penalty point. The maximum number of points is 140 and the maximum dollar value is $60,000.

When applied to MSHA's 2005 assessment data, the penalty amounts under the proposed conversion table increase generally as severity of the violation and violation history increase. Section III of this preamble provides data showing the increased penalty amounts under the proposal. Table III–12 shows the existing and the proposed penalty conversion tables.

TABLE III–12.—EXISTING AND PROPOSED PENALTY POINT CONVERSION TABLES

Current points	Current penalties	Proposed points	Proposed penalties
20 or fewer	$72	60 or fewer	$112
21	80	61	121
22	87	62	131
23	94	63	142
24	101	64	154
25	109	65	167
26	120	66	181
27	131	67	196
28	142	68	212
29	153	69	230
30	164	70	249
31	178	71	270
32	193	72	293
33	207	73	317
34	221	74	343
35	237	75	372
36	254	76	403
37	273	77	436
38	291	78	473

TABLE III–12.—EXISTING AND PROPOSED PENALTY POINT CONVERSION TABLES—Continued

Current points	Current penalties	Proposed points	Proposed penalties
39	310	79	512
40	327	80	555
41	354	81	601
42	383	82	651
43	409	83	705
44	437	84	764
45	463	85	828
46	500	86	897
47	536	87	971
48	629	88	1,052
49	749	89	1,140
50	878	90	1,235
51	1,033	91	1,337
52	1,198	92	1,449
53	1,376	93	1,569
54	1,566	94	1,700
55	1,769	95	1,842
56	2,003	96	1,995
57	2,252	97	2,161
58	2,515	98	2,341
59	2,793	99	2,536
60	3,086	100	2,748
61	3,419	101	2,976
62	3,770	102	3,224
63	4,137	103	3,493
64	4,521	104	3,784
65	4,856	105	4,099
66	5,099	106	4,440
67	5,342	107	4,810
68	5,585	108	5,211
69	5,828	109	5,645
70	6,071	110	6,115
71	6,374	111	6,624
72	6,678	112	7,176
73	6,981	113	7,774
74	7,285	114	8,421
75	7,588	115	9,122
76	7,892	116	9,882
77	8,499	117	10,705
78	9,106	118	11,597
79	9,713	119	12,563
80	10,321	120	13,609
81	11,535	121	14,743
82	12,749	122	15,971
83	13,963	123	17,301
84	15,177	124	18,742
85	16,392	125	20,302
86	18,213	126	21,993
87	20,642	127	23,825
88	23,070	128	25,810
89	25,498	129	27,959
90	27,927	130	30,288
91	30,355	131	32,810
92	33,391	132	35,543
93	36,427	133	38,503
94	39,462	134	41,574
95	42,498	135	44,645
96	45,533	136	47,716
97	48,569	137	50,787
98	51,605	138	53,858
99	54,640	139	56,929
100	60,000	140 or more	60,000

The range of points in the proposed conversion table to reflects proposed changes in the individual criteria tables in proposed § 100.3. The minimum penalty in the proposed conversion table would be changed from $72 to $112. MSHA believes that this would represent a reasonable adjustment for many of the violations processed under the existing regulations as single penalty assessments. Typically, single penalty assessments address non-S&S and paperwork type violations. The maximum penalty would remain at $60,000 per violation.

h. Effect on operator's ability to remain in business (§ 100.3(h)). Existing § 100.3(h) provides that MSHA presumes that the operator's ability to continue in business will not be affected by payment of a civil penalty. In addition, it provides that MSHA may adjust the penalty if the operator submits information to MSHA concerning the business financial status which shows that payment of the penalty will adversely affect the operator's ability to continue in business. MSHA is proposing several editorial changes for easier reading and clarity, but there would be no substantive change to existing § 100.3(h).

4. Determination of Penalty; Single Penalty Assessment (§ 100.4)

Existing § 100.4 provides for a $60 penalty for non-S&S violations, *i.e.*, those that are not reasonably likely to result in reasonably serious injury or illness. The single penalty assessment is available only if the violation is abated within the time set by the inspector and the operator does not have an excessive history of violations. The existing provision defines excessive violation history.

MSHA is proposing to delete the single penalty assessment provision in § 100.4 based on an evaluation of agency data and a review of experience gained under the provision. The primary focus of the Mine Act, as reiterated in the MINER Act, is on the prevention and correction of violative conditions before they occur and the improvement of the safety and health of miners. MSHA believes that deletion of the single penalty provision will have a positive impact on miner safety and health. MSHA believes that deleting the single penalty provision will provide a greater incentive for mine operators to abate hazards. The Agency believes that deleting the single penalty provision will cause mine operators to focus their attention on preventing all hazardous conditions before they occur and promptly correct those violations that do occur. Therefore, MSHA is proposing to delete the single penalty provision.

5. Unwarrantable Failure (§ 100.4)

Proposed § 100.4 would implement the MINER Act requirements related to minimum unwarrantable failure penalties. Section 8(a)(1)(B) of the MINER Act amends the Mine Act by setting a minimum penalty of $2,000 for any citation or order issued under section 104(d)(1) and a minimum penalty of $4,000 for any order issued under section 104(d)(2).

6. Determination of Penalty; Special Assessment (§ 100.5)

Existing § 100.5 provides for a special assessment for those violations which MSHA believes should not be processed under the provision for a single penalty assessment or under the regular assessment provision.

Consistent with the proposal to delete the single penalty provision, MSHA is proposing to revise the first sentence in paragraph (a) of this section. The revision would remove the reference to the single assessment provision. MSHA proposes to remove the second sentence in existing paragraph (a) of § 100.5 that provides a general explanation stating when a special assessment would be applied. This sentence is "Although an effective penalty can generally be derived by using the regular assessment formula and the single assessment provision, some types of violations may be of such a nature or seriousness that it is not possible to determine an appropriate penalty under these provisions." This sentence is unnecessary because the first sentence specifies that it is within MSHA's discretion to waive the regular assessment depending upon the conditions surrounding the violation.

MSHA proposes to remove the list of eight categories of violations that will be reviewed for possible special assessment under existing § 100.5(b). As stated in existing and proposed § 100.5(a), MSHA has the discretion to waive the regular assessment formula if it determines that conditions warrant a special assessment for any type of violation. The existing list of eight categories of violations that MSHA would review, although not intended to be exclusive, resulted in a time-consuming and resource-intensive process. Under the proposed rule, MSHA would retain its discretion to determine which types of violations would be reviewed for a special assessment, without being limited to a specific list. MSHA anticipates that, under the proposal, the regular assessment provision would generally provide an appropriate penalty in most cases. This change will allow MSHA to focus its enforcement resources on more field enforcement activities, as opposed to administrative review activities. There would be circumstances, however, in which the regular assessment would not provide an appropriate penalty and thus the special assessment provision would be applied.

Changes in proposed § 100.5(b) would provide for easier reading and clarity and would be revised to include references to sections 105(b) and 110(i) of the Mine Act. The reference to § 100.4(b) would be removed as the single penalty provision would be deleted. Paragraphs (c) and (d) would remain unchanged.

Proposed paragraphs (e) and (f) would implement new civil penalty provisions of the MINER Act. New paragraph (e) addresses penalties for flagrant violations. Under the MINER Act amendments to the Mine Act, violations that are deemed to be flagrant may be assessed a civil penalty of not more than $220,000. A "flagrant" violation is defined as a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury. Under the proposal these violations would be processed as a special assessment.

New paragraph (f) addresses penalties related to prompt incident notification. Under the MINER Act amendments to the Mine Act, an operator who fails to provide timely notification to the Secretary under section 103(j) (relating to the 15-minute requirement) shall be assessed a civil penalty of not less than $5,000 and not more than $60,000. Violations under this new paragraph would be processed as a special assessment.

7. Procedures for Review of Citations and Orders; Procedures for Assessment of Civil Penalties and Conferences (§ 100.6)

Existing § 100.6 contains requirements and administrative procedures for review of citations and orders. Proposed § 100.6 remains substantively the same as existing § 100.6. MSHA believes that safety and health is improved when mine operators and miners or their representatives are afforded an opportunity to discuss safety and health issues after an inspection with the MSHA District Manager or designee. Like existing § 100.6, initial review of the citation or order would be conducted during the inspection closeout conference or at a time reasonably convenient to operators and miners or their representatives. In addition, the proposal, like the existing rule, allows the operator and miners or their representative to submit additional facts or to request a safety and health conference. Any of these parties may request to be notified of, and participate in, a safety and health conference initiated by one of the other parties. Safety and health conference requests would continue to be made with the MSHA District Office. When a request is

granted, conferences will be promptly conducted.

Proposed paragraph 100.6(a) contains editorial changes which incorporate concepts from existing paragraphs 100.6(a) and (c). Under proposed § 100.6(a), the review process would continue to provide any operator, and miners or their representatives, with an opportunity to (1) review the citation or order with MSHA, (2) submit additional information to MSHA, and (3) request a safety and health conference with the District Manager or designee. In addition, the provision in existing § 100.6(c), which provides that a request for a conference is within MSHA's discretion, would be moved to this paragraph.

Proposed § 100.6(b) would reduce the time, from ten days to five days, to submit additional information or request a safety and health conference. MSHA believes that the proposed reduction would result in a more effective civil penalty system because penalties would be assessed closer in time to the issuance of the citation. MSHA believes that all parties would be able to request a health and safety conference within this timeframe.

As stated above, the provision in existing § 100.6(c), which provides that a request for a conference is within MSHA's discretion, would be moved to proposed § 100.6(a). Existing 100.6(d) would be renumbered as § 100.6(c) and otherwise remain unchanged.

Existing §§ 100.6(e), (f), and (g) would be combined and incorporated into proposed § 100.6(d). The wording in paragraphs (e) and (g) would be unchanged. Paragraph (f) would be clarified to specify when the MSHA District managers are to refer citations and orders to MSHA's Office of Assessments but would remain substantively unchanged.

8. Notice of Proposed Penalty; Notice of Contest (§ 100.7)

Existing § 100.7 provides for procedures applicable to a notice of proposed penalty and notice of penalty contest. Existing paragraph (a) sets out the circumstances under which a notice of proposed penalty will be served on the parties, paragraph (b) sets out the procedures for contesting a notice of proposed penalty, and paragraph (c) sets out when a proposed penalty becomes a final order of the Commission.

Proposed § 100.7(a), (b), and (c) include editorial changes for ease of reading, but remain substantively unchanged from the existing provision. Proposed § 100.7(b) would remove from the regulatory text: (1) The reference to a return mailing card that is used to request a hearing before the Federal Mine Safety and Health Review Commission, (2) the reference to providing instructions for returning the card to MSHA, and (3) the provision that MSHA will immediately advise the Commission of the contest and also advise the Office of the Solicitor of the contest. MSHA is proposing these deletions because it is no longer using a return mailing card. Instead, MSHA currently provides a form that lists violations being assessed, instructions for paying or contesting assessments, and MSHA contact information to facilitate an operator's request for a hearing. MSHA intends to continue this practice. MSHA would continue to advise the Office of the Solicitor and the Commission of the notice of penalty contest.

9. Service (§ 100.8)

Existing § 100.8 remains substantively unchanged. This section provides that service of proposed civil penalties will be made at the mailing address of record for an operator and miners' representative, that penalty assessments may be mailed to a different address if MSHA is notified in writing of the new address, and that operators who fail to file a notification of legal identity under 30 CFR Part 41 will be served at their last known business address. Specific references to part 40 (Representative of Miners) and part 41 (Notification of Legal Identity) would be changed to indicate they are parts contained in Chapter I of Title 30 CFR.

IV. Executive Order 12866

Executive Order (E.O.) 12866 as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review) requires that regulatory agencies assess both the costs and benefits of regulations. To comply with E.O. 12866, MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) for the proposed rule. The PREA contains supporting data and explanation for the summary materials presented in sections IV–VII of this preamble, including the covered mining industry, costs and benefits, feasibility, small business impacts, and paperwork. The PREA is located on MSHA's Web site at *http://www.msha.gov/REGSINFO.HTM.* A printed copy of the PREA can be obtained from MSHA's Office of Standards, Regulations, and Variances.

Based on the PREA, MSHA has determined that the proposed rule would not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" pursuant to Section 3, paragraph (f) of E.O. 12866.

A. Population at Risk

Based on 2004 data, the proposed rule would apply to the entire mining industry, covering all 14,480 mine operators and 6,693 independent contractors in the United States, as well as the 214,450 miners and 72,739 contract workers they employ.

B. Costs

In order to derive and explain the cost impact of the proposed rule on the mining industry, MSHA has divided its analysis into three sections: (1) The baseline—the total number and monetary amount of civil penalty assessments proposed by MSHA in 2005, the year prior to the proposed rule; (2) the impact of the proposed rule on civil penalty assessments under the assumption that mine operators and independent contractors take no actions, in response to higher proposed penalty assessments, to increase compliance with MSHA standards and regulations; and (3) the impact of the proposed rule on the number and amount of civil penalty assessments taking into account the anticipated response of mine operators and independent contractors to increase compliance with MSHA standards and regulations and thereby reduce the number of civil penalty assessments they would otherwise receive.

Before proceeding, it is important to note the nature of the impacts associated with the proposed rule. For most MSHA rules, the estimated impact reflects the cost to the mining industry of achieving compliance with the rule. For this proposed rule, the estimated impact consists of two parts: (1) Higher payments for penalties received and (2) expenses incurred to increase compliance with MSHA standards and regulations so as to reduce the number and amount of civil penalties otherwise received. Although the former impact is not a traditional compliance cost, but rather a cost specifically due to non-compliance, for the purposes of this analysis, MSHA has shown these costs. The latter costs are compliance costs, but for existing MSHA standards and regulations. These costs were included in economic assumptions made when those standards and regulations were promulgated. At that time, MSHA generally assumed full industry compliance. Therefore, compliance efforts made in response to higher penalties are not a cost attributable to the proposed rule. However, for illustrative purposes only, this analysis

reflects additional expenditures associated with improved compliance.

1. Baseline

The first step in estimating the impact of the proposed rule is to establish a baseline: The number and monetary amount of civil penalty assessments in the absence of the proposed rule. For this purpose, MSHA chose all civil penalty assessments for 2005, the last full calendar year of data prior to the proposed rule. Table IV–1 shows the number of civil penalty assessments issued in 2005, disaggregated by mine employment size, by coal and MNM, and by operators and independent contractors.

TABLE IV–1.—BASELINE NUMBER OF CIVIL PENALTY ASSESSMENTS FOR 2005

Contractor/mine employment size	Coal-M/NM, operator/contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	All violations
1–5	2,856	2,741	1,609	12,528	19,734
6–19	757	9,063	1,048	16,125	26,993
20–500	1,479	43,428	1,183	17,685	63,775
501+	1	4,432	66	1,672	6,171
All Mine Sizes	5,093	59,664	3,906	48,010	116,673

The mine size and independent contractor size categories being used are 1–5 employees, 6–19 employees, 20–500 employees, and more than 500 employees. These categories are relevant for the analysis of impacts in section VI of this preamble, to determine whether small mines, as defined by the Small Business Administration (SBA) and MSHA, would be significantly impacted by the proposed rule. Mines with 500 or fewer employees meet SBA's definition of a small mine. Mines with fewer than 20 employees meet MSHA's traditional definition of a small mine.

Mine violation data have been broken out by coal and metal/nonmetal (MNM) and by operator and independent contractor. The employment sizes shown are contractor size for independent contractors and mine size for mine operators.

Of the 116,673 civil penalty assessments issued in 2005, 113,484, or about 97.3%, were single penalty or regular assessments. The remaining 3,189, or 2.7%, were special assessments.

As can be calculated from Table IV–1, there were about 25% more coal violations than MNM violations in 2005, even though there were more than 3½ times as many MNM operators and independent contractors as there were coal operators and independent contractors. One reason for the larger number of coal violations is that there are about 3 times as many underground coal mines as underground MNM mines. There are a number of circumstances surrounding underground mines which tend to result in a greater number of violations. They are required to be inspected more often, and conditions are generally more dangerous and subject to change. Another reason for more coal violations is that coal mines are, on average, larger operations than MNM mines, and larger mines tend to receive more violations, on average, than smaller mines. The average coal mine operator employed about 3 times as many miners as the average MNM operator in 2004.

The 2005 civil penalty monetary amount used as a baseline was the penalty proposed by MSHA. Table IV–2 shows, by contractor/mine employment size and coal-MNM, operator-independent contractor, the total baseline dollar amount of civil penalties proposed by MSHA in 2005.

TABLE IV–2.—BASELINE TOTAL OF PROPOSED CIVIL PENALTY ASSESSMENTS FOR 2005

Contractor/mine employment size	Coal-M/NM, operator/contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	All violations
1–5	$308,649	$463,277	$200,947	$1,887,443	$2,860,316
6–19	86,319	1,492,545	109,837	2,535,563	4,224,264
20–500	314,195	11,010,009	192,151	3,890,799	15,407,154
501+	2,000	1,706,750	14,876	634,888	2,358,514
All Mine Sizes	711,163	14,672,581	517,811	8,948,693	24,850,248

Of the $24.9 million in civil penalties proposed by MSHA in 2005, $16.6 million, or about 67%, were from single penalty and regular assessments. The remaining $8.2 million were from special assessments. Of this amount, about $0.3 million were issued to agents of mine operators and another $1.5 million were issued for violations involving a fatality.

Table IV–3 displays the baseline average dollar amount of a proposed civil penalty in 2005 disaggregated by mine size and coal-MNM, operator-independent contractor. The average penalty assessment for a violation in 2005 was $213. For a regular or single penalty assessment, the average penalty was $147. For a special assessment, the average penalty was $2,385. For special assessments issued to agents of the mine operator, the average assessment was $582, and for special assessments involving a fatality, the average penalty was $27,181.

TABLE IV–3.—BASELINE AVERAGE PROPOSED CIVIL PENALTY ASSESSMENT PER VIOLATION IN 2005

Contractor/mine employment size	Coal-M/NM, operator contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	Average for all violations
1–5	$108	$169	$125	$151	$145
6–19	114	165	105	157	156
20–500	212	254	162	220	242
501+	2,000	385	225	380	382
All Mine Sizes	140	246	133	186	213

Consistent with the formulas used to calculate regular assessments under the existing regulations, Table IV–3 shows that the average proposed penalty assessment in 2005 tended to increase as mine size increased. This effect is consistent, particularly for mine operators with 20 or more employees.

Table IV–3 also indicates that the difference in average penalties between coal and MNM mines and independent contractors of a given employment size is generally small.

Table IV–2 reveals that total civil penalty assessments in 2005 were substantially larger, more than 50% larger, for coal mines than for MNM mines. The larger aggregate penalty assessment for coal mines is due to the larger number of violations issued to coal mines and the higher average penalty per violation. Coal violations tend to be more serious, on average, than MNM violations (e.g., 40% of coal violations are Significant and Substantial, or S&S, versus 23% for MNM violations).

2. Impacts If No Compliance Response to Higher Penalties

With the baseline established, the next task in the cost analysis is to determine the impact of the proposed rule on civil penalty assessments under the assumption that mine operators and independent contractors take no actions, in response to higher proposed penalty assessments, to increase compliance with MSHA standards and regulations. This task is an intermediate step in determining the total cost impact of the proposed rule, as MSHA's assumption in IV.B.3 of this preamble is that mine operators and independent contractors will change their compliance behavior in response to increased penalties.

Given the assumption of no compliance response by mine operators and independent contractors, the number of violations would not change in response to the proposed rule. They would remain the same as presented in Table IV–1 for the baseline. However, the type of the violations would change under the proposed rule. In the analysis, all 2005 regular and single penalty assessments would be issued as regular assessments under the proposed rule. MSHA assumed that most unwarrantable failure citations and orders would be processed as regular assessments under the minimum penalty requirements of the MINER Act. MSHA further assumed that the 2005 special assessments issued to agents, those involving a fatality, those involving failure to promptly notify MSHA, and those involving flagrant violations would be assessed as special assessments under the proposed rule. MSHA assumed that all other 2005 special assessments would be processed as regular assessments. Thus, under the proposed rule, MSHA estimates that the number of special assessments would decline by 85%, from 3,189 to 491. MSHA anticipates that, under the proposal, the regular assessment provision would generally provide an appropriate penalty in most cases. Equally significant, this will allow MSHA to focus its enforcement resources on more field enforcement activities, as opposed to administrative review activities.

Tables IV–4 and IV–5 show the estimated total dollar amount and average dollar amount, respectively, of civil penalties under the proposed rule, assuming no compliance response by mine operators and independent contractors. Table IV–6 shows, relative to the baseline, the estimated percentage increase of civil penalties (both total and average) under the proposed rule, assuming no compliance response by mine operators and independent contractors. All of these tables are disaggregated by contractor/mine employment size, coal-MNM, and operator/contractor.

TABLE IV–4.—TOTAL PROPOSED CIVIL PENALTY ASSESSMENTS UNDER PROPOSED RULE, ASSUMING NO COMPLIANCE RESPONSE

Contractor/mine employment size	Coal-M/NM, operator/contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	All violations
1–5	$414,826	$684,448	$410,544	$3,207,759	$4,717,577
6–19	133,074	2,287,667	187,432	4,744,450	7,352,623
20–500	415,811	37,598,722	340,542	8,365,383	46,720,458
501+	807	7,394,118	43,973	2,288,395	9,727,293
All Mine Sizes	964,518	47,964,955	982,491	18,605,987	68,517,951

TABLE IV–5.—AVERAGE OF PROPOSED CIVIL PENALTY ASSESSMENTS UNDER PROPOSED RULE, ASSUMING NO COMPLIANCE RESPONSE

Contractor/mine employment size	Coal-M/NM, operator/contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	Average for all violations
1–5	$145	$250	$255	$256	$239
6–19	176	252	179	294	272
20–500	281	866	288	473	733
501+	807	1,668	666	1,369	1,576
All Mine Sizes	189	804	252	388	587

TABLE IV–6.—PERCENTAGE INCREASE IN TOTAL AND AVERAGE PROPOSED CIVIL PENALTY ASSESSMENTS UNDER PROPOSED RULE, ASSUMING NO COMPLIANCE RESPONSE

Contractor/mine employment size	Coal-M/NM, operator/contractor				
	Coal contractor	Coal operator	M/NM contractor	M/NM operator	Average percentage increase for all violations
1–5	34	48	104	70	65
6–19	54	53	71	87	74
20–500	32	241	77	115	203
501+	−60	333	196	260	312
All Mine Sizes	36	227	90	108	176

As indicated in these tables, MSHA estimates that total civil penalty assessments would increase under the proposed rule, assuming no compliance response, from $24.9 million in the baseline to $68.5 million, an increase of $43.7 million, or 176%. Approximately $2.5 million, or about 4% of the $68.5 million, would come from special assessments. Of the $43.7 million increase, approximately $1.9 million would result from the minimum penalty provisions for unwarrantable violations in the MINER Act. In its analysis of 2005 data, MSHA found one violation which met the failure to provide timely notification provisions in the MINER Act. For this category of violations, the MINER Act imposes a penalty of $5,000 to $60,000. However, the particular violation had already received a special assessment in excess of $5,000. Thus, MSHA did not adjust penalty totals to account for this provision of the MINER Act.

MSHA has determined that flagrant violations will be processed under the special assessment provision. As stated in the proposal, MSHA will use the definition for flagrant violation in the MINER Act, but the Agency cannot estimate, at this point in the rulemaking process, the specific impact of this new requirement in the MINER Act. The Agency does, however, anticipate that penalties will increase due to this provision.

MSHA estimates that the average penalty assessment would increase under the proposed rule, assuming no compliance response, from $213 (shown in Table IV–3) to $587 (shown in Table IV–5), an increase of 176% (shown in Table IV–6). Consistent with Congressional intent, the average penalty generally increases as mine size or contractor size increases (shown in Table IV–5).

For purposes of the analysis, special assessments that remain as special assessments were assumed to receive the same penalty, unless they would be impacted by the minimum penalty provisions of the MINER Act. All special assessments in 2005 involving a fatality exceeded the new minimum penalty provisions, so these penalties are assumed unchanged by the proposed rule. However, the average penalty for special assessments issued to agents of the mine operator is estimated to increase by 367% under the proposed rule. This increase is entirely due to the application of the minimum penalty provisions for unwarrantable violations in the MINER Act.

For purposes of analysis, the remaining special assessments are assumed to be treated as regular assessments under the proposal. In the analysis, the average penalty for 2005 special assessments, assumed to be issued as regular assessments under the proposed rule, increased by 84%.

3. Impacts With Compliance Response to Higher Penalties

MSHA intends and expects that higher penalty assessments will lead to efforts by mine operators and independent contractors to increase compliance with MSHA standards and regulations and ultimately to decreased violations. MSHA assumes that each violation is associated with a probability of occurrence that declines as penalty assessments rise. To estimate this impact, MSHA assumes that each 10% increase in penalty for a violation is associated with a 3% decrease in its probability of occurrence.

In economic terms, this is equivalent to assuming an elasticity of −0.3 between the number of violations and the dollar size of penalties. The numbers derived from this elasticity assumption are for illustrative purposes only. A lower elasticity number (*e.g.*, −0.1) would yield less impact and a higher number (*e.g.*, −0.9) would yield more impact. This elasticity of −0.3 was previously assumed by MSHA in its regulatory economic analysis for the 2003 direct final rule to adjust civil penalties for inflation. Further explanation and mathematics are provided in the PREA for this proposed rule.

MSHA has consistently applied this assumption to each assessed violation in the 2005 database. For most violations, the proposed rule would result in a penalty increase. Accordingly, MSHA has computed a reduction (or in the rare

case, an increase) in the probability of the violation's occurrence. The reduction is larger as the penalty increases.

Tables IV–7 and IV–8 estimate the increased compliance response of the industry to higher penalty assessments. Table IV–7 provides estimates for mine operators and Table IV–8 provides estimates for independent contractors. Tables IV–7 and IV–8 show, by mine or contractor employment size and by coal and MNM, the number of violations and the dollar amount of penalties in the 2005 database ("Old"). Using the assumption that the elasticity of response is −0.3 for each violation, Tables IV–7 and IV–8 estimate the new reduced number of violations and the higher penalties associated with these violations ("New"). Taking into account the mine industry's compliance response, MSHA estimates that were the proposed rule in effect in 2005, total violations would have declined from 116,673 to 95,035, a reduction of about 19% in the total number of violations.

TABLE IV–7.—IMPACT OF PROPOSED RULE ON MINE OPERATORS GIVEN INCREASED COMPLIANCE RESPONSE TO HIGHER PENALTY ASSESSMENTS

Mine employment size	Old number of violations	Old proposed penalties	New number of violations	New proposed penalties	Change in penalties	Additional expenditures to improve compliance*
Impact on Coal Mine Operators						
1–5	2,741	$463,277	2,476	$566,992	$103,715	$44,449
6–19	9,063	1,492,545	8,145	1,895,806	403,261	172,826
20–500	43,428	11,010,009	33,616	23,661,984	12,651,975	5,422,275
501+	4,432	1,706,750	2,941	4,356,873	2,650,123	1,135,767
All Mine Sizes	59,664	14,672,581	47,178	30,481,655	15,809,074	6,775,317
Impact on Metal/Nonmetal Mine Operators						
1–5	12,528	$1,887,443	10,955	$2,562,832	675,389	$289,453
6–19	16,125	2,535,563	13,846	3,632,672	1,097,109	470,190
20–500	17,685	3,890,799	13,986	6,110,644	2,219,845	951,362
501+	1,672	634,888	1,101	1,381,516	746,628	319,983
All Mine Sizes	48,010	8,948,693	39,889	13,687,664	4,738,971	2,030,988

*These additional expenditures are shown for illustrative purposes only and are not included in the costs of this proposal, since they were included in analyses of costs when standards were promulgated.

TABLE IV–8.—IMPACT OF PROPOSED RULE ON INDEPENDENT CONTRACTORS GIVEN INCREASED COMPLIANCE RESPONSE TO HIGHER PENALTY ASSESSMENTS

Contractor employment size	Old number of violations	Old proposed penalties	New number of violations	New proposed penalties	Change in penalties	Additional expenditures to improve compliance*
Impact on Coal Independent Contractors						
1–5	2,856	$308,649	2,607	$361,058	$52,409	$22,461
6–19	757	86,319	678	113,178	26,859	11,511
20–500	1,479	314,195	1,349	355,952	41,757	17,896
501+	1	2,000	1	1,060	−940	−403
All Contractor Sizes	5,093	711,163	4,636	831,247	120,084	51,465
Impact on Metal/Nonmetal Independent Contractors						
1–5	1,609	$200,947	1,377	$318,731	$117,784	$50,479
6–19	1,048	109,837	905	150,508	40,671	17,430
20–500	1,183	192,151	998	267,210	75,059	32,168
501+	66	14,876	52	30,615	15,739	6,745
All Contractor Sizes	3,906	517,811	3,332	767,064	249,253	106,823

*These additional expenditures are shown for illustrative purposes only and are not included in the costs of this proposal, since they were included in analyses of costs when standards were promulgated.

The "Change in Penalties" column represents the increase in penalties, relative to the baseline, for remaining violations. The total change in proposed penalty assessments is approximately $15.8 million for coal mine operators, $0.1 million for coal independent contractors, $4.7 million for MNM mine operators, and $0.2 million for MNM independent contractors. The sum of these four numbers, $20.9 million, is the total cost of the proposed rule.

To reduce the number of violations in response to the higher penalty assessments, MSHA assumes that mines will increase costs to improve compliance. The column, "Additional Expenditures to Improve Compliance,"

represents MSHA's estimate of these increased compliance costs. These estimates are based on the same assumption that the elasticity of response is −0.3 and the additional assumption that the increased compliance activities will be undertaken by the mining industry to avoid increased penalties. These increased compliance costs to avoid higher penalties are not counted as a cost of this proposed rule, because full compliance with MSHA standards is assumed when standards are promulgated.

Table IV–9 summarizes the impacts by mining sector.

TABLE IV–9.—IMPACT OF PROPOSED RULE, BOTH WITH UNCHANGED COMPLIANCE AND WITH INCREASED COMPLIANCE RESPONSE TO HIGHER PENALTY ASSESSMENTS

Mining sector	Old proposed penalties	New proposed penalties, same compliance	Change in penalties, same compliance	Percent change in penalties, same compliance
Same Number of Violations				
Coal	$15,383,744	$48,929,473	$33,545,729	218
Metal	1,396,682	4,054,371	2,657,689	190
Nonmetal	594,888	1,171,774	576,886	97
Sand and Gravel	3,113,522	5,544,307	2,430,785	78
Stone	4,361,412	8,818,026	4,456,614	102
Total	24,850,248	68,517,951	43,667,703	176

Mining sector	Additional expenditures to improve compliance*	New proposed penalties, improved compliance	Change in penalties, improved compliance	Percent change in penalties, improved compliance
Reduced Number of Violations				
Coal	$6,826,782	$31,312,902	$15,929,158	104
Metal	524,403	2,620,288	1,223,606	88
Nonmetal	132,222	903,406	308,518	52
Sand and Gravel	522,167	4,331,911	1,218,389	39
Stone	959,019	6,599,123	2,237,711	51
Total	8,964,592	45,767,630	20,917,382	84

*These additional expenditures are shown for illustrative purposes only and are not included in the costs of this proposal, since they were included in analyses of costs when standards were promulgated.

C. Benefits

The benefits of the proposed rule are the reduced number of injuries and fatalities that would result from increased compliance with MSHA's health and safety standards and regulations in response to higher penalty assessments. MSHA projects that higher penalties will induce mine operators to reduce all safety and health violations. The reduction in the number of violations, particularly S&S violations, or those reasonably likely to result in reasonably serious injury or illness, will reduce the number and severity of injuries and illnesses.

V. Feasibility

MSHA has concluded that the requirements of the proposed rule are technologically and economically feasible.

A. Technological Feasibility

The proposed rule is a regulation, not a standard. It does not involve activities on the frontiers of scientific knowledge. The mining industry has been complying with the adjudication and payment of civil penalties for decades. MSHA concludes, therefore, that the proposed rule is technologically feasible.

B. Economic Feasibility

MSHA estimates that the yearly increased penalty assessments issued to coal mines as a result of the proposed rule will be $15.9 million dollars, which is equal to about 0.07 percent of coal mine sector revenues of $22.1 billion in 2004. MSHA estimates that the yearly increased penalty assessments issued to MNM mines as a result of the proposed rule will be $5.0 million dollars, which is equal to about 0.01 percent of MNM mine sector revenues of $44.0 billion in 2004. Since the total estimated increased penalty assessments for both the coal and MNM mine sectors are well below one percent of their estimated revenues, MSHA concludes that the proposed rule is economically feasible for the mining industry.[1]

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small entities. Based on that analysis, MSHA has made a determination with respect to whether

[1] As shown earlier, in response to increased penalty assessments, MSHA expects that coal mine operators and contractors will spend an additional $6.8 million and MNM operators and contractors an additional $2.1 million to increase compliance with MSHA standards and regulations so as to reduce the number and amount of civil penalty assessments otherwise received. But the costs to achieve compliance with these standards and regulations have already been estimated and recognized, under full compliance assumptions, when the standards and regulations were promulgated. Therefore, the costs associated with improved compliance are not properly attributable to the proposed rule. To include them as a cost of the proposed rule would be to double-count them.

the agency can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Unless able to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, MSHA must develop an initial regulatory flexibility analysis.

MSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The factual basis for this certification is presented in full in Chapter V of the PREA and in summary form below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impacts of agency rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the agency's rules on them will also tend to be different. It is for this reason that "small mines," as traditionally defined by MSHA as those employing fewer than 20 workers, are of special concern to MSHA. In addition, for this proposed rule, MSHA has examined the cost on mines with five or fewer employees to ensure that this subset of mines is not significantly and adversely impacted by the proposed rule.

This analysis complies with the requirements of the RFA for an analysis of the impacts on "small entities" while continuing MSHA's traditional definition of "small mines." Both the proposal and this analysis reflect MSHA's concern for mines with 5 or fewer employees. MSHA concludes that it can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. MSHA has determined that this is the case for mines with fewer than 20 employees and mines with 500 or fewer employees. In its detailed factual basis below, MSHA will also show effects of the proposal on mines with 5 or fewer employees.

B. Factual Basis for Certification

MSHA's analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated costs are less than one percent of the estimated revenues, MSHA believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated costs are equal to or exceed one percent of revenues, it tends to indicate that further analysis may be warranted.

Normally, the analysis of the costs or economic impact of a rule assumes that mine operators are in 100% compliance with a rule. Under the assumption that mine operators are in 100% compliance with all of MSHA's rules, there would be no cost of compliance with the proposed rule, since no mine operator would be exposed to civil penalties. For purposes of analyzing the effects on small mines, MSHA reverses this usual assumption and instead analyzes the increased penalty assessments for mines not in compliance with the agency's other rules.

For coal mines, estimated 2004 production was 4.6 million tons for mines with 1–5 employees, 28.7 million tons for mines with 1–19 employees, and 896.8 million tons for mines with 1–500 employees. Using the 2004 price of coal of $19.93 per ton, the 2004 coal revenues are estimated to be approximately $91 million for mines with 1–5 employees, $572 million for mines with 1–19 employees, and $17,872 million for mines with 1–500 employees. Dividing the increase in penalties by the revenues in each mine size category, the cost of the rule for coal mines is 0.17% of revenues for mines with 1–5 employees, 0.10% of revenues for mines with 1–19 employees, and 0.07% of revenues for mines with 1–500 employees. Further details are shown in Table VI–1.

For MNM mines, the total 2004 revenue generated by the MNM industry ($44.0 billion)[2] was divided by the total number of employee hours to arrive at the average revenue per hour of employee production ($145.90). The $145.90 was multiplied by employee hours in specific mine size categories to arrive at estimated revenues for these categories. This approach was used to determine the estimated revenues for the MNM mining industry because MSHA does not collect data on MNM production. The 2004 MNM revenues are estimated to be approximately $3.9 billion for mines with 1–5 employees, $15.4 billion for mines with 1–19 employees, and $40.6 billion for mines with 1–500 employees. Dividing the increase in penalties by the revenues in each mine size category, the cost of the rule for MNM mines is 0.02% of revenues for mines with 1–5 employees, 0.01% of revenues for mines with 1–19 employees, and 0.01% of revenues for mines with 1–500 employees. Further details are shown in Table VI–1.

TABLE VI–1.—INCREASE IN PENALTIES DUE TO PROPOSED RULE COMPARED TO MINE REVENUES, BY MINE SIZE

Employment size	Number of mines	Increase in penalties	Estimated revenue (millions)	Increase in penalties per mine	Penalty increase as % of revenue
Coal Mines					
1–5 employees	560	$156,124	$91	$279	0.17
1–19 employees	1,149	586,243	572	510	0.10
1–500 employees	2,000	13,279,975	17,872	6,640	0.07

[2] U.S. Department of the Interior, U.S. Geological Survey, *Mineral Commodity Summaries 2005*, January 2005, p. 8.

TABLE VI–1.—INCREASE IN PENALTIES DUE TO PROPOSED RULE COMPARED TO MINE REVENUES, BY MINE SIZE—Continued

Employment size	Number of mines	Increase in penalties	Estimated revenue (millions)	Increase in penalties per mine	Penalty increase as % of revenue
All mines	2,011	15,929,158	22,144	7,921	0.07
M/NM Mines					
1–5 employees	6,370	793,173	3,903	125	0.02
1–19 employees	10,771	1,930,953	15,379	179	0.01
1–500 employees	12,447	4,225,857	40,628	340	0.01
All mines	12,467	4,988,224	44,000	400	0.01

As shown in Table VI–1, when applying MSHA's and SBA's definitions of small mines, yearly costs of the proposed rule are substantially less than 1 percent of estimated yearly revenues, well below the level suggesting that the rule might have a significant economic impact on a substantial number of small entities. Accordingly, MSHA has certified that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by the rule.

VII. Paperwork Reduction Act of 1995

The proposed rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

The proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) requires no further agency action or analysis.

B. Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

The proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

The proposed rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. The proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. MSHA has determined that the proposed rule would meet the applicable standards provided in Section 3 of Executive Order 12988.

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

The proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132: Federalism

The proposed rule 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." Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The proposed rule does not have "tribal implications" because it does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

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

The proposed rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as the proposed rule will result in added yearly civil penalty assessments of approximately $15.9 million to the coal mining industry, relative to annual revenues of $22.1 billion in 2004, it is not a "significant energy action" because it is not "likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined

and certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: September 5, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

For the reasons set forth in the preamble, MSHA proposes to revise 30 CFR part 100 to read as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

Sec.

Authority: 30 U.S.C. 815, 820, and 957; Pub. L. 109–236, 120 Stat. 493.

§ 100.1 Scope and purpose.

This part provides the criteria and procedures for proposing civil penalties under sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The purpose of this part is to provide a fair and equitable procedure for the application of the statutory criteria in determining proposed penalties for violations, to maximize the incentives for mine operators to prevent and correct hazardous conditions, and to assure the prompt and efficient processing and collection of penalties.

§ 100.2 Applicability.

The criteria and procedures in this part are applicable to all proposed assessments of civil penalties for violations of the Mine Act and the standards and regulations promulgated pursuant to the Mine Act, as amended. MSHA shall review each citation and order and shall make proposed assessments of civil penalties.

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* (1) The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than $60,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the proposed civil penalty shall be based on the criteria set forth in sections 105(b) and 110(i) of the Mine Act. These criteria are:

(i) The appropriateness of the penalty to the size of the business of the operator charged;

(ii) The operator's history of previous violations;

(iii) Whether the operator was negligent;

(iv) The gravity of the violation;

(v) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and

(vi) The effect of the penalty on the operator's ability to continue in business.

(2) A regular assessment is determined by first assigning the appropriate number of penalty points to the violation by using the appropriate criteria and tables set forth in this section. The total number of penalty points will then be converted into a dollar amount under the penalty conversion table in paragraph (g) of this section. The penalty amount will be adjusted for demonstrated good faith in accordance with paragraph (f) of this section.

(b) *The appropriateness of the penalty to the size of the business of the operator charged.* The appropriateness of the penalty to the size of the production operator's business is calculated by using both the size of the mine cited and the size of the controlling entity of the mine. The size of coal mines and their controlling entities is measured by coal production. The size of metal and nonmetal mines and their controlling entities is measured by hours worked. The size of independent contractors is measured by the total hours worked at all mines. Penalty points for size are assigned based on Tables I to V of this section. As used in these tables, the terms "annual tonnage" and "annual hours worked" mean coal produced and hours worked in the previous calendar year. In cases where a full year of data is not available, the coal produced or hours worked is prorated to an annual basis. This criterion accounts for a maximum of 25 penalty points.

TABLE I.—SIZE OF COAL MINE

Annual tonnage of mine	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	2
Over 30,000 to 50,000	4
Over 50,000 to 100,000	6
Over 100,000 to 200,000	8
Over 200,000 to 300,000	10
Over 300,000 to 500,000	12
Over 500,000 to 800,000	14
Over 800,000 to 1.1 million	16
Over 1.1 million to 2 million	18
Over 2 million	20

TABLE II.—SIZE OF CONTROLLING ENTITY—COAL MINE

Annual tonnage	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

TABLE III.—SIZE OF METAL/NONMETAL MINE

Annual hours worked at mine	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	2
Over 20,000 to 30,000	4
Over 30,000 to 60,000	6
Over 60,000 to 100,000	8
Over 100,000 to 200,000	10
Over 200,000 to 300,000	12
Over 300,000 to 500,000	14
Over 500,000 to 700,000	16
Over 700,000 to 1 million	18
Over 1 million	20

TABLE IV.—SIZE OF CONTROLLING ENTITY—METAL/NONMETAL MINE

Annual hours worked	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

TABLE V.—SIZE OF INDEPENDENT CONTRACTOR

Annual hours worked at all mines	Penalty points
0 to 10,000	0
Over 10,000 to 20,000	2
Over 20,000 to 30,000	4
Over 30,000 to 60,000	6
Over 60,000 to 100,000	8
Over 100,000 to 200,000	10

TABLE V.—SIZE OF INDEPENDENT CONTRACTOR—Continued

Annual hours worked at all mines	Penalty points
Over 200,000 to 300,000	12
Over 300,000 to 500,000	14
Over 500,000 to 700,000	16
Over 700,000 to 1 million	18
Over 1 million	20

(c) *History of previous violations.* An operator's history of previous violations is based on both the total number of violations and the number of repeat violations of the same standard in a preceding 15-month period. Only assessed violations that have been paid or finally adjudicated, or have become final orders of the Commission will be included in determining an operator's history.

(1) *Total number of violations.* For production operators, penalty points are calculated on the basis of the number of violations per inspection day (VPID)(Table VI of this section). Penalty points are not calculated for mines with fewer than ten violations in the specified history period. For independent contractors, penalty points are calculated on the basis of the total number of violations at all mines (Table VII of this section). This aspect of the history criterion accounts for a maximum of 25 penalty points.

TABLE VI.—MINE OPERATORS

Violations per inspection day	Penalty points
0 to 0.3	0
Over 0.3 to 0.5	2
Over 0.5 to 0 7	4
Over 0.7 to 0.9	6
Over 0.9 to 1.1	8
Over 1.1 to 1.3	10
Over 1.3 to 1.5	13
Over 1.5 to 1.7	16
Over 1.7 to 1.9	19
Over 1.9 to 2.1	22
Over 2.1	25

TABLE VII.—INDEPENDENT CONTRACTORS

Number of violations	Penalty points
0 to 5	0
Over 5 to 10	2
Over 10 to 15	4
Over 15 to 20	6
Over 20 to 25	8
Over 25 to 30	10
Over 30 to 35	13
Over 35 to 40	16
Over 40 to 45	19
Over 45 to 50	22

TABLE VII.—INDEPENDENT CONTRACTORS—Continued

Number of violations	Penalty points
Over 50	25

(2) *Repeat violations of the same standard.* Repeat violation history is based on the number of violations of the same standard. This aspect of the history criterion accounts for a maximum of 20 penalty points (Table VIII of this section).

TABLE VIII.—REPEAT VIOLATIONS OF THE SAME STANDARD

Number of violations	Penalty points
5 or fewer	0
6	1
7	2
8	3
9	4
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	14
19	16
20	18
More than 20	20

(d) *Negligence.* Negligence is conduct, either by commission or omission, which falls below a standard of care established under the Mine Act to protect miners against the risks of harm. Under the Mine Act, an operator is held to a high standard of care. A mine operator is required to be on the alert for conditions and practices in the mine that affect the safety or health of miners and to take steps necessary to correct or prevent hazardous conditions or practices. The failure to exercise a high standard of care constitutes negligence. The negligence criterion assigns penalty points based on the degree to which the operator failed to exercise a high standard of care. When applying this criterion, MSHA considers mitigating circumstances which may include, but are not limited to, actions taken by the operator to prevent or correct hazardous conditions or practices. This criterion accounts for a maximum of 50 penalty points, based on conduct evaluated according to Table IX of this section.

TABLE IX.—NEGLIGENCE

Categories	Penalty points
No negligence	0
(The operator exercised diligence and could not have known of the violative condition or practice.)	
Low negligence	10
(The operator knew or should have known of the violative condition or practice, but there are considerable mitigating circumstances.)	
Moderate negligence	20
(The operator knew or should have known of the violative condition or practice, but there are mitigating circumstances.)	
High negligence	35
(The operator knew or should have known of the violative condition or practice, and there are no mitigating circumstances.)	
Reckless disregard	50
(The operator displayed conduct which exhibits the absence of the slightest degree of care.)	

(e) *Gravity.* Gravity is an evaluation of the seriousness of the violation. This criterion accounts for a maximum of 88 penalty points, as derived from the Tables X through XII of this section. Gravity is determined by:

(1) The likelihood of the occurrence of the event against which a standard is directed;

(2) The severity of the illness or injury if the event occurred or were to occur; and

(3) The number of persons potentially affected if the event occurred or were to occur.

TABLE X.—LIKELIHOOD

Likelihood of occurrence	Penalty points
No likelihood	0
Unlikely	10
Reasonably likely	30
Highly likely	40
Occurred	50

TABLE XI.—SEVERITY

Severity of injury or illness if the event occurred or were to occur	Penalty points
No lost work days	0
(All occupational injuries and illnesses as defined in 30 CFR part 50 except those listed below.)	
Lost work days or restricted duty	5

TABLE XI.—SEVERITY—Continued

Severity of injury or illness if the event occurred or were to occur	Penalty points
(Any injury or illness which would cause the injured or ill person to lose one full day of work or more after the day of the injury or illness, or which would cause one full day or more of restricted duty.)	
Permanently disabling	10
(Any injury or illness which would be likely to result in the total or partial loss of the use of any member or function of the body.)	
Fatal	20
(Any work-related injury or illness resulting in death, or which has a reasonable potential to cause death.)	

TABLE XII.—PERSONS POTENTIALLY AFFECTED

Number of persons potentially affected if the event occurred or were to occur	Penalty points
0	0
1	1
2	2
3	4
4	6
5	8
6	10
7	12
8	14
9	16
10 or more	18

(f) *The demonstrated good faith of the operator in abating violation.* This criterion provides a 10% reduction in the penalty amount of a regular assessment where the operator abates the violation within the time set by the inspector.

(g) *Penalty conversion table.* The penalty conversion table is used to convert the total penalty points to a dollar amount.

TABLE XIII.—PENALTY CONVERSION TABLE

Points	Penalty ($)
60 or fewer	112
61	121
62	131
63	142
64	154
65	167
66	181
67	196
68	212
69	230
70	249
71	270
72	293
73	317
74	343
75	372
76	403
77	436
78	473
79	512
80	555
81	601
82	651
83	705
84	764
85	828
86	897
87	971
88	1,052
89	1,140
90	1,235
91	1,337
92	1,449
93	1,569
94	1,700
95	1,842
96	1,995
97	2,161
98	2,341
99	2,536
100	2,748
101	2,976
102	3,224
103	3,493
104	3,784
105	4,099
106	4,440
107	4,810
108	5,211
109	5,645
110	6,115
111	6,624
112	7,176
113	7,774
114	8,421
115	9,122
116	9,882
117	10,705
118	11,597
119	12,563
120	13,609
121	14,743
122	15,971
123	17,301
124	18,742
125	20,302
126	21,993
127	23,825
128	25,810
129	27,959
130	30,288
131	32,810
132	35,543
133	38,503
134	41,574
135	44,645
136	47,716
137	50,787
138	53,858
139	56,929
140 or more	60,000

(h) *The effect of the penalty on the operator's ability to continue in business.* MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit information to the District Manager concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

§ 100.4 Unwarrantable failure.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be $2,000.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be $4,000.

§ 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under § 100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in § 100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $6,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than $275 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(a)(2) of the Mine Act may be assessed a civil penalty of not more than $220,000. For purposes of this section, a flagrant violation means "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury."

(f) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than $5,000 and not more than $60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine which has a reasonable potential to cause death.

§ 100.6 Procedures for review of citations and orders; procedures for assessment of civil penalties and conferences.

(a) All parties shall be afforded the opportunity to review with MSHA each citation and order issued during an inspection. It is within the sole discretion of MSHA to grant a request for a conference and to determine the nature of the conference.

(b) Upon notice by MSHA, all parties will have five days within which to submit additional information or request a safety and health conference with the District Manager or designee. A conference request may include a request to be notified of, and to participate in, a conference initiated by another party.

(c) When a conference is conducted, the parties may submit any additional relevant information relating to the violation, either prior to or at the conference. To expedite the conference, the official assigned to the case may contact the parties to discuss the issues involved prior to the conference.

(d) MSHA will consider all relevant information submitted in a timely manner by the parties with respect to the violation. When the facts warrant a finding that no violation occurred, the citation or order will be vacated. Upon conclusion of the conference, or expiration of the conference request period, all citations that are abated and all orders will be promptly referred to MSHA's Office of Assessments. The Office of Assessments will use the citations, orders, and inspector's evaluation as the basis for determining the appropriate amount of a proposed penalty.

§ 100.7 Notice of proposed penalty; notice of contest.

(a) A notice of proposed penalty will be issued and served by certified mail upon the party to be charged and by regular mail to the representative of miners at the mine after the time permitted to request a conference under § 100.6 expires, or upon the completion of a conference, or upon review by MSHA of additional information submitted in a timely manner.

(b) Upon receipt of the notice of proposed penalty, the party charged shall have 30 days to either:

(1) Pay the proposed assessment. Acceptance by MSHA of payment tendered by the party charged will close the case.

(2) Notify MSHA in writing of the intention to contest the proposed penalty. When MSHA receives the notice of contest, it advises the Federal Mine Safety and Health Review Commission ("Commission") of such notice. No proposed penalty which has been contested before the Commission shall be compromised, mitigated or settled except with the approval of the Commission.

(c) If the proposed penalty is not paid or contested within 30 days of receipt, the proposed penalty becomes a final order of the Commission and is not subject to review by any court or agency.

§ 100.8 Service.

(a) All operators are required by part 41 (Notification of Legal Identity) of this chapter to file with MSHA the name and address of record of the operator. All representatives of miners are required by part 40 (Representative of Miners) of this chapter to file with MSHA the mailing address of the person or organization acting in a representative capacity. Proposed penalty assessments delivered to those addresses shall constitute service.

(b) If any of the parties choose to have proposed penalty assessments mailed to a different address, the Office of Assessments must be notified in writing of the new address. Delivery to this address shall also constitute service.

(c) Service for operators who fail to file under part 41 of this chapter will be upon the last known business address recorded with MSHA.

[FR Doc. 06–7512 Filed 9–5–06; 1:11 pm]
BILLING CODE 4510–43–U

Notices

Federal Register
Vol. 71, No. 174
Friday, September 8, 2006

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–2006–0140]

Bayer CropScience; Availability of an Environmental Assessment and a Preliminary Decision for an Extension of a Determination of Nonregulated Status for Rice Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a preliminary decision to extend a determination of nonregulated status. The original determination and the requested extension involve rice lines genetically engineered to be tolerant to the herbicide glufosinate. We have received a petition from Bayer CropScience requesting the extension for a rice line, designated as LLRICE601, based on its similarity to previously deregulated rice lines, LLRICE62 and LLRICE06.

DATES: We will consider all comments we receive on or before October 10, 2006.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0140 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0140, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0140.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Neil Hoffman, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–6331. To obtain copies of the extension request or the environmental assessment, contact Mr. Steve Bennett at (301) 734–5672; e-mail: *steven.m.bennett@aphis.usda.gov*. The extension request and the environmental assessment are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/06_23401p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/06_23401p_ea.pdf*.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6 provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. The section describes the form that a petition for a determination of nonregulated status must take, the information that must be included in the petition, and the actions that will be taken by APHIS once a petition has been submitted. Under the regulations in § 340.6(e), a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism (*i.e.*, the organism with nonregulated status) and the regulated article in question.

On August 18, 2006, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 06–234–01p) from Bayer CropScience (Bayer) of Research Triangle Park, NC, for rice (*Oryza sativa* L.) designated as Liberty Link® Transformation Event LLRICE601, which has been genetically engineered for tolerance to the herbicide glufosinate. The request Bayer CropScience submitted seeks an extension of the determination of nonregulated status issued [1] in response to APHIS petition number 98–329–01p for glufosinate-tolerant rice transformation events LLRICE06 and LLRICE62, the antecedent organisms. Because rice line LLRICE601 is similar to antecedent rice lines LLRICE06 and LLRICE62, Bayer CropScience requests a determination that rice line LLRICE601 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On July 31, 2006, Bayer CropScience notified APHIS that trace levels of LLRICE601 were detected in long grain commercial rice. Subsequently, Bayer CropScience supplied APHIS and the Food and Drug Administration (FDA) with information about the molecular characterization and agronomic performance of LLRICE601. APHIS completed a preliminary risk

[1] *See* 64 FR 22595, published April 27, 1999, Docket No. 98–126–2.

assessment and determined that LLRICE601 did not pose any environmental concerns.

Analysis

Like the antecedent organisms LLRICE62 and LLRICE06, rice line LLRICE601 has been genetically engineered to contain the *bar* gene isolated from the bacterium *Streptomyces hygroscopicus*, under the control of a 35S promoter sequence derived from cauliflower mosaic virus (35S CaMV). The *bar* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme that confers tolerance to the herbicide glufosinate. LLRICE601 and LLRICE62 produce a single PAT protein of the same apparent molecular weight, as demonstrated by Western blotting. LLRICE06 does not produce sufficient protein for the size to be determined by this method. The level of expression of the PAT protein produced in LLRICE601 plants falls between that of the two antecedent organisms LLRICE62 and LLRICE06.

The DNA construct was introduced into the LLRICE06 and LLRICE62 by direct gene transfer, but was introduced into LLRICE601 by *Agrobacterium*-mediated transformation. Both direct gene transfer and *Agrobacterium*-mediated transformation are standard practices for introduction of genetic material into plant genomes; APHIS does not, therefore, consider this difference significant.

The 35S CaMV promoter is slightly longer for LLRICE601 than it is for LLRICE06 or LLRICE62. APHIS does not consider this difference significant. The promoter in LLRICE601 has been used in other events that have APHIS and FDA approval, and no unusual effects have been observed in those events. The 35S CaMV promoter is among the most common gene sequences used in genetically engineered plants and has a long history of safe use.

LLRICE601 uses the *nos* (nopaline synthase) terminator, while LLRICE06 and LLRICE62 use the 35S CaMV terminator. The function of the 3[1] terminator is to provide a polyadenylation site, a necessary part of the mRNA transcript of the gene. In LLRICE601, the *nos* terminator is truncated. However, the PAT protein is still made, so the truncation does not affect the function of the transgene. The *nos* terminator is widely used in genetic engineering, and has been approved in a number of deregulated products, *e.g.*, LLCotton25 and MON810 corn. APHIS does not consider LLRICE601's use of a different terminator than the antecedent organisms to be a significant difference because both sequences provide the same function.

LLRICE06 was originally genetically engineered into the medium grain variety M202, and LLRICE62 was originally genetically engineered into the medium grain variety Bengal and has since been bred into other rice varieties, including long grain varieties. LLRICE601 was originally genetically engineered in the long grain variety Cocodrie. APHIS does not consider this difference significant.

Rice line LLRICE601 has been considered a regulated article under APHIS regulations in 7 CFR part 340, and it was field tested under APHIS authorization between 1998 and 2001. Numerous field trials of LLRICE601 were conducted under notification during this time period.

The sequence of the PAT protein produced in LLRICE601 is identical to the sequence produced in the approved cotton line LLCotton25. These sequences vary from the PAT proteins in LLRICE06 and LLRICE62 by a single amino acid at position 2, where the former have an aspartic acid residue and the latter have a serine. APHIS does not consider this difference to be significant because lines corresponding to both versions of the protein have undergone applicable reviews by APHIS and FDA.

Conclusion

Accordingly, we have concluded that rice line LLRICE601 is similar to the antecedent organisms in APHIS petition number 98–329–01p, and we have reached a preliminary decision that rice line LLRICE601 should no longer be regulated under the regulations in 7 CFR part 340.

We will consider all comments we receive regarding this preliminary decision during the comment period for this notice (see **DATES** above), after which APHIS will issue its final decision. Until the final decision is made, LLRICE601 will remain a regulated article.

Should the preliminary decision be made final, LLRICE601 would no longer be considered a regulated article under the regulations in 7 CFR part 340, and the requirements pertaining to regulated articles under those regulations would no longer apply to the field testing, importation, or interstate movement of LLRICE601 or its progeny.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed extension of a determination of nonregulated status for LLRICE601, an environmental assessment (EA) has been prepared. The EA was 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 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room (*see* **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). The EA is also available as described under **FOR FURTHER INFORMATION CONTACT.** We will consider all comments we receive regarding the EA during the comment period for this notice (see **DATES** above).

In accordance with § 372.9(e) of APHIS' NEPA Implementing Procedures, the APHIS decisionmaker will consider the alternatives discussed in environmental documents in reaching a determination on the merits of the proposed action (*i.e.*, the decision regarding the regulatory status of rice line LLRICE601).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 1st day of September 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14921 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0027]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and subcommittees on September 18–22, 2006. The Committee will discuss: (1) Determination of Cooking Parameters for Safe Seafood for Consumers, and (2) Assessment of the Food Safety

Importance of *Mycobacterium avium* subspecies *paratuberculosis*.

DATES: The full Committee will hold an open meeting on Friday, September 22, 2006, 8:30 a.m. to 1:30 p.m. The Subcommittee on Determination of Cooking Parameters for Safe Seafood for Consumers will hold open meetings on Monday and Tuesday, September 18–19, 2006, from 8:30 a.m. to 5 p.m. The Subcommittee on Assessment of the Food Safety Importance of *Mycobacterium avium* subspecies paratuberculosis will hold open meetings on Wednesday and Thursday, September 20–21, 2006, from 8:30 a.m. to 5 p.m.

ADDRESSES: The September 18–21, 2006, subcommittee meetings will be held at the Aerospace Building, 901 "D" St., SW., Room 369, Washington, DC. The September 22, 2006, full committee meeting will be held in the conference room at the south end of the U.S. Department of Agriculture (USDA) cafeteria located in the South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All documents related to full Committee meetings will be available for public inspection in the Food Safety and Inspection Service (FSIS) Docket Room, 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/*.

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Internet Web page *http://www.fsis.usda.gov/News/Meetings_&_Events/*. Please note that the meeting agenda is subject to change due to the time required for committee discussions, thus, sessions could start or end earlier or later than anticipated. Please plan accordingly if you would like to attend a particular session.

Also, the official transcript of the September 22, 2006 full Committee meeting, when it becomes available, will be kept in the FSIS Docket Room at the above address and will also be posted on the FSIS Internet Web page *http://www.fsis.usda.gov/About/NACMCF_Meetings/*.

The mailing address for the contact person below, Karen Thomas, is: Food Safety and Inspection Service, U.S. Department of Agriculture, Office of Public Health Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments at the September 22, plenary session should contact Karen Thomas, phone (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas@fsis.usda.gov*, or at the mailing address above. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas by September 14, 2006.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/About/NACMCF_Charter/*.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Richard Raymond, Under Secretary for Food Safety, USDA, is the Committee Chair; Dr. Robert E. Brackett, Director of the Department of Health and Human Services Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Gerri Ransom, FSIS, is the Executive Secretariat.

At the subcommittee meetings the week of September 18–21, 2006 the Committee will discuss:

- The determination of cooking parameters for safe seafood for consumers, and
- Assessment of the food safety importance of *Mycobacterium avium* subspecies *paratuberculosis*.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in both electronic formats on the FSIS web page, as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the electronic and information technology accessibility standards contained in Section 508 of the Rehabilitation Act in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision-impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables will be available for inspection in the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web

page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on September 6, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. 06–7563 Filed 9–6–06; 11:26 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comments, (4) Project Proposal/Possible Action, (5) General Discussion (6) Plan Schedule for the Next Year, (7) Next agenda.

DATES: The meeting will be held on September 18, 2006, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or purpose agenda items must send their names and proposals to Tricia Christofferson, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1268; e-mail *ggaddin@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 15, 2006 will have the opportunity to address the committee at those sessions.

Dated: August 31, 2006.

Paul Montgomery,

Acting Designated Federal Official.

[FR Doc. 06–7494 Filed 9–7–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China

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

DATES: *Effective Date:* September 8, 2006.

SUMMARY: We determine that imports of certain lined paper products ("CLPP") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination" section of this notice. Moreover, we determine that critical circumstances exist with regard to certain imports of CLPP from the PRC. *See* the "Critical Circumstances" section below.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336 or 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 17, 2006, the Department published in the **Federal Register** ("FR") the preliminary determination that CLPP from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 733 of the Act, covering three exporters and producers as mandatory respondents [1] and 27 separate-rate respondents.[2] *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*. 71 FR 16965 (April 17, 2006) (*"Preliminary Determination"*). Since the publication of the *Preliminary Determination* the following events have occurred.

On April 13, 2006, we sent a separate-rate verification agenda to separate-rate applicants, Planet International. On April 18, 2006, Planet International notified the Department of its withdrawal from the verification. On May 4, 2006, we sent a separate-rate verification agenda to a separate-rate applicant, Lansheng, and on May 8, 2006, it notified the Department of its withdrawal from the verification. From May 8 through 18, 2006, the Department conducted a sales verification of Lian Li and a factors verification of its unaffiliated producers Shanghai Sentian Paper Products Co., Ltd. ("Sentian"),

[1] (1) Watanabe Paper Product (Shanghai) Co., Ltd. ("Watanabe Shanghai"); Hotrock Stationery (Shenzhen) Co. ("Watanabe Shenzhen"); and Watanabe Paper Product (Linqing) Co., Ltd. ("Watanabe Linqing"), collectively (the "Watanabe Group"); (2) Atico International (HK) Ltd. & Atico Overseas Ltd. (collectively "Atico"); and (3) Shanghai Lian Li Paper Products Co., Ltd. ("Lian Li"). On January 26, 2006, Atico submitted a letter informing the Department that it was unable to participate further in this investigation. As in the *Preliminary Determination*, we find that Atico does not merit a separate rate and will be subject to the PRC-wide entity. See *The PRC-Wide Rate and Use of Adverse Facts Available* section for further discussion.

[2] Anhui Light Industries International Co., Ltd. ("Anhui Light"), Changshu Changjiang Printing Co., Ltd. ("Changjiang"), Chinapack Ningbo Paper Products Co., Ltd. ("Chinapack"), Dongguan Yizhi Gao Paper Products Ltd. ("Yizhi Gao"), Essential Industries Limited ("Essential"), Fujian Hengda Group Co., Ltd. ("Hengda"), Haijing Stationery (Shanghai) Co., Ltd. ("Haijing"), Excel Sheen Limited ("Excel"), Maxleaf Stationary Ltd. ("Maxleaf"), Jiaxing Te Gao Te Paper Products Co., Ltd. ("Te Gao Te"), Linqing Silver Star Paper Products Co., Ltd. ("Linqing Silver"), MGA Entertainment (H.K.) Limited ("MGA"), Ningbo Guangbo Imports and Exports Co. Ltd. ("Ningbo"), Orient International Holding Shanghai Foreign Trade Co., Ltd. ("Orient"), Paperline Limited ("Paperline"), Planet (Hong Kong) International Company Ltd. ("Planet HK"), Planet International Company Ltd. ("Planet"), Shanghai Pudong Wenbao Paper Products Factory ("Wenbao Paper"), Shanghai Foreign Trade Enterprise Co., Ltd. ("SFTE"), Sunshine International Group (HK) Ltd. ("Sunshine"), Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd. ("Suzhou"), Suzhou Industrial Park You-You Trading Co., Ltd. ("You You Trading"), Wah Kin Stationery and Paper Product Limited ("Wah Kin"), and Yalong Paper Products (Kunshan) Co., Ltd. ("Yalong"), Shanghai Lansheng Stationery & Sporting Goods Import & Export Co., Ltd. ("Lansheng"), Yantai License Printing & Making Co., Ltd. ("Yantai"), You-You Paper Products (Suzhou) Co., Ltd. ("You-You"), Paperline Limited ("Paperline"), and Shanghai Pudong Wenbao Paper Products Factory ("Wenbao Paper"). Also, Paperline and Wenbao Paper are collectively known as ("Wenbao") and Planet and Planet Hong Kong are collectively known as ("Planet International").

and Shanghai Miaopanfang Paper Products Co., Ltd. ("MPF"). From May 29 through June 9, 2006, the Department conducted a sales and factors verification of Watanabe Linqing and Watanabe Shenzhen. *See* "Verification" Section below for additional information.

On June 1, 2006, the Department published in the FR the notice of amended preliminary determination to correct a ministerial error discovered with respect to the antidumping duty margin calculation for Lian Li, which also affected all companies for which the Department granted separate-rate status. We also preliminarily granted separate-rate status for You-You. *See Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Certain Lined Paper Products from the People's Republic of China*, 71 FR 31159 (June 1, 2006) ("*Amended Preliminary Determination*").

On June 13, 2006, Watanabe, Lian Li, and Petitioner [3] filed surrogate value information. On June 23, 2006, Petitioner filed a rebuttal surrogate value submission.

We invited parties to comment on our *Preliminary Determination* and verification reports. Case briefs were filed with the Department on July 28, 2006, by Excel, a separate-rate respondent; on July 31, 2006, by the Watanabe Group, Lian Li, and by separate-rate respondents MGA, Maxleaf, Te Gao Te, and Wenbao; and on August 1, 2006, by Petitioner.[4] On August 7, 2006, Watanabe and Lian Li filed rebuttal briefs responding to issues raised in the case briefs. On August 8, 2006, Petitioner filed a rebuttal brief.[5] On August 9, 2006, we rejected Petitioner's rebuttal brief because it contained argument that did not constitute a rebuttal. (On August 10, 2006, Petitioner timely refiled its redacted rebuttal brief.) On August 9, 2006, Petitioner filed a rebuttal brief commenting only on issues raised in Maxleaf's brief.[6]

Period of Investigation

The period of investigation is January 1, 2005, through June 30, 2005.

[3] The Association of American School Paper Suppliers and its individual members (MeadWestvaco Corporation; Norcom, Inc.; and Top Flight, Inc.).

[4] This case brief was timely because one copy was originally filed on July 31, 2006, as "bracketing not final."

[5] This rebuttal brief was timely because one copy was originally filed on August 7, 2006, as "bracketing not final."

[6] On August 4, 2006, we extended the time in which to file rebuttal to the briefs filed by Maxleaf and MGA due to a delay in the receipt of these briefs by the other parties.

Non-Market Economy Status of the PRC

On December 22, 2005, the Watanabe Group submitted a request that the Department reevaluate the PRC's status as a non-market economy (NME) country under the U.S. antidumping law. On February 2, 2006, the Department received a submission from the PRC Ministry of Commerce ("MOFCOM") expressing support for the Watanabe Group's request.

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. *See, e g., Notice of Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006); and *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005). A designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

The Department issued a memorandum to the file on May 15, 2006, determining that the Department shall continue to treat the PRC as an NME for purposes of the U.S. antidumping law. In the May 15 memorandum, the Department focused mainly on distortions in the banking sector. However, the Department also stated in that memorandum that it would issue a follow-up analysis concerning all six statutory factors that govern NME-country designation. Accordingly, the Department issued a memorandum to the file on August 30, 2006, providing the full underlying analysis of the May 15 decision to continue the PRC's NME designation.

Scope of Investigation [7]

The scope of this investigation includes certain lined paper products, typically school supplies,[8] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[9] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise, is within the scope of this petition whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this investigation are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;

[7] The Department has received several requests for scope clarifications from SchoolMax LLC, GEM Group Incorporated, Avenues in Leather, Inc., and ACCO Brands Corporation. The department has not addressed these requests in this final determination. However, the Department will consider the issues raised in these requests as scope requests in the event this proceeding goes to order.

[8] For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

[9] There shall be no minimum page requirement for looseleaf filler paper.

- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled,[10] measuring 6 inches by 9 inches; Also excluded from the scope of this investigation are the following trademarked products:
- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.[11]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[12]
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is caputred both ends of a 1" wide elastic fabric band. This band is located 2⅜" from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[13]
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[14]

Merchandise subject to this proceeding is typically imported under headings 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2050, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS).[15] The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by two mandatory respondents: The Watanabe Group and Lian Li and two of Lian Li's suppliers, Sentian and MPF, for use in our final determination. *See* the Department's verification reports on the record of this investigation in the Central Records Unit ("CRU"), Room B–099 of the main Commerce Department building. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this investigation are addressed in the Issues and Decision Memorandum, dated August 30, 2006 ("Issues and Decision Memo"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document which is on file in CRU in room B–099 in the main Department building, and is accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Critical Circumstances

On November 29, 2005, Petitioner alleged that there was a reasonable basis to believe or suspect critical circumstances existed with respect to the antidumping investigation of CLPP from the PRC. In the *Preliminary Determination*, the Department found that critical circumstances existed for imports of CLPP from Changjiang,

[10] "Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[11] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[12] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[13] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[14] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[15] During the investigation additional HTSUS headings were identified.

Hengda, Linqing Silver, SFTE, Wenbao Paper, Paperline, Wah Kin, and the PRC-wide entity. In addition, we found that critical circumstances did not exist for Anhui Light, Chinapack, Essential Industries Limited, Excel, Haijing, Te Gao Te, Lian Li, MGA, Ningbo, Orient, Planet International, Sunshine, Suzhou, You-You Trading, the Watanabe Group, and Yalong. *See* Memorandum to Stephen Claeys from Juanita Chen through Robert Bolling and Wendy Frankel: Lined Paper Products from the People's Republic of China: Preliminary Determination of Critical Circumstances, dated April 7, 2006 ("Prelim Critical Circumstances Memo").

Section 735(a)(3) of the Act provides that if the final determination of the Department is affirmative, then that fmding shall also include a finding of whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) There have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that in general, an increase in imports of at least 15 percent during the "relatively short period" over the imports during an immediately preceding period of comparable duration may be considered "massive."

Based on the changes made to both the comparison and base periods and as discussed further in the Issues and Decision Memo at Comment 26, the Department has re-examined its preliminary critical circumstances finding. For the final determination, we find critical circumstances exist for Changjiang, Hengda, Linqing Silver, SFTE, Wah Kin, Maxleaf, MGA, Yantai, and the PRC-wide entity. In addition, we find critical circumstances do not exist for Anhui Light, Chinapack, Essential, Excel, Haijing, Te Gao Te, Lian Li, Ningbo, Orient, Sunshine, Suzhou, You-You Trading, the Watanabe Group, Yalong, You-You, Wenbao Paper, and Paperline. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, through Wendy J. Frankel, Office Director, from Charles Riggle, Program Manager: Lined Paper Products from the People's Republic of China: Final Determination of Critical Circumstances, dated August 30, 2006.

Surrogate Country

In the Preliminary Determination, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination* at 19699, 19700. For the final determination, we made no changes to our findings with respect to the selection of a surrogate country.

Affiliation

In the Preliminary Determination, based on the evidence on the record, we preliminarily found that members of the Watanabe Group are affiliated pursuant to section 771(33) of the Act. We are also treating them as a single entity for purposes of this investigation. *See* Memorandum to Wendy Frankel, Director, from Charles Riggle, Program Manager: Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China: Affiliation and Treatment of the Watanabe Group as a Single Entity, dated April 7, 2006. Since the *Preliminary Determination*, the Department has found no information that would rebut this determination. Therefore, the Department continues to find that members of the Watanabe Group are affiliated, pursuant to section 771(33) of the Act, for this final determination.

Separate Rates

Since the *Preliminary Determination* and the *Amended Preliminary Determination*, the Department has received additional information from Yantai, Maxleaf, and Excel, allowing the Department to determine these companies' eligibility for separate-rate status. Therefore, for purposes of this final determination, the Department is granting separate-rate status to the following companies: the Watanabe Group, Lian Li, Anhui Light, Changjiang, Chinapack, Essential, Excel, Hengda, Haijing, Te Gao Te, Linqing Silver, Maxleaf, MGA, Ningbo, Orient, Paperline, Wenbao Paper, SFTE, Sunshine, Suzhou, You-You, You-You Trading, Wah Kin, Yalong, and Yantai. In addition, the Department attempted to conduct verifications of two separate-rate applicants, (i) Lansheng and (ii) Planet International,[16] both of whom withdrew from participating in verification.[17]. For further discussion of these changes in separate rates, see Final Determination Separate Rates Memorandum: Certain Lined Paper Products from the People's Republic of China, dated August 30, 2006. Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g.*, Final Determination of Sales at Less Than Fair Value: *Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the "Final Determination Margins" section below (except as noted).

Changes Since the Preliminary Determination

We have made the following changes since the *Preliminary Determination:*

Changes That Affect Both the Watanbe Group and Lian Li

- Where we used domestic prices as surrogate values we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. See Issues and Decision Memo at Comment 2.
- We have used the year-ended March 31, 2005, financial statements of Sundaram Multi Pap Ltd. and Shiv Ganga Paper Converters Pvt. Ltd. to value factory overhead, selling, general and administrative expenses, and profit. *See* Issues and Decision Memo at Comment 1.

Changes for the Watanabe Group

- Based on the information in Watanabe Linqing's minor corrections at verification, we have recalculated tbe

[16] The Department sent a verification agenda to Planet International.

[17] Therefore, neither of these entities has demonstrated its eligibility for separate-rate status. Accordingly, Lansheng and Planet International will be considered part of the PRC-wide entity for purposes of this final determination.

zinc wire usage rates for the necessary control numbers ("CONNUM"s) and valued this input with Indian Harmonized Tarrif Schedule number 7217.20.00.[18] *See* the Watanabe Group's May 31,2006, submission ("Watanabe Linqing Minor Corrections").

• We determined that Watanabe Linqing had unreported U.S. sales. *See* Decision Memo at Comment 8. We have assigned as adverse facts available ("AFA") to the Watanabe Group the initiation rate of 258.21 percent for those unreported sales.

• Based on verification findings, we are not granting the Watanabe Group a by-product offset. *See* Issues and Decision Memo at Comment 11.

• In their verification minor corrections, both Watanabe Shenzhen and Watanabe Linqing identified certain observations for which they had misreported shipment dates. *See* Watanabe Linqing Minor Corrections and the Watanabe Group's June 7, 2006, submission containing Watanabe Shenzhen's minor corrections. During the course of verification, the Department identified additional observations for which shipment date and/or payment date had been misreported. See Memorandum to the File Re: Verification of the Sales and Factors Response of Watanabe Paper Product (Linqing) Co., Ltd. in the Antidumping Investigation of Certain Lined Paper from the People's Republic of China ("Watanabe Linqing Verification Report") (July 21, 2006) and Memoradum to the File Re: Verification of the Sales and Factors Response of Hotrock Stationery (Shenzhen) Co., Ltd. in the Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("Watanabe Shenzhen Verification Report") (July 21, 2006). We have corrected these dates for the final results.

• During the course of the Watanabe Shenzhen verification we found that a billing adjustment ("BILLADJU") was misreported and we have corrected this for this final determination. See Watanabe Shenzhen Verification Report at 19.

• In the Watanabe Linqing Minor Corrections, Watanabe Linqing stated that it had misreported indirect labor ("INDLAB") hours for January. This affected one matching CONNUM which we have corrected for this final determination.

Changes for Lian Li

• We used the Indian domestic purchase prices for creamwove paper from *Indian Printer and Publisher* ("IPP") to calculate a simple average ofthe available POI IPP prices reflecting the GSM weights reported by Lian Li to value Lian Li's insert paper. *See* Issues and Decision Memo at Comment 4.

• For Lian Li's white paperboard, white/white paperboard, and grey/white board, we used the *IPP* paperboard price data to calculate a simple average of the available POI *IPP* prices reflecting the GSM weights used by Lian Li in its production of in-scope merchandise. *See* Issues and Decision Memo at Comment 4.

• We used the Indian domestic purchase prices for creamwove paper from *IPP* to calculate a simple average of the available POI *IPP* prices which reflect the GSM weights used by Lian Li to value Lian Li's recycled paper. *See* Issues and Decision Memo at Comment 5.

• We applied AFA to Lian Li's agency sales. *See* Issues and Decision Memo at Comment 15.

• Consistent with the Department's practice, for Lian Li's products that have a metal cover and back, we have included in the normal value of these products a value for the metal covers and backs. We also added to the U.S. price the same value for metal covers and backs. *See* Issues and Decision Memo at Comment 17.

• We applied AFA to Lian Li's paper consumption for its producers, Sentian and MPF. *See* Issues and Decision Memo at Comment 18.

• For Lian Li's producer, MPF, we corrected electricity consumption based on a minor correction found at verification. *See* Issues and Decision Memo at Comment 21.

• We found that it is not appropriate to grant a by-product offset for Lian Li's producers Sentian and MPF. *See* Issues and Decision Memo at Comment 23.

• In the preliminary determination's SAS calculation, we inadvertently truncated the reported thread consumption to four decimal places when we converted Lian Li's submitted factors of production ("FOP") Excel worksheet database, which had the effect of setting the values to zero. For the final determination, for those products using this material input, we have corrected the Department's error and have included Lian Li's reported consumption value for thread. *See* Issues and Decision Memo at Comment 24

• We have treated polyethylene film as a direct material input, where Lian Li sold filler paper bound by polyethylene film or where we were able to identify multi-pack notebooks bound in the same way. *See* Issues and Decision Memo at Comment 25.

• In the preliminary determination's SAS calculation, we inadvertently assigned an incorrect variable name to domestic freight. We have corrected this for the final determination. *See* Memorandum to The File, through Charles Riggle, Program Manager, from Frances Veith, International Trade Compliance Analyst: Final Determination in the Investigation of Certain Lined Paper Products from the People's Republic of China: Calculation Memorandum, Shanghai Lian Li Paper Products Co. Ltd.

The PRC-Wide Rate and Use of Adverse Facts Available

Sections 776(a)(l) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provided that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

[18] This surrogate value was used at the Preliminary Determination to value Lian Li's zinc wire. See memorandum to Wendy J. Frankel Re: Preliminary Determination of the Investigation of Certain Lined Paper Products from the People's Republic of China: Factors-of-Production Valuation for Preliminary Determination (April 7, 2006).

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34600 (May 31, 2000), and accompanying Issues and Decision Memorandum, at "Facts Available." We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. As in the Preliminary Determination, we have assigned to the PRC-wide entity a margin based on information in the petition because the margins derived from the petition are higher than the calculated margins for the selected respondents in this case.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Sess. Vol. 1 at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

For the final determination, in accordance with section 776(c) of the Act, we corroborated our AFA margin using information submitted by the Watanabe Group and Lian Li. *See* Memorandum to the File from Marin Weaver, International Trade Compliance Analyst, through Charles Riggle, Program Manager, China/NME Group, Corroboration for the Final Determination of Certain Lined Paper Products from the People's Republic of China, regarding the corroboration of the AFA rate. We found that the margin of 258.21 percent has probative value. Accordingly, we find that the rate of 258.21 percent is corroborated within the meaning of section 776(c) of the Act.

In addition, because we have determined that Atico, Dongguan Yizhii Gao Paper Products Ltd. ("Dongguan"), Planet International, and Lansheng are not entitled to separate rates and are now part of the PRC-wide entity, the PRC-wide entity is now under investigation. Further, because the PRC-wide entity (including these entities) failed to provide the requested information in this investigation, the Department, pursuant to section 776(a) of the Act, has applied a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Furthermore, because we have determined that the PRC-wide entity (including Atico, Dongguan, Planet International, and Lansheng) has failed to cooperate to the best of its ability, the Department has used an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Combination Rates

In the Notice of Initiation, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China*, 70 FR at 58379 (October 6, 2005). *See* Policy Bulletin 05.1.

Final Determination

The Department has determined that the following final percentage weighted-average dumping margins exist for the period January 1, 2005, through June 30, 2005:

CERTAIN LINED PAPER PRODUCTS FROM THE PRC-WEIGHTED-AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted-average deposit rate
Watanabe Paper Product (Linqing) Co., Ltd	Watanabe Paper Product (Linqing) Co., Ltd	76.7
Watanabe Paper Product (Linqing) Co., Ltd	Hotrock Stationery (Shenzhen) Co., Ltd	76.7
Watanabe Paper Product (Linqing) Co., Ltd	Watanabe Paper Products (Shanghai) Co., Ltd	76.7
Hotrock Stationery (Shenzhen) Co., Ltd	Hotrock Stationery (Shenzhen) Co., Ltd	76.7
Hotrock Stationery (Shenzhen) Co., Ltd	Watanabe Paper Product (Linqing) Co., Ltd	76.7
Hotrock Stationery (Shenzhen) Co., Ltd	Watanabe Paper Products (Shanghai) Co., Ltd	76.7
Watanabe Paper Products (Shanghai) Co., Ltd	Watanabe Paper Products (Shanghai) Co., Ltd	76.7
Watanabe Paper Products (Shanghai) Co., Ltd	Hotrock Stationery (Shenzhen) Co., Ltd	76.7
Watanabe Paper Products (Shanghai) Co., Ltd	Watanabe Paper Product (Linqing) Co., Ltd	76.7
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Lian Li Paper Products Co. Ltd	94.98
Shanghai Lian Li Paper Products Co., Ltd	Sentian Paper Products Co., Ltd	94.98
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Miaopaofang Paper Products Co., Ltd	94.98
Shanghai Lian Li Paper Products Co., Ltd	ShanghaiPudong Wenbao Paper Products Co., Ltd	94.98
Shanghai Lian Li Paper Products Co., Ltd	Changshu Changjiang Printing Co., Ltd	94.98
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Loutang Stationery Factory	94.98
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Beijia Paper Products Co., Ltd	94.98
Ningbo Guangbo Imports and Exports Co., Ltd	Ningbo Guangbo Plastic Products Manufacture Co., Ltd	78.39

CERTAIN LINED PAPER PRODUCTS FROM THE PRC-WEIGHTED-AVERAGE DUMPING MARGINS—Continued

Exporter	Producer	Weighted-average deposit rate
Yalong Paper Products (Kunshan) Co., Ltd	Yalong Paper Products (Kunshan) Co., Ltd	78.39
Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd	Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd	78.39
Sunshine International Group (HK) Ltd	Dongguan Shipai Tonzex Electronics Plastic Stationery Factory;.	78.39
Sunshine International Group (HK) Ltd	Dongguan Kwong Wo Stationery Co., Ltd	78.39
Sunshine International Group (HK) Ltd	Hua Lian Electronics Plastic Stationery Co., Ltd	78.39
Suzhou Industrial Park You-You Trading Co., Ltd	Linqing YinXing Paper Co., Ltd	78.39
Suzhou Industrial Park You-You Trading: Co., Ltd	Jiaxing Seagull Paper Products Co., Ltd	78.39
Suzhou Industrial Park You-You Trading Co., Ltd	Shenda Paper Product Factory	78.39
Suzhou Industrial Park You-You Trading Co., Ltd	Lianyi Paper Product Factory	78.39
Suzhou Industrial Park You-You Trading: Co., Ltd	Changhang Paper Product Factory	78.39
Suzhou Industrial Park You-You Trading Co., Ltd	Tianlong Paper Product Factory	78.39
Suzhou Industrial Park You-You Trading: Co., Ltd	Rugao PaDer Printer Co., Ltd	78.39
Suzhou Industrial Park You-You Trading Co., Ltd	Yinlong Paper Product Factory	78.39
You You Paper Products (Suzhou) Co., Ltd	You You Paper Products (Suzhou) Co., Ltd	78.39
Haijing Stationery (Shanghai) Co., Ltd	Haijing Stationery (Shanghai) Co., Ltd	78.39
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Yalong Paper Products Ltd (Kunshan) Co., Ltd	78.39
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Shanghai Cornwell Stationery Co., Ltd	78.39
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Yuezhou PaDer Co., Ltd	78.39
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Changshu Guangming Stationery Co., Ltd	78.39
Shanghai Foreign Trade Enterprise Co., Ltd	Shanghai Xin Zhi Liang Culture Products Co., Ltd	78.39
Shanghai Foreign Trade Enterprise Co., Ltd	Shangyu Zhongsheng Paper Products Co., Ltd	78.39
Shanghai Foreign Trade Enteprise Co., Ltd	Shanghai Miaoxi Paper Products Factory;	78.39
Shanghai Foreign Trade Enterprise Co., Ltd	Shanghai Xueya Stationery Co., Ltd	78.39
Anhui Light Industries International Co., Ltd	Shanghai Pudong Wenbao Paper Products Factory;	78.39
Anhui Light Industries International Co., Ltd	Foshan City Wenhai Paper Factory	78.39
Fujian Hengda Group Co., Ltd	Fujian Hengda Group Co., Ltd	78.39
Changshu Changjiang Printing Co., Ltd	Changshu Changjiang Paper Industry Co., Ltd	78.39
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Te Gao Te Paper Products Co., Ltd	78.39
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Seagull Paper Products Co., Ltd	78.39
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Boshi Paper Products Co., Ltd	78.39
Chinapack Ningbo Paper Products Co., Ltd	Jiaxing Te Gao Te Paper Products Co., Ltd	78.39
Linqing Silver Star Paper Products Co., Ltd	Linqing Silver Star Paper Products Co., Ltd	78.39
Wah Kin Stationery and Paper Product Limited	Shenzhen Baoan Waijing Development Company	78.39
Shanghai Pudong Wenbao Paper Products Factory	Shanghai Pudong Wenbao Paper Products Factory	78.39
Shanghai Pudong Wenbao Paper Products Factory	Linqing Glistar Paper Products Co., Ltd	78.39
Shanghai Pudong Wenbao Paper Products Factory	Changshu Changjiang Printing Co., Ltd	78.39
Shanghai Pudong Wenbao Paper Products Factory	Linqing Silver Star Paper Products Co., Ltd	78.39
Paperline Limited	Shanghai Pudong Wenbao Paper Products Factory	78.39
Paperline Limited	Linqing Glistar Paper Products Co., Ltd	78.39
Paperline Limited	Changshu Changjiang Printing Co., Ltd	78.39
Paperline Limited	Linqing Silver Star Paper Products Co., Ltd	78.39
Paperline Limited	Jiaxing Te Gao Te Paper Products Co., Ltd	78.39
Paperline Limited	Yantai License Printing & Making Co., Ltd	78.39
Yantai License Printing & Making Co., Ltd	Yantai License Printing & Making Co., Ltd	78.39
Paperline Limited	Anhui Jinhua Import & Export Co., Ltd	78.39
Essential Industries Limited	Dongguan Yizhi Gao Paper Products Ltd	78.39
MGA Entertainment (H.K.) Limited	Kon Dai (Far East) Packaging Co., Ltd	78.39
MGA Entertainment (H.K.) Limited	Dong Guan Huang Giang Rong Da Printing Factory	78.39
MGA Entertainment (H.K.) Limited	Dong Guan Huang Giang Da Printing Co., Limited	78.39
Excel Sheen Limited	Dongguan Shipai Fuda Stationery Factory	78.39
Maxleaf Stationery Ltd	Maxleaf Stationery Ltd	78.39
PRC Entity*		258.21

*Including Atico, Planet International, and the companies that did not respond to the Q&V questionnaire.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after April 17, 2006, the date of publication of the *Preliminary Determination*. For those companies for which we found critical circumstances to exist, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after January 17, 2006, which is 90 days prior to the date of publication of the preliminary determination. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CLPP, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. If the ITC determines that material injury, or threat of material injury does exist, but finds no critical circumstances, the Department will instruct CBP refund or cancel all securities posted prior to April 17, 2006.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: August 30, 2006.

David M. Spooner,

Assistant Secretary, for Import Administration.

[FR Doc. 06–7538 Filed 9–7–06; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051906B]

Taking of Marine Mammals Incidental to Specified Activities; Harbor Redevelopment Project, Moss Landing Harbor, California

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Moss Landing Harbor District (MLHD) to take small numbers of Pacific harbor seals and California sea lions by harassment incidental to the harbor redevelopment project in Moss Landing Harbor, California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to MLHD to incidentally take, by harassment, small numbers of these two species of pinnipeds during the next 12 months.

DATES: Comments and information must be received no later than October 10, 2006.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR1.051906B@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 051906B. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application and Biological Assessment for the North Harbor Redevelopment Project may be obtained by writing to this address or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

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

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

Summary of Request

On April 24, 2006, NMFS received a request from the Terrestrial and Aquatic Biological Resources, on behalf of MLHD, to take small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to the North Harbor Redevelopment Project in Moss Landing Harbor, Monterey County, California.

The proposed project includes construction of a 100 ft (30.5 m) long by

90 ft (27.4 m) wide boat ramp, a 5,000 square foot (464.5 m^2) public wharf with pedestrian promenade and seating areas, and installation of a 171 ft long (52.1 m) by 10 ft (3.1 m) wide floating dock. The total proposed project site is 4.5 acres (18,211.5 m^2). The construction phase of the redevelopment would involve driving a total of 72 piles: 9 for the boat ramp, 53 for the public wharf and promenade, and 10 for the floating dock. Installation of the pilings would most likely be from a land-based driver, however, a barge may be used for installation. The pilings will be concrete, 16–inch square for the wharf and the boat launch ramp boarding floats, and 20–inch square for the dock.

An impact hammer is required for installation of the piles. The energy output levels of the impact hammer are approximately 48–94 kiloJoules (kJ) (or 35,381–69,458 foot-pound force (ft-lbs)), depending on the setting. The hammer would be operating at the rate of 36–52 blows per minute. The underwater noise level is measured at approximately between 165 - 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155–170 dB re 1 microPa rms at 20 m (65.6 ft). It takes approximately 20 - 40 minutes drive time to install each pile; therefore, the maximum time required to install all piles would be 48 hours. The pile driving is estimated to take an estimated 27 working days during a period of 7–9 months to complete. The proposed project would start in summer/fall 2006.

Description of the Marine Mammals Potentially Affected by the Activity

Marine mammals that may occur near the proposed project site are Pacific harbor seals and California sea lions. General information on these marine mammal species can be found in Caretta *et al.* (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf*. Refer to that document for information on these species. None of the marine mammals species found in the proposed project areas is listed under the Endangered Species Act (ESA) or designated as depleted under the MMPA. Additional information on the abundance and occurrence of these species within or close to the proposed project area is presented below.

Pacific harbor seal

Pacific harbor seals are mainly seen on the sand bar at the North area of the harbor (North Harbor), which is about 575 ft (175.3 m) west from the proposed project area, across a Federal navigation channel. They are also seen along the boat dock area, and swimming to and from the ocean. The North Harbor sand bar is not a typical Pacific harbor seal pupping area. The closest known seal pupping area is over 0.5 mile (0.8 km) east of the proposed project area at Seal Bend in Elkhorn Slough (NMFS, 2004).

The number of Pacific harbor seals varies seasonally and with the time of day. They are most abundant during the day with approximately 20 - 100 individuals at the North Harbor sand bar, but leave the sand bar in the evening to feed in Monterey Bay. The number of seals are most abundant during the pupping and molting season from May to August.

California sea lion

California sea lions have been seen on the North Harbor docks but their occurrence within the proposed project area is rare. Usually there are fewer than 2 individuals in the vicinity of Moss Landing Harbor (L. McIntyre, MLHD, 2006). Most of the sea lions in the Monterey Bay area are males of varying age classes that arrive in early fall from their southern breeding ground (Monterey Bay Aquarium, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico (NMFS, 2004).

Potential Effects on Marine Mammals and Their Habitat

Construction of the boat ramp, public wharf and promenade, and floating docks has the potential to result in Level B behavioral harassment of Pacific harbor seals and California sea lions that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. The impact to these marine mammals is expected to be disturbance by the presence of workers, construction noise, and possibly construction vessel traffic if pile driving is to be conducted from a barge. Disturbances could alter seal and sea lion behaviors and cause the animals to temporarily disperse from the area, or to flush and possibly return or could result in temporary use of an alternate haul out site in Monterey Bay.

Noise from pile driving is expected to be much louder than all other noises from the construction. However, the impact hammer being selected has energy levels at 48 - 94 kJ (35,381 - 69,458 ft-lbs). These energy levels are significantly less than either of the two pile drivers being used on the San Francisco-Oakland Bay Bridge (SF-OBB) (see 68 FR 64595, November 14, 2003), which are 500 kJ and 1,700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other aquatic life) will be significantly smaller than at SF-OBB.

Based on underwater noise levels measured in 2004 during a separate project at Pier 40 in San Francisco, the hammer's impulses were recorded approximately between 165 - 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155 - 170 dB re 1 microPa rms at 20 m (65.6 ft) from the pile. These levels are significantly below 190 dB re 1 microPa rms, the level NMFS uses to estimate Level A harassment of pinnipeds and the onset of temporary threshold shift (TTS) in pinniped hearing (see 68 FR 64595, November 14, 2003).

A self-monitoring program was also conducted in July 2006 to obtain airborne noise levels from pile driving. Time-averaged acoustic values in air ranged from 80 to 90 dB re 20 microPa, with peak discrete values approaching 100 dB re 20 microPa at 250 feet (76 m) from the sound source (Sea Engineering Inc., 2006). Studies have shown that when exposed to sound levels between 98.9 and 101 dB (re 20 microPa) from rocket launch, harbor seals responded by fleeing into the water but many returned to land within several hours (Stewart, 1993). Ringed seals (*Phoca hispida*) exhibited little or no reaction to pipe-driving noise measured at 112 and 96 dB re 20 microPa and 90 dB re 20 $microPa^2s$ (Blackwell *et al.*, 2004).

Mitigation

The following mitigation measures are proposed to be required under the proposed IHA to be issued to MLHD for construction activities, including pile driving, associated with the harbor redevelopment project at Moss Landing Harbor. NMFS believes that the implementation of these mitigation measures would reduce impacts to marine mammals to the lowest extent practicable.

Time and Location

Construction activities, including pile driving, would only take place during daylight hours between 7 am to 5 pm, when marine mammal monitoring prior to and during the pile driving can be effectively implemented.

Establishment of Safety Zones

Before any pile driving, a clearly marked 500–ft (152.4 m) radius safety zone for Pacific harbor seals and California sea lions will be established. The safety zone would be marked by buoys for easy monitoring. At these distances, underwater sound pressure levels (SPLs) are expected to be

significantly reduced from 165 - 175 dB re 1 microPa rms measured at 10 m (32.8 ft), and airborne noise levels are expected to be way below 80 - 90 dB re 20 microPa measured at 250 feet (76 m). These SPLs are not believed to cause Level A harassment or onset of TTS (Level B harassment).

Biological observers on a boat will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving begins. If marine mammals are found within the safety zone, pile driving will be delayed until they move out of the area. If a marine mammal is seen above the water and then dives below, pile driving will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994).

Once pile driving begins it will not be stopped until that pile is installed because any interruption would take longer for the pile to be installed, thus introducing more acoustic energy into the water column. Each pile driving takes about approximately 20 - 40 minutes to complete. The marine mammal observers will record the behaviors/reactions by any marine mammals in or near the safety zone.

Soft Start

Although marine mammals will be protected from Level A harassment by establishment of a safety zone of 500–ft (152.4 m) radius, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area, thus further reducing the incidence of Level B harassment from startling marine mammals with a sudden intensive sound, MLHD will implement "soft start" practice when startup pile driving. By implementing the "soft start" practice, pile driving would be initiated at an energy level less than full capacity (i.e., approximately 40–60 percent energy levels) for at least 5 minutes before gradually escalate to full capacity. This would ensure that, although not expected, any pinnipeds that are undetected during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to Pacific harbor seals and California sea lions, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Monitoring and Reporting

MLHD would implement a monitoring plan that would collect data for each distinct marine mammal species observed during pile driving at the Moss Landing Harbor construction site. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving will be recorded.

Monitoring would be conducted by qualified NMFS-approved biologists. Binoculars and range finders would be provided to marine mammal observers for accurately identifying species and determining distances.

Monitoring would begin prior to the first day of the pile driving to establish baseline data, and would occur during the entire period when pile driving is underway, and would continue for 30 minutes after the pile driving. Post construction monitoring would also be conducted for a period of one day upon completion of pile driving to identify any change of pinniped behaviors.

Before the startup of the pile driving, marine mammal observers would visually survey the area to confirm the safety zone is clear of any marine mammals. Pile driving will not begin until the safety zone is clear of marine mammals. Monitoring would continue by the observers on a boat during the entire period of pile driving. However, as described in the Mitigation section, once pile driving begins, operations will continue uninterrupted until that pile is installed. However, if driving of a pile is completed and a marine mammal is sighted within the designated safety zone prior to commencement of the next pile driving, the observer(s) must notify the pile driver (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation).

MLHD would submit a final report to NMFS 90 days after completion of the proposed project. The final report would include data collected for each distinct marine mammal species observed in the vicinity of the construction area during pile driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving would also be included in the final report.

ESA

Based on a review conducted by NMFS biologists, no ESA-listed species are expected to occur in the proposed action area, therefore, NMFS has determined that no species listed under the ESA are likely to be affected and, therefore, a section 7 consultation is not warranted.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on the issuance of an IHA for the taking of marine mammals incidental to demolition of the Sandholdt Road Bridge and construction of a new bridge in Moss Landing, California, in 2004 and made a Finding of No Significant Impact (FONSI) on December 21, 2004. The proposed action discussed in this document is not substantially different from the action analyzed in the 2004 EA, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past 2 years that would warrant new NEPA documentation. Therefore, a new EA is not warranted for the proposed project.

Preliminary Determinations

For the reasons discussed in this document and identified supporting documents, NMFS has preliminarily determined that the impact of pile driving associated with Moss Landing Harbor redevelopment project would result, at worst, in the Level B harassment of small numbers of Pacific harbor seals and California sea lions in the vicinity of the proposed project area. While behavioral modifications, including temporarily vacating the area during the pile driving, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas near Monterey Bay and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on Pacific harbor seal and California sea lion populations near the proposed project area.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: September 1, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–14905 Filed 9–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 081806E]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 116–1691; U.S. Fish and Wildlife Service File No. PRT–062475

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821 (Todd Robeck, D.V.M., Ph.D., Responsible Party and Principal Investigator) has been issued a permit to collect, receive, import, and export marine mammal specimens for scientific research purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 9, 2003, notice was published in the **Federal Register** (68 FR 58316) that a request for a scientific research permit 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 parts 18 and 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).

Sea World, Inc., has been issued a scientific research permit to collect, receive, import, and export a specified number of marine mammal specimens under the jurisdiction of NMFS and USFWS to study reproductive physiology, including endocrinology, gamete biology, cryophysiology, and assisted reproductive techniques. Species authorized include bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), killer whale (Orcinus orca), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Commerson's dolphin (*Cephalorhynchus commersonii*), short-beaked common dolphin (*Delphinus delphis*), false killer whale (*Pseudorca crassidens*), Baiji (*Lipotes vexillifer*), Vaquita (*Phocoena sinus*), and walrus (*Odobenus rosmarus*). Only specimens collected legally and in a humane manner would be authorized by the permit. Sources of samples may include animals that have already died and from captive animals during routine husbandry procedures. No animals may be intentionally killed for the purpose of collecting specimens, and no money can be offered for the specimens. Specimens may be taken world-wide at anytime of the year for up to 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: September 1, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: September 1, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 06–7521 Filed 9–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0177]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Notice of proposed amendments to the Manual for Courts-Martial, United States (2005 ed.) and notice of public meeting (modification).

SUMMARY: The Department of Defense published proposed changes to the Manual for Courts-Martial (2005 ed.) on August 10, 2006, in the **Federal Register** (Volume 71, Number 154)] [Notices] [Page 45780–45797]. This announcement modifies that former publication to include information concerning submitting comments, and extends the time period for submission.

DATES: Comments on the proposed changes must be received no later than October 13, 2006, to be assured consideration by the JSC. A public meeting concerning these proposed changes will be held on September 18, 2006 at 11 a.m. in the 14th Floor Conference Room, 1777 N. Kent St., Rosslyn, VA 22209–2194.

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

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

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at

http://regulations.gov as they are received without change, including any personal identifiers or contact information.

SUPPLEMENTARY INFORMATION: The original publication indicated that portions of the draft changes contained information that was in bold lettering or underlined. This formatting was not contained in the version published. The version published without such highlighting is consistent with the final version of the Executive Order. Those desiring a version of the draft changes with bold and underline portions highlighting the change should request this from the designated point of contact, below.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel L. Peter Yob, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, 1777 N. Kent St., Rosslyn, VA 22209–2194, (703) 588–6744, e-mail *Lousi.Yob@hqda.army.mil.*

Dated: September 1, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–7509 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Department of Defense (DoD) Task Force on Mental Health; Meeting

AGENCY: Department of the Army; DoD.

ACTION: Notice of Meeting Change in Venue.

SUMMARY: The DoD Task Force on Mental Health meeting on September 20, 2006 from 8:30 a.m.–5 p.m. and September 21, 2006 from 8:30 a.m.–11 a.m. published in the **Federal Register** on August 18, 2006 (71 FR 47782) has changed venues. The previous location was Howze Auditorium, Bldg 33009, 7500 761st Tank Battalion Ave., Fort Hood, TX 76544–5008. The new location is The Plaza Hotel, 1721 East Central Texas Expressway, Killeen, TX 7641–9144.

FOR FURTHER INFORMATION CONTACT: Colonel Roger Gibson, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, VA 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–7505 Filed 9–7–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Department of Defense Historical Advisory Committee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: October 26, 2006.

Time: 9 a.m. to 4:30 p.m.

Place: U.S. Army Center of Military History, Collins Hall, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, *ATTN:* DAMH–ZA, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2706.

SUPPLEMENTARY INFORMATION: The committee will review the Army's historical activities for FY 2006 and those projected for FY 2007 based upon reports and manuscripts received throughout the period. And the committee will formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

The meeting of the advisory committee is open to the public. Because of the restricted meeting space, however, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 26, 2006 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Dated: August 21, 2006.

Jeffrey J. Clarke,

Director, Center for Military History.

[FR Doc. 06–7507 Filed 9–7–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Draft Integrated Feasibility Report and Environmental Impact Statement for the Mid-Chesapeake Bay Island Ecosystem Restoration Project in Dorchester County, on Maryland's Eastern Shore

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Baltimore District has prepared a Draft Integrated Feasibility Report and Environmental Impact Statement (EIS) for the Mid-Chesapeake Bay Island Ecosystem Restoration Project in Dorchester County, on Maryland's Eastern Shore. Approximately 90 to 95 million cubic yards of material, primarily dredged during maintenance of the Chesapeake Bay approach channels to Baltimore Harbor, would be placed behind dikes at James Island. Material placed at Barren Island would be from authorized maintenance dredging of Federal navigation channels in the Honga River. After placement, the material would be shaped and planted to provide 2,144 acres of island habitat at James and Barren Islands as well as protect existing island ecosystem habitat, including critical submerged aquatic vegetation.

DATES: Two public meetings will be held. The meeting dates are:

1. October 11, 2006, 7 p.m., Cambridge, MD.

2. October 12, 2006, 7 p.m., Taylors Island, MD.

ADDRESSES: The first public meeting will be held at the Dorchester County Public Library, Central Branch, 303 Gay Street, Cambridge, MD 21613. The second public meeting will be held at Taylors Island Volunteer Fire Company, 510 Taylors Island Road, Taylors Island, MD 21617.

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Baltimore District, Attn: Ms. Stacey S. Blersch, CENAB–PL–P, P.O. Box 1715, Baltimore, MD 21203–1715, electronically at

Stacey.S.Blersch@usace.army.mil or by telephone at (410) 962–5196 or (800) 295–1610. You may view the Draft EIS and related information on the USACE Web page at *http://www.nab.usace.army.mil/publications/non-reg_pub.htm.*

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) to prepare a draft EIS was published by the U.S. Environmental Protection Agency (EPA) in the **Federal Register** (68 FR 2532) on January 17, 2003. The Mid-Chesapeake Bay Ecosystem Restoration was one of three actions specifically recommended by the USACE-Baltimore District's *Dredged Material Management Plan* (DMMP) and *Final Tiered Environmental Impact Statement* (December 2005). The USACE is making the Draft Mid-Chesapeake Bay Island Ecosystem Restoration Integrated Feasibility Report and EIS available to the public for review and comment through a Notice of Availability published in the **Federal Register.** The recommendations of the draft Mid-Chesapeake Bay report and EIS are:

• Construction of a 2,072-acre fill area at James Island, consisting of approximately 55 percent tidal wetland habitat and 45 percent upland island habitat;

• Construction and backfilling of sills at Barren Island to protect both the current acreage of the island and the adjacent submerged aquatic vegetation (SAV)/shallow water habitat, providing approximately 72 acres of wetland habitat on the northern and western portions of the island; and

• If deemed necessary to protect the SAV, construction at Barren Island of a maximum of 3,350 feet of breakwater extending South from the southern tip of the existing island at a maximum height of plus 6 feet MLLW.

James and Barren Islands have been identified by the U.S. Fish and Wildlife Service, and other natural resource management agencies as a valuable nesting and nursery area for many species of wildlife, including bald eagles, diamondback terrapins, and potentially horseshoe crabs. The project would restore James Island and protect Barren Island from further erosion. The Draft EIS documents the NEPA compliance and information specific to the actions for the proposed Mid-Chesapeake Bay project.

The Draft Integrated Feasibility report and EIS has been prepared in accordance with (1) NEPA of 1969, 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), and (3) USACE regulations implementing NEPA (ER–200–2–2).

USACE filed the Draft document with EPA on September 1, 2006 for the publication of Notice of Availability in the September 8, 2006 **Federal Register.** We must receive comments on or before October 23, 2006, to ensure consideration in final plan development. At both public meetings, the public will have an opportunity to present oral and/or written comments. All persons and organizations that have an interest in the Mid-Chesapeake Bay Integrated Ecosystem Restoration Feasibility Report and EIS are urged to participate in one or both meetings. Staff will be available one hour prior to the meeting start time. A Record of Decision may be signed no earlier than 30 days after the EPA Notice of Availability for the Final document.

Your comments must be contained in the body of your message; please do not send attached files. Please include your name and address in your message. You may view the Draft EIS and related information on the USACE Web page at *http://www.nab.usace.army.mil/publications/non-reg_pub.htm.* USACE has distributed copies of the Draft Integrated Feasibility Report and EIS to appropriate members of Congress, State, and local government officials, Federal agencies, and other interested parties.

Copies are available for public review at the following public reading rooms:

(1) Andrew G. Trial Library, Anne Arundel Community College, 101 College Parkway, Arnold, MD 21012.

(2) Anne Arundel County Public Library, 1410 West Street, Annapolis, MD 21401.

(3) Anne Arundel County Public Library, Annapolis Branch, 5 Harry S. Truman Parkway, Annapolis, MD 21401.

(4) Calvert County Public Library, 30 Duke Street, Prince Frederick, MD 20678.

(5) Chesapeake College Library, Wyes Mills, MD 21679.

(6) Corbin Memorial Library, 4 East Main Street, Crisfield, MD 21817.

(7) Dorchester County Public Library, 303 Gay Street, Cambridge, MD 21613.

(8) Dorchester County Public Library, Hurlock Branch, 222 S. Main Street, Hurlock, MD 21643.

(9) Eastern Shore Public Library, 23610 Front Street, Accomack, VA 23301.

(10) Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, MD 21201.

(11) Federal Maritime Commission, 110 L Street NW., Washington, DC 20573.

(12) Kent County Public Library, 408 High Street, Chestertown, MD 21620.

(13) Maryland State Law Library, Court of Appeals Building, 361 Rowe Boulevard, Annapolis, MD 21401.

(14) Northumberland County Public Library, 7204 Northumberland Highway, Heathsville, VA 22473.

(15) Queen Anne's County Public Library, Centreville Branch, 121 S. Commerce Street, Centreville, MD 21617.

(16) Queen Anne's County Public Library, Stevensville Branch, 200 Library Circle, Stevensville, MD 21666.

(17) Somerset County Library, 11767 Beechwood Street, Princess Anne, MD 21853.

(18) Somerset County Library, Ewell Branch, 20910 Caleb Jones Road, Ewell, MD 21824.

(19) State Department of Legislative Reference Library, 90 State Circle, Annapolis, MD 21401.

(20) St. Mary's County Memorial Library, Leonardtown Branch, 23250 Hollywood Road, Leonardtown, MD 20650.

(21) Sudlersville Memorial Library, Easton Branch, 100 West Dover Street, Easton, MD 21601.

(23) Talbot County Public Library, St. Michaels Branch, 106 Freemont Street, St. Michaels, MD 21663.

(24) Talbot County Public Library, Tilghman Island Elementary School Branch, 21374 Foster Avenue, Tilghman, MD 21671.

(25) Twin Beaches Library, 3819 Harper Road, Chesapeake Beach, MD 20732.

(26) Wicomico County Free Library, 122 S. Division Street, Salisbury, MD 21801.

After the public comment period ends on October 23, 2006, the USACE will consider all comments received. The Draft Integrated Feasibility Report and EIS will be revised as appropriate and a Final Integrated Feasibility Repot and EIS will be issued.

Amy M. Guise,

Chief, Civil Project Development Branch.

[FR Doc. 06–7506 Filed 9–7–06; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC); Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was recently established under the Energy Policy Act of 2005 (EPACT), P.L. 109–190. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the first meeting of HTAC.

DATES: The meeting will begin on October 2, 2006, at 11 am and will conclude at 3 pm on October 3, 2006.

ADDRESSES: Crystal Gateway Marriott, 1700 Jefferson-Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: *HTAC.Committee@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice, information, and recommendations to the Secretary on the program authorized by Title VIII, Hydrogen, of EPACT.

Tentative Agenda (Subject to change; updates will be posted on hydrogen.energy.gov):

Monday, October 2

11 Welcome and Introductory Remarks
11:15 Introductions and Review of Agenda
11:45 Presentation by DOE General Counsel; Questions and Answers
12:30 Lunch
1:30 Review of Charter
2 Presentation on former Committee, Hydrogen Technical Advisory Panel by Allan Lloyd, former member
2:30 Break
2:50 Presentation of EPACT 2005 HTAC Deliverables and Timeline
3:40 Presentation of DOE Hydrogen Program and Posture Plan
5:30 Nominations for Chair and Overview of Plans for Day 2
6 Adjourn

Tuesday, October 3

8:30 Election of the Chairperson
9:10 Committee discussion: HTAC structure and subcommittees, (e.g., Policy, Analysis, Specific program areas, etc.)
10:10 Break
10:30 Discussion: Committee Deliverables (e.g., Report to the Secretary on the Review of Posture Plan)
11:30 Lunch
12:30 Work Plan for FY07 and Other Committee Business
1:40 Public Comment Period
2:40 Review Action Items and Schedule Next Meeting
3 Adjourn

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of HTAC and to make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC.Committee@ee.doe.gov* at least 5 business days before the meeting. (Please indicate if you will be attending the meeting both days or just one day.) Members of the public will be heard in the order in which they sign up for the Public Comment Period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting (electronic and hard copy).

Minutes: The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 31, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–14880 Filed 9–7–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket No. V–2006–1, FRL–8218–1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Louis Dreyfus Agricultural Industries, LLC

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: This document announces that the USEPA Administrator has responded to a citizen petition asking USEPA to object to a Clean Air Act (Act) Title V operating permit proposed by the Indiana Department of Environmental Management (IDEM). Specifically, the Administrator has denied the petition submitted by Bunge North America (Bunge) to object to the proposed operating permit for Louis Dreyfus Agricultural Industries, LLC. (Louis Dreyfus).

Pursuant to section 505(b)(2) of the Act, a petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit for those portions of a petition which EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the USEPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for Louis Dreyfus is available electronically at: *http://www.epa.gov/region07/programs/artd /air/title5/petitiondb/petitions/dreyfus_ bunge_response2006.pdf.*

FOR FURTHER INFORMATION CONTACT: Pamela Blakley, Chief, Air Permitting Section, Air Programs Branch, Air and Radiation Division, USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4447.

SUPPLEMENTARY INFORMATION: The Act affords USEPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the USEPA Administrator within 60 days after the expiration of the USEPA review period to object to state operating permits if USEPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On February 16, 2006, USEPA received from Bunge North America a petition requesting that USEPA object to the proposed title V operating permit for Louis Dreyfus Agricultural Industries, LLC. The petition raised two objections to the permit: (1) IDEM failed to respond adequately to comments filed on the draft permit; and (2) USEPA's comments on the permit, summarized in IDEM's response to comments, failed to provide clarity with respect to regulatory and policy determinations used in drafting the permit.

On July 21, 2006, the Administrator issued an order denying the petition on both issues. In response to the first

issue, USEPA found that the Petitioner did not provide any information to show that USEPA had made inconsistent determinations or that IDEM's approach differed from USEPA's. In response to the second issue, USEPA found that the petitioner did not specify any information which demonstrated a conflict between IDEM's decisions and USEPA's Prevention of Significant Deterioration regulations. The Petitioner has 60 days from the date of this notice to file a petition in the United States Court of Appeals for the Seventh Circuit.

Dated: August 25, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–14853 Filed 9–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8218–2]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of Charter Renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of the NEJAC is to provide advice and recommendations to the Administrator on issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

It is determined that NEJAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Charles Lee, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue, NW. (Mail Code 2201A), Washington, DC 20460.

Dated: September 1, 2006.

Barry E. Hill,

Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

[FR Doc. E6–14885 Filed 9–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6679–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060138, ERP No. D–BLM–K65305–CA, United States Gypsum Expansion/Modernization Project, Expand and Upgrade Plaster City Plant to Increase Wallboard Production Capacity with Related Increases in Water Supply, Right-of-Way Grant, Imperial County, CA.

Summary: EPA expressed environmental concerns about impacts to watershed resources, including water quality and habitat, groundwater quality and quantity, and air quality and that these impacts should be avoided or mitigated. Rating EC2.

EIS No. 20060205, ERP No. D–AFS–D65036–PA, Allegheny National Forest, Proposed Revised Land and Resource Management Plan, Implementation, Elk, Forest, McKean, and Warren Counties, PA.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality and aquatic and terrestrial resources. Management activities of most concern include oil, gas, mineral extraction, and associated infrastructure, especially roads. The final EIS should further minimize impacts or include adequate mitigation measures to reduce sedimentation, habitat loss and fragmentation. Rating EC2.

EIS No. 20060258, ERP No. D–FRC–L05236–OR, Clackamas River Hydroelectric Project, Application for Relicensing of a Existing 173 megawatt(MS) Project, (FERC No. 2195–011) Clackamas River Basin, Clackamas County, OR.

Summary: EPA expressed environmental concerns about potential exceedance of the temperature water quality standard and requested additional information on dissolved oxygen in salmonid spawning and rearing areas. Rating EC2.

Final EISs

EIS No. 20060254, ERP No. F–FHW–C40166–NY, Southtowns Connector/Buffalo Outer Harbor Project, Improvements on the NY Route 5 Corridor from Buffalo Skyway Bridge to NY Route 179, in the City of Buffalo, City of Lackawanna and Town of Hamburg, Erie County, NY.

Summary: EPA does not object to the preferred alternative.

EIS No. 20060302, ERP No. F–NPS–E65077–FL, Fort King National Historic Landmark, Special Resource Study, Implementation, Second Seminole War Site, City of Ocala, Marion County, FL.

Summary: EPA does not object to the proposed project.

EIS No. 20060310, ERP No. F–IBR–G31003–NM, Long-Term Miscellaneous Purposes Contract Abstract, To Use Carlsbad Project Water for Purposes Other than Irrigation, Eddy County, NM.

Summary: No formal comment letter was sent to the preparing agency.

Dated: September 5, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–14887 Filed 9–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6678–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 08/28/2006 Through 09/01/2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060361, Draft Supplement, NRS, WV, Lost River Subwatershed of the Potomac River Watershed Project, Construction of Site 16 on Lower Cove Run and Deletion of Site 23 on Upper Cove Run, U.S. Army COE Section 404 Permit, Hardy County, WV, Comment Period Ends: 10/25/2006, Contact: Ronald L. Hilliard 304–284–7560.

EIS No. 20060362, Draft EIS, NOA, AK, Alaska Groundfish Harvest Specifications Project, Establish Harvest Strategy for the Bering Sea

and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Fisheries, AK, Comment Period Ends: 10/23/2006, Contact: Ben Muse 907–586–7234.

EIS No. 20060363, Final EIS, SFW, IL, Crab Orchard National Wildlife Refuge Comprehensive Conservation Plan (CCP), Implementation, Williamson, Jackson and Unicon Counties, IL, Wait Period Ends: 10/09/2006, Contact: Dan Frisk 618–997–3344.

EIS No. 20060364, Draft EIS, BIA, WA, Spokane Tribes Integrated Resource Management Plan, Implementation, Stevens County, WA, Comment Period Ends: 11/06/2006, Contact: Rudy Peone 509–258–9042.

EIS No. 20060365, Second Draft EIS (Tiering), NAS, 00, Mars Science Laboratory Mission (MSL), To Conduct Comprehensive Science on the Surface of Mars and Demonstate Technological Advancements in the Exploration of Mars, Using a Radioisotope Power Source in 2009 from Cape Canaveral Air Force Station, FL, Comment Period Ends: 10/23/2006, Contact: Mark R. Dahl 202–358–4800.

EIS No. 20060366, Second Draft EIS (Tiering), COE, MD, Mid-Chesapeake Bay Island Ecosystem Restoration Integrated Feasibility Study, Using Uncomtaminated Dredged Material from the Upper Chesapeake Bay Approach Channnels to the Port of Baltimore to Restore and Protect Island Habitat in the Middel Portion of Chesapeake Bay, Dorchester County, MD, Comment Period Ends: 10/23/2006, Contact: Stacey Blersch 410–962–5126.

Dated: September 5, 2006.

Ken Mitteholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–14886 Filed 9–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2006–0701; FRL–8217–7]

Florida Petroleum Reprocessors Superfund Site Davie, Broward County, FL; Notice Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLS), the United States Environmental Protection Agency has entered into a proposed settlement for reimbursement of past response costs concerning the Florida Petroleum Reprocessors Superfund Site located in Davie, Broward County, Florida.

DATES: The Agency will consider public comments on the settlement until October 10, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the amended portion of the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0701 or Site name Florida Petroleum Reprocessors Superfund Site by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.
- *Mail:* Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. "In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503."

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0701. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: August 17, 2006.

Melissa D. Waters,

Acting Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E6–14851 Filed 9–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

Time and Date: The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, September 13, 2006. The closed portion of the meeting will follow immediately the open portion of the meeting.

Place: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

Status: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

Matters to be Considered at the Open Portion: Fiscal Year 2007 Agency

Budget. Strategic Plan and Annual Performance Budget. Proposed Bank Examination Rating System. Final Rule: Affordable Housing Program Amendments.

Matter to be Considered at the Closed Portion: Periodic Update of Examination Program Development and Supervisory Findings.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: September 6, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 06–7581 Filed 9–06–06; 2:54 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Minnwest Corporation, Minnetonka, Minnesota; to acquire 100 percent of the voting shares of Aumanchester, Inc., Rochester, Minnesota, and thereby indirectly acquire Rochester Bank, Rochester, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Columbine Capital Corp., Buena Vista, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Collegiate Peaks Bank, Buena Vista, Colorado.

Board of Governors of the Federal Reserve System, September 5, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–14889 Filed 9–7–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting on Patient and Physician Concerns in Access to Intravenous Immunoglobulin (IVIG)

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (HHS/ASPE).

ACTION: Notice of Meeting.

SUMMARY: This notice announces the date and location of a Town Hall meeting to be held on September 28, 2006 to obtain public comment on patient and physician concerns with access to IVIG. The Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation has contracted with Eastern Research Group, Inc. (ERG) to develop an analysis of supply, distribution, demand, and access issues associate with IVIG. This public meeting provides a forum for interested parties to make oral comments and to submit written comments about IVIG access for use in the analysis. In particular, comments are invited that will aid in the analysis of any physician or patient problems with access to IVIG, including the nature, size, and scope of any problems, as well as estimation of changes in health outcomes that may result from access problems.

DATES: The Town Hall meeting will be held on September 28, 2006 from 10 a.m. to 5 p.m.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Amber Jessup. Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Ave., SW., Washington, DC 20201. Telephone: 202–690–6621.

Web site: Additional details regarding the Town Hall meeting process for public comments, along with information on how to register and guidelines for an effective presentation and/or electronic comment submission, can be found on the project Web site at *https://www2.ergweb.com/projects/conferences/hhs.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation has contracted with Eastern Research Group, Inc. (ERG) to develop an analysis of supply, distribution, demand, and access issues associated with IVIG. As part of this analysis, a Town Hall meeting is being scheduled to obtain public comment on access issues to be used in the analysis.

Intravenous Immune Globulin (IVIG) is a plasma product that is used to treat patients with immune system disorders. Immune globulins are antibodies. IVIG has a number of on-label uses including treatment of humoral immunodeficiency, acute and chronic idiopathic thrombocytopenia purpura, B cell chronic lymphocytic leukemia (to prevent recurrent bacterial infections), Kawasaki disease, pediatric HIV, and bone marrow transplantation. It is also used for off-label treatments including autoimmune, neurological, and systemic inflammatory conditions. According to the Department of Health and Human Services Advisory Committee on Blood Safety and Availability, more than half of IVIG use may be for off-label indications. Due at least in part to the increase in off-label uses, demand for IVIG has increased in recent years. The number of infusion days in hospitals increased to 70,000 days in 2004 from 40,000 days in 2002 and the number of grams infused in physician offices increased by 1.7 million grams, between 2003 and 2004, from 2.3 to 4.0 million grams.

IVIG is covered under Medicare Part B. In 2005, Medicare shifted from Average Wholesale Price (AWP) as the basis for reimbursement to Average

Sales Price (ASP) as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). This shift reduced the reimbursement amount to physicians by 35 percent for the powder form of IVIG and by 15 percent for the liquid form of IVIG. Since January 2005, some patient advocacy groups and physicians have reported difficulty acquiring IVIG. The FDA Center for Biologics Evaluation and Research, however, has not identified a shortage of IVIG. There have also been reports of IVIG being diverted to secondary markets with increases in prices.

The focus of the Town Hall meeting is on receiving information from stakeholders that will be helpful in the analysis. The Town Hall meeting will accept comments from all stakeholders, but is focused on patient and physician concerns with access to IVIG including:

(1) Patients switching IVIG products due to access problems,

(2) Changes in the administration location,

(3) Patients receiving fewer treatments,

(4) Patients receiving reduced dosages, and

(5) Reimbursement problems with IVIG products,

(6) Patients receiving reduced dosages, and

(7) Health consequences for patients of any access issues.

II. Registration

Registration procedures: Registration can be completed online at *https://www2.ergweb.com/projects/conferences/hhs/*. To register by telephone, contact ERG's Conference Registration Line at 781–674–7374. The following information must be provided when registering: Name, organization name and address (if applicable), and consent to publish contact information on a participants list and other reports to document the Town Hall meeting. An ERG staff member will confirm your registration by mail, e-mail, or fax. Attendees may participate in person or by phone. If you wish to participate by phone, please indicate this in your registration and a call-in conference number will be provided in your registration confirmation. Attendees must register by September 21.

III. Comment Format

a. "5-Minute" Public Comment

Meeting attendees can sign up on a first-come, first-served basis to present their comments (maximum of 5 minutes) via the meeting Web site when you register. Comments may be made in person or by phone. Commenters should focus on issues related to access to IVIG and quantify these impacts when possible. Commenters must provide their name, title, and organization (if applicable) on their registration and identify the topic area they will address. Presenters that can not attend in person can participate via phone. If you are unable to attend in person, you should indicate at registration that you wish to participate via phone. A call-in conference number will be provided to you in your registration confirmation.

b. Written Comments From Meeting Attendees

Written comments are welcome from the public regardless of whether you attend the Town Hall Meeting or whether you make an oral presentation at the Town Hall Meeting. Written comments can be submitted either at the meeting, or before or after the meeting via e-mail to *meetings@erg.com* (subject: IVIG Meeting Comments). Or via regular mail to Attn: IVIG Meeting, ERG, 110 Hartwell Avenue, Lexington, MA 02421. Please note that electronic submissions are preferred due to delays in receiving US Postal Mail. We are able to consider only those comments received in writing and/or via e-mail by 5 p.m. EST on October 15, 2006.

IV. Special Accommodations

Individuals attending the meeting who are hearing- or visually-impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information when registering for the meeting and accommodations will be made.

Dated: August 31, 2006.

Jerry Regier,

Principal Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 06–7510 Filed 9–7–06; 8:45 am]

BILLING CODE 4151–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on September 26, 2006, from 9 a.m. to 5 p.m., and on September 27, 2006, from 9 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, Room 443–H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566, *nvac@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Assistant Secretary for Health, as the Director of the National Vaccine Program, on matters related to the program's responsibilities.

Topics to be discussed at the meeting include: the 2006–2007 influenza season, increasing immunization among adolescents, vaccine financing, implementation plans for new vaccines, and vaccine safety. Updates will be given by various subcommittees and working groups. A tentative agenda will be made available on or about September 5, 2006 for review on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac*.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business September 19, 2006. Preregistration is required for both public attendance and comment. Any

individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *nvac@hhs.gov* or call 202–690–5566.

Dated: September 5, 2006.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E6–14882 Filed 9–7–06; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health Emergency Preparedness; Draft HHS Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Strategy for Chemical, Biological, Radiological and Nuclear (CBRN) Threats [1]

AGENCY: Office of Public Health Emergency Preparedness.

ACTION: Draft HHS Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Strategy for Chemical, Biological, Radiological and Nuclear (CBRN) Threats.

SUMMARY: The United States faces serious public health threats from the deliberate use of weapons of mass destruction (WMD)—chemical, biological, radiological, or nuclear (CBRN)—by hostile States or terrorists, and from naturally emerging infectious diseases that have a potential to cause illness on a scale that could adversely impact national security. Effective strategies to prevent, mitigate, and treat the consequences of CBRN threats is an integral component of our national security strategy. To that end, the United States must be able to rapidly develop, stockpile, and deploy effective medical countermeasures to protect the American people. The ultimate goal of this HHS Public Health Emergency Medical Countermeasures Enterprise Strategy (*PHEMCE Strategy*) is to establish the foundational elements and guiding principles that will support medical countermeasure availability and utilization for the highest priority CBRN threats facing our nation.

[1] This Strategy excludes pandemic influenza which is addressed in the HHS Pandemic Influenza Plan, a blueprint for pandemic influenza preparation and response. It provides guidance to national, state, and local policy makers and health departments. The HHS Pandemic Influenza Plan includes an overview of the threat of pandemic influenza, a description of the relationship of this document to other Federal plans and an outline of key roles and responsibilities during a pandemic. It is aligned with the .National Strategy for Pandemic Influenza, issued by President Bush November 1, 2005, and the *Implementation Plan for the National Strategy for Pandemic Influenza* which guide our nation's preparedness and response to an influenza pandemic.

DATES: The public is invited to submit comments on the draft HHS *PHEMCE Strategy* up to thirty days from the date of publication in the **Federal Register**. After consideration of the comments submitted, HHS will issue a final *PHEMCE Strategy*.

Comments: Address all comments to Dr. Susan Coller at *PHEMCSTRAT@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Susan Coller, Policy Analyst, Office of Public Health Emergency Medical Countermeasures, Office of Public Health Emergency Preparedness at 330 Independence Ave., SW., Room G640 Washington, DC 20201, or by phone at 202–260–1200.

Overview

The United States faces serious public health threats from the deliberate use of weapons of mass destruction (WMD)—chemical, biological, radiological, or nuclear (CBRN)—by hostile States or terrorists, and from naturally emerging infectious diseases that have a potential to cause illness on a scale that could adversely impact national security. A failure to anticipate these threats, or the lack of a capacity to effectively respond to them could leave an untold number of Americans dead or permanently disabled. Thus, effective strategies to prevent, mitigate, and treat the consequences of CBRN threats are an integral component of our national security strategy. To that end, the United States must be able to rapidly develop, stockpile, and deploy effective medical countermeasures (MCM) to protect the American people.

The key role for development and acquisition of effective medical countermeasures for WMD was previously identified in the *National Strategy to Combat Weapons of Mass Destruction* and *Biodefense for the 21st Century,* the President's blueprint for addressing the nation's biodefense programs. Research and early development support of CBRN MCM by the National Institutes of Health has grown from $53 million in Fiscal Year (FY) 2001 to $1.8 billion in FY 2006. Funding for the Strategic National Stockpile similarly has grown from $52 million in FY01 to $530 million in FY06. Furthermore, on July 21, 2004, President George W. Bush signed into law the Project BioShield Act of 2004 (Project BioShield) to accelerate the research, development, acquisition, and availability of effective medical countermeasures to protect our citizens against CBRN threats. Project BioShield provided $5.6 billion over 10 years to acquire these medical countermeasures.

During its first two years of implementation, Project BioShield acquisitions were guided by a policy and requirements document derived from interagency deliberations in 2003 that involved Cabinet-level Departments and the Executive Office of the President. This document served as the initial strategic plan for acquisition under Project BioShield. Under this strategy, the Department of Health and Human Services (HHS) pursued acquisitions for those highest priority threats for which there were candidate products at relatively advanced stages of development. These products included medical countermeasures for anthrax, smallpox, botulinum toxins and radiological/nuclear agents, the four threat agents deemed by the Department of Homeland Security (DHS) to pose a "material threat" to national security. The relatively advanced nature of the products pursued resulted from years of investment, made in large part by the Department of Defense in advance of the BioShield program, as well as aggressive development programs launched by the National Institutes of Health soon after the anthrax attacks in 2001.

Despite these achievements, more can and must be done. HHS will continue to shape and execute a comprehensive, focused MCM program to protect our citizens against CBRN threats today and into the future. On behalf of the Secretary, the Office of Public Health Emergency Preparedness is dedicated to the mission of preventing and mitigating the adverse public health consequences of disasters resulting from these threats. This mission encompasses the breadth of activities required to accomplish the goal including: threat agent and disease surveillance and detection; and research, development, acquisition, storage, deployment and utilization of medical countermeasures.

A focused medical countermeasure program will reflect threat priorities, threat agent characteristics, medical/public health consequence assessments, and the likelihood that effective medical and public health intervention will prevent and mitigate adverse health consequences. Given the expense and time required to develop each countermeasure, and the wide range of pathogens and compounds that potentially could be used in an attack, we must develop a strategy that prioritizes investment in a manner that optimizes our ability to mitigate the public health impact of current and future threats.

The type and magnitude of both CBRN and natural threats are evolving. New diseases emerge and existing diseases change. World-wide travel is

commonplace and more rapid. Advances in biotechnology support the development of new treatments, but make those same tools more widely available to adversaries who might use them to intentionally inflict harm. Nuclear technologies proliferate despite international efforts to contain them, and chemical exposures can result from accidents or deliberate releases. We must, therefore, focus our efforts to meet the evolving nature of these threats by relying on cutting-edge technologies to expand and improve national capacity and capabilities to protect public health in a dynamic environment. This will require unprecedented cooperation among all levels of Government, private industry, academia, international partners and the public.

Approach and Guiding Principles

HHS is undertaking a two-staged approach to develop a Public Health Emergency Medical Countermeasures Enterprise Strategy that will lead to an Implementation Plan for the Public Health Emergency Medical Countermeasures Enterprise (PHEMCE). The PHEMCE Implementation Plan will be a prioritized plan with near-, mid- and long-term goals for research, development and acquisition of medical countermeasures that is consistent with the guiding principles and priority-setting criteria defined in this PHEMCE Strategy.

HHS created the Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) in July 2006 [ref: Office of Public Health Emergency Preparedness: Statement of Organization, Functions and Delegations of Authority, 71 FR 38403 (July 6, 2006)]. The PHEMCE is a coordinated interagency effort led by HHS and charged with the responsibility to: (1) Define and prioritize requirements for public health medical emergency countermeasures; (2) coordinate research, early- and advanced product development and procurement activities to address the requirements; and (3) set deployment and use strategies for medical countermeasures held in the Strategic National Stockpile.

The PHEMCE Strategy defines the principles and objectives that will guide our Implementation Plan for the entire PHEMCE-surveillance/detection of threats; research, development, acquisition, storage/maintenance, deployment and utilization of medical countermeasures. The ultimate goal of the PHEMCE Strategy is to establish the foundational elements and guiding principles that will support medical countermeasure availability and utilization for the highest priority CBRN threats facing our nation.

The PHEMCE Strategy will provide a framework for future U.S. Government planning efforts that is consistent with the President's Biodefense for the 21st Century, the National Security Strategy and the National Strategy for Homeland Security. It recognizes that preparing for and responding to CBRN events is not strictly a Federal responsibility, but relies significantly on multiple key stakeholders, including both domestic and international industrial, academic and governmental biomedical research and development communities, Federal, State and local Governments, public health authorities, first responders, and the public.

To address the challenges presented by the diverse CBRN threat spectrum, mitigate the risks associated with MCM development and ensure that our development and acquisition of MCM significantly enhances our response and recovery capabilities, we must utilize the following overarching principles to guide decisions on the development and acquisition of medical countermeasures:

- We must focus our preparations on countering the threat agents that have the highest potential to cause catastrophic public health consequences.
- We must direct investments where medical intervention presents the greatest opportunity to prevent, mitigate, and treat those public health consequences.
- Under HHS leadership, we must align and synchronize efforts on the part of all key stakeholders involved in the PHEMCE towards defending the United States of America against CBRN weapons of mass destruction.
- We must adapt our plans and programs to changes in intelligence, threat assessments, and assessments of medical and public heath consequences including our public health emergency response capabilities, and the progress that is made in the development and availability of candidate medical countermeasures.

To implement programs that most effectively acquire medical countermeasures, including those under Project BioShield, the PHEMCE Strategy addresses the full spectrum of events required from the identification of priority threats, to setting medical countermeasure requirements for those threats, to the ultimate acquisition and effective use of those medical countermeasures. The PHEMCE Strategy builds upon the following four pillars:

1. Threat Identification and Prioritization:

○ HHS will consider the best available intelligence and scientific information to identify and prioritize CBRN threats. HHS' public health consequences assessments and corresponding MCM priorities and requirements will be informed by the DHS Material Threat Determinations which, as defined in the Project BioShield Act, present a material threat sufficient to affect national security.

2. Medical/Public Health Consequence Assessment:

○ HHS will utilize modeling, where available, to complement the subject matter experts' evaluation of the effectiveness of various medical countermeasure strategies and response capabilities.

3. Establishment and Prioritization of Medical Countermeasures Requirements:

○ HHS will establish baseline requirements based on unmitigated consequence assessments.

○ HHS will assess the status of medical countermeasures available and in development including:

■ Holdings of the SNS

■ Relevant commercial products potentially accessible to the USG

■ Candidate medical countermeasures in the developmental pipeline (USG and Industry)

○ HHS will establish Concept of Operations including maintenance, utilization policies and deployment plans for each MCM in the context of all available consequence mitigation strategies.

○ Gap analysis: HHS will assess medical countermeasure requirements vs. candidate and available medical and non-medical countermeasures

○ HHS will define specific medical countermeasure requirements, including product specifications consistent with USG storage plans and operational capabilities for deployment and utilizations by federal, state and local authorities.

4. Establish and Prioritize Near-Term (FY07–08), Mid-Term (FY09–13), and Long-Term (FY14–23) Development, Acquisition, Stockpiling and Maintenance Strategies:

○ HHS will establish a research and development portfolio to address MCM gaps and to meet future acquisition targets (align requirements with priorities).

○ HHS will identify and support critical infrastructure that enables medical countermeasure development such as biocontainment facilities, animal models, workforce training, production, etc.

○ HHS will establish short-, mid-, and long-term acquisition strategies that

incorporate all relevant cost elements for acquisition, storage, maintenance, deployment and utilization of the medical countermeasure.

After publishing a final *PHEMCE Strategy*, HHS will develop and publish an Implementation Plan for this strategy. Several critical policy issues will guide creation of the Implementation Plan. These policies will address both the development and acquisition of MCM to threat agents. These ten strategic policies include:

1. Relative Hierarchy of CBRN Threat Classes (Biological versus Chemical versus Radiological/Nuclear)

The *PHEMCE Implementation Plan* will address the relative value of medical countermeasures across all classes of threat agents. There is general consensus that the greatest potential for medical mitigation exists for biological threat agents. However, HHS also envisions identifying significant, though more limited, opportunities for MCM for radiological, nuclear and chemical threats.

2. Addressing Top Priority versus All Threats

While our primary goal is to prevent the health effects of an attack with WMD, we recognize that despite our best efforts we will not be able to develop and acquire medical countermeasures to prevent and reduce adverse health effects against all threats in all places at all times for all people. Consequently, the *PHEMCE Implementation Plan* will consider all CBRN threats weighing costs, risks, and benefits such as their relative priority, feasibility of use in an event, and cost to mitigate with MCM and non-MCM to develop the best strategy. Recognizing the scope of the threats and the limited resources, the investments will focus on the top priorities for medical mitigation. Where possible, HHS will aim to develop and acquire medical countermeasures that have the potential to address multiple threats, particularly for lower priority threat agents.

3. Traditional, Enhanced, Emerging, and Advanced Threats

There are four classes of biological threat agents: traditional, enhanced, emerging, and advanced (or engineered) threats. These are defined, briefly as:

- Traditional Agents: naturally occurring microorganisms or toxin products with the potential to be weaponized and disseminated to cause mass casualties (*e.g.* anthrax, smallpox, etc.).
- Enhanced Agents: traditional agents that have been modified or selected to circumvent current countermeasures. For example, an enhanced agent could be a bacterial pathogen that is modified to confer resistance to an antibiotic.
- Emerging Agents: naturally occurring organisms that are newly recognized or anticipated to present a public health threat. Recent examples of emerging agents include Severe Acute Respiratory Syndrome (SARS) and West Nile Virus.
- Advanced Agents: novel organisms that have been engineered or newly generated in the laboratory. Ongoing advances in biotechnology are believed to enable the engineering of novel organisms that could be targeted to completely bypass our countermeasures and might even be mistaken as naturally occurring emerging agents.

The *PHEMCE Implementation Plan* will address traditional, enhanced, emerging, and advanced (engineered) threats and develop the best strategy to mitigate risk within time and cost constraints. HHS will continue to support a robust basic research program that will aim to develop broad-spectrum solutions using technologies that enable more flexible next generation interventional concepts and to consider approaches and technologies derived from the commercial drug development sector to support the biodefense mission. However, it is anticipated that near- and mid-term acquisition programs will continue to focus on addressing specific high priority threats with specific medical countermeasures. We will work closely with the intelligence community to ensure that our priorities are consistent with intelligence assessment of the threats most likely to be faced by our nation.

4. Medical Versus Non-Medical Countermeasures

HHS will work closely with interagency partners and in concert with national strategies and directives to guide and coordinate our medical countermeasure efforts with the other aspects of our homeland security strategies and missions to maximize synergies and minimize any gaps in our national defenses. Specifically, the *PHEMCE Implementation Plan* will take into consideration the use of non-medical countermeasures when establishing priorities to complement the use of medical countermeasures.

5. Specific Versus Broad Spectrum or Fixed Versus Flexible Defenses

As is true in the broader biodefense context, a key challenge to the Implementation Plan will be to define the optimal balance between fixed and flexible defenses.[2] While static defenses and the so-called "one bug-one drug" approach can be justified for top priority threat agents such as anthrax, with well-recognized potential for catastrophic medical and economic consequences, the uncertainties associated with the CBRN threat environment require that the PHEMCE Strategy also be as flexible as possible, to allow for the best approach for protection of our nation's citizens. Therefore, HHS will support the development of flexible MCM while recognizing that, at least for the immediate future, some agents will require agent-specific MCM.

6. Prevention/Mitigation Versus Treatment

The PHEMCE Implementation Plan will address both medical prevention and treatment alternatives and develop the best strategy considering both costs and benefits. The term "cost" in this case goes beyond simple immediate expenditure of funds to also include weighing future opportunity costs. For example, if the United States government purchases a medical countermeasure in the short term it may then miss the opportunity to buy a more effective medical countermeasure in the future due to budgetary constraints. In addition, a medical countermeasure that has a more expensive cost upfront, may be more valuable in the long term if it meets the criteria in utilization during a crisis, that is, easily self administered, no cold-chain storage, or broad spectrum with respect to threat mitigation. As with the definition of costs, benefits also go beyond the simple definition of "curing disease" and include concepts such as overall lifecycle of the medical countermeasure including storage, utilization and deployment.

For civilian populations, it is anticipated that, aside from some of the top priority threats, a post-event strategy will be adopted. Pre-event MCM (*e.g.* vaccines) are appropriate for high priority threats and when pre-event MCM are justified. Therapeutics/diagnostics or the use of post-exposure prophylaxis following an event will be the preferred strategy for all other threats. From this perspective, vaccines that provide post-exposure efficacy will be of interest.

[2] "Bioterrorism—Preparing to Fight the Next War", David A. Relman, *New England Journal of Medicine*, Vol 354(2):113–115, 2006. In the context of defense against biological threats, a fixed defense is a medical countermeasure intended for use against a specific organism and not useful in scenarios that employ a different organism.

7. Acute Versus Chronic Effects

The *PHEMCE Implementation Plan* will give priority to addressing the acute (immediate to weeks time frame) medical/public health outcomes resulting from CBRN threat agents.

8. First Available Versus Next Generation

The *PHEMCE Implementation Plan* will address both currently available and next generation medical countermeasures and will regularly evaluate on a case-by-case basis strategies for long-term maintenance and/or replacement of medical countermeasures in the SNS. Currently available medical countermeasures will be considered for acquisition if they meet immediate, critical needs and may be effectively deployed under current preparedness plans. Investment to meet particular threats will not however be a singular event, but rather an ongoing process that synchronizes the lifecycle requirements of currently stockpiled medical countermeasures with on-going research and development efforts. This synchronization should ensure that, as current stockpiles age and decline, more appropriate, next generation products will be available for acquisition consideration.

9. General Versus Special Populations

The *PHEMCE Implementation Plan* will address the needs of both general and special populations such as children, the elderly, pregnant women, persons with immunocompromised conditions and persons with disabilities that may impact the efficacy of, or the ability to access, MCM. Given limited available resources, priority will be given to those medical countermeasures that will prevent and treat adverse health effects to the greatest number of individuals. However, efforts will continue to be made to find creative solutions for providing treatment and mitigation of high priority threats to all populations.

10. Domestic Versus International

The *PHEMCE Implementation Plan* will focus on the domestic medical countermeasure needed to protect the homeland, while recognizing that in a global emergency these resources may be utilized by the USG to meet critical international needs and the need to protect the homeland, to the extent feasible, under the framework of the International Health Regulations (2005) that will go into force in June 2007. Additionally, the Implementation Plan will call out and address those instances in which domestic manufacturing capacity is critical to national security.

PHEMCE Strategic Objectives

To achieve the goal of acquiring critical, targeted MCM, HHS will act on the following strategic objectives:

1. Identify and prioritize current and future MCM objectives;

2. Build balanced, effective programs across all phases of the PHEMCE;

3. Increase transparency and predictability in the Nation's civilian MCM priorities;

4. Develop, Recruit, and Support A World-Class Workforce

1. Identify and Prioritize Current and Future MCM Objectives

HHS has made substantial progress toward protecting the Nation from several of the most worrisome bioterrorist threats.[3] Biological threats have significant potential to have a catastrophic impact on public health by causing tens of thousands to millions of casualties in single, multiple, or sequential attacks. There are fewer technical barriers to the acquisition, production and dissemination of biological agents to a large number of people relative to those posed by other CBRN threat classes. In addition, biological threats are unique in that some agents are contagious and have the potential to continue inflicting casualties beyond their original area of release. Therefore, the acquisition of medical countermeasures for priority biological agents presents the greatest opportunity to prevent and mitigate health effects of public health emergencies. When addressing radiological/nuclear and chemical threats emphasis should be on well-defined diagnostics and therapeutic interventions, since the mitigation of the threat will be after the catastrophic event has occurred.

HHS has major stockpiles of antibiotics for use against anthrax, plague, and tularemia, as well as a significant stockpile of smallpox vaccines. These medical countermeasures can be used to protect our citizens from adverse health effects following exposure to these pathogens. The timelines for effective use after a large number of people are exposed are however very demanding and HHS is working with States and localities to enhance our ability to distribute these MCM swiftly enough to be effective in a crisis. HHS also has invested in a growing stockpile of the current anthrax vaccine which is licensed for pre-exposure immunization, as well as the acquisition of a new anthrax vaccine targeted for licensure for both pre-exposure and post-exposure use. Additionally, HHS has contracted for anthrax treatments including polyclonal and monoclonal antibodies. In addition, HHS will include in its overall MCM acquisition strategy the threat of naturally occurring, emerging or re-emerging infectious diseases of which SARS or West Nile Virus represent two examples. Analysis of the threat potential will influence resource allocation towards targeted versus flexible MCM investments. At the same time, long term investments towards the development of broad spectrum platform technologies are expected to enhance the overall threat detection, diagnosis, and disease mitigation capabilities.

In its strategy for future priority setting for acquisition of MCM, HHS recognizes it must focus MCM investments across two separate dimensions.

One dimension is across potential CBRN threat agents. MCM investments must be appropriately targeted across the full range of CBRN agents, informed by the potential gravity of a threat agent, as well as by the probability that such an event might occur. Broad assessments from DHS and the intelligence and scientific community, including both domestic and international perspectives will inform these judgments. Protection against threats must be broad enough to mitigate the impact of major biological, radiological, nuclear and chemical threats and enhance overall security.

A second dimension to consider is the near, mid and long-term MCM needs across time. As we move into the future, both the sophistication of the threat and the sophistication of potential medical countermeasures are expected to increase. The need for and the benefits

[3] In 2000 the Centers for Disease Control and Prevention issued a ranked list of bioterrorism agents. The highest priority, Category A, was assigned to agents that can be easily disseminated or transmitted person-to-person, cause high mortality and major public health impact, might cause public panic and social disruption, and require special action for public health preparedness. The Category A agents (and the diseases they cause) are variola major (smallpox), *Bocillus onthrocis* (anthrax), *Yersinia pestis* (plague), *Clostridium botulinum* toxin (botulism), *Froncisello tulorensis* (tularemia), and two categories of hemorrhagic fever viruses: filoviruses, (Ebola and Marburg) and arenaviruses (Lassa fever, Junin [Argentine hemorrhagic fever] and related viruses). Many other organizations have done rankings of bioterrorism threats and the principle results have roughly been the same. An integrated all WMD hazards risk assessment is necessary for the creation of an overarching guide for setting prioritize across the range of CBRN agents. The Department of Homeland Security will complete and deliver to the Homeland Security Council by January 2008 the results of an all-WMD assessment that builds upon their bioterrorism risk assessment and will integrate chemical, radiological and nuclear threats.

of purchasing large quantities of a currently available MCM must be weighed against the risks and benefits of waiting for a new MCM that could be more effective but will not be available for years. HHS must balance between the risk of an event in the immediate future and the opportunity of a fully refined, advanced MCM in the longer term.

The balancing of these two dimensions will require some difficult tradeoffs. HHS cannot acquire all of the countermeasures that might be available to counter all potential threat agents in each of the near, mid and long-term time frames. Using a more cost-effective and efficient approach, HHS might choose to fund fully the development of a needed MCM, take it through clinical trials, and then purchase only a small stockpile and principally rely on a finely honed, well-planned and exercised surge production capability to swiftly produce enough doses in a national crisis.

For the near-term, HHS will continue to identify MCM opportunities for currently licensed medical treatments and candidate medical treatments already in advanced development that fill near-term vulnerabilities. These will focus on the most worrisome agents, in terms of adverse public health and medical outcomes. We will seek greater robustness in our anthrax and smallpox responses, for example, by using different classes of antibiotics against a bacterial pathogen or focusing on MCM with different mechanisms of action such as vaccines, antimicrobials, and antitoxins which use newer rather than legacy technologies.

For the mid-term, HHS will monitor advances in medical countermeasure technology and seek to provide the needed incentive to pull promising candidate MCM out of the laboratory and turn them into greatly improved medical countermeasures through a more tightly focused advanced development effort. A high priority, for example, will be development of point-of-care assays and diagnostics that can rapidly differentiate microbial pathogens, specific radionuclides, or toxic chemicals that would lead to timely and appropriate medical decisions. Such assays are critical in rapidly separating those who have been exposed and require intervention from the unexposed but "worried well." HHS also will support new MCM manufacturing methods. Just as it has been promoting the development of cell-based production of influenza vaccines to supplement egg-based vaccine preparation methods, the Department will seek other opportunities to promote faster production methods that lend themselves to surge production in a crisis. Furthermore, HHS will support the development of MCM with produce specifications that will facilitate a rapid public health response such as needle-less delivery systems and single dose solutions over multidose strategies.

For the long-term, HHS will strive to develop broad-spectrum countermeasures as well as other new MCM approaches. We, for example, hope to see, over time, improved methods for treating the acute effects of radiation exposure. Replacement of legacy technologies, such as equine heptavalent botulinum antitoxin, may also be needed upon expiration of the current generation products currently being stockpiled.

Prioritizing MCM Based on Product Characteristics

HHS also will select candidate medical countermeasures based on desired product characteristics are most compatible with the concept of operations for public health emergency response. For example, HHS will favor medical countermeasures that people can self-administer, such as oral antibiotics, over those that require a health care worker (doctor or nurse) to administer. Among those that require a health care worker, HHS will favor easily administered medications, such as a simple injection, over those needing longer interventions such as slow-infusion intravenous drugs or multiple interventions. Ideal medical countermeasures will have a low risk of adverse side effects so that their benefits clearly outweigh their risks. Finally, ideal medical countermeasures will include products that can be stored at room temperature and be appropriate for use by the vast majority of citizens. Their use will require little or no screening to identify those patients who cannot use them and hence will most readily facilitate their rapid and broad distribution in a public health emergency.

2. Build Balanced, Effective Programs Across All Phases of the PHEMCE

HHS will assure a balanced, effective program across the PHEMCE and will pursue the broad priorities across the spectrum of research and early development, advanced development, and procurement to ensure a comprehensive, mutually-supportive program.

A strong biodefense research and early development program is currently underway under the leadership of the National Institute of Allergy and Infectious Diseases at the NIH. To supplement this effort, over the next year, and pending the availability of funds, HHS intends to expand its advanced development program. The Department plans to fund and staff this new function to enhance its ability to pursue an aggressive and strategic advanced development program as part of the comprehensive PHEMCE.

HHS is similarly committed to strengthening its execution of MCM procurements. It is expanding the size of procurement staff and is working with DHS to streamline the approval process for use of the Special Reserve Fund authorized in the Project BioShield Act of 2004.

In July 2006, HHS created a strategic planning function in the Office of Public Health Emergency Preparedness. This office will be responsible for carrying out a PHEMCE Strategic Plan that balances investment across CBRN agents and timelines. It also will produce threat-specific plans for the most worrisome bioterrorism agents, identify all the potential junctures for medical intervention post-exposure and present procurement options for the HHS Secretary's decision.

3. Increase Transparency and Predictability in The Nation's Civilian MCM Priorities

HHS will clearly and publicly articulate MCM priorities, the types of MCM it will seek to acquire and the general timelines for acquisition. The development of new medical countermeasures requires effective interactions among Government, the private sector and academia. Private research organizations, pharmaceutical manufacturers, biotechnology companies, and clinical research organizations already have many of the resources and the expertise needed to develop MCM but have been reluctant to make substantial investments in research and development because of market uncertainties.

HHS will promote appropriate discussion of these priorities with all stakeholders, public and private, by convening meetings and workshops with representatives from relevant industries, academia, other Federal departments and agencies, international agencies as appropriate, and other interested persons. In addition, HHS will launch a stakeholder Web portal to enhance industry's access to and communication with the relevant HHS agencies regarding MCM product development.

HHS will work to streamline the regulatory process for medical countermeasures. HHS will facilitate private investment of time, energy and

resources in MCM development by removing or lowering obstacles whenever appropriate, including the application of liability protections where appropriate. HHS will conduct its selection and acquisition process with full transparency while respecting requirements for confidentiality.

4. Develop, Recruit, and Support a World-Class Workforce

A successful PHEMCE will need a highly qualified and accomplished workforce with appropriate technical training, scientific skills, and business experience. HHS is committed to staffing the PHEMCE with outstanding professionals and to creating a supportive work environment.

The Department will recruit outstanding professionals from both the public and private sectors, to build a model program for advanced product development and procurement program that will provide needed products as efficiently and effectively as possible. HHS will recruit career Federal employees for their experience, skills and expertise in research, development, and the regulatory aspects of product development programs as well as management of such government programs. Highly qualified researchers and managers from academia and private industry will compliment their expertise. HHS will facilitate the appointment of these individuals through existing general and senior service programs.

HHS also will develop programs to provide opportunities for information regarding scientific and product development by using such mechanisms as fellowship, sabbatical, internship and exchange programs. This effort will allow private sector individuals to bring new skills and fresh ideas to the program from the biotechnology and pharmaceutical industries. The Department also will create appropriate career paths to assure staff who are working in the PHEMCE have opportunities to continue to grow professionally and assure that excellence remains the hallmark.

HHS will use current Federal hiring practices to offer compensation that attracts the best human capital to meet its mission and challenges. HHS also will accept service from qualified individuals with special expertise who are willing to contribute their skills to advisory boards or committees that the Secretary determines would contribute to the overall program.

Conclusion

This HHS PHEMCE Strategy reflects the new HHS approach to develop and acquire medical countermeasures against CBRN events. It provides strategic direction to the Department, signals the Department's intent and priorities to its Governmental and private partners and will serve to guide development of the PHEMCE Implementation Plan. Consistent with its stated commitment to transparency, predictability, and wide-ranging solicitation of expertise, the Department will engage those partners as it develops specific strategic initiatives to meet its goals and objectives in MCM advanced development, procurement, and delivery. The HHS PHEMCE Strategy underscores the recognition of HHS's top leadership that the President is relying on the Department to craft and execute a program that responsibly protects our fellow citizens from CBRN threats.

Dated: September 5, 2006.

Gerald Parker,

Principal Deputy Assistant Secretary, Office of Public Health Emergency Preparedness.

[FR Doc. E6–14908 Filed 9–7–06; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–223]

Identification of Priority Data Needs for Two Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Request for public comments on the identification of priority data needs for two priority hazardous substances, and an ongoing call for voluntary research proposals.

SUMMARY: This notice makes available for public comment the priority data needs for two priority hazardous substances (see Table 1) as part of the continuing development and implementation of the ATSDR Substance-Specific Applied Research Program (SSARP). The notice also serves as a continuous call for voluntary research proposals. The SSARP is authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)]. This research program was initiated in 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the **Federal Register** on October 17, 1991 (56 FR 52178). The list was subsequently revised, based on public comments, and published in final form on November 16, 1992 (57 FR 54150). In 1997, ATSDR finalized the priority data needs for a second list of 12 substances; that priority data needs list was subsequently announced in the **Federal Register** on July 30, 1997 (62 FR 40820). Ten substances constitute the third list of hazardous substances for which priority data needs were identified by ATSDR. The final list of the 10 substances was published on April 29, 2003 (68 FR 22704), after it was subjected to public comment.

The exposure and toxicity priority data needs in this notice were distilled from data needs identified in the Agency's toxicological profiles via a logical scientific approach described in a "Decision Guide" published in the **Federal Register** on September 11, 1989 (54 FR 37618). The priority data needs represent essential information to improve the database for conducting public health assessments. Research to address these priority data needs will help determine the types or levels of exposure that may present significant risks of adverse health effects in people exposed to the hazardous substances.

The priority data needs identified in this notice reflect the opinion of the Agency, in consultation with other Federal programs, of the research needed pursuant to ATSDR's authority under CERCLA. They do not represent the priority data needs for any other agency or program.

Consistent with Section 104(i)(12) of CERCLA as amended [42 U.S.C. 9604(i)(12)], nothing in this research program shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority regarding any other provision of law, including the Toxic Substances Control Act of 1976 (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or the response and abatement authorities of CERCLA.

In developing this research program, ATSDR has worked with other federal programs to determine common substance-specific data needs, as well as mechanisms to implement research that may include authorities under TSCA and FIFRA, private-sector voluntarism, or the direct use of CERCLA funds.

When deciding the type of research that should be done, ATSDR considers the recommendations of the Interagency Testing Committee established under Section 4(e) of TSCA. Federally funded

projects that collect information from 10 or more respondents and that are funded by cooperative agreements are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that the project will be subject to initial and continuing review by the appropriate institutional review committees. Overall, data generated from this research program will lend support to others conducting human health assessments involving these two substances by providing additional scientific information for the risk assessment process.

The two substances that are included in the ATSDR Priority List of Hazardous Substances established by ATSDR and EPA (70 FR 72840, December 7, 2005) are:

- Acrolein
- Barium

The priority data needs for these two substances are presented in Table 1. We invite comments from the public on individual priority data needs. After considering the comments, ATSDR will publish the final priority data needs for each substance. These priority data needs will be addressed by the mechanisms described in the "Implementation of Substance-Specific Applied Research Program" section of this **Federal Register** notice.

This notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs in this notice by indicating their interest through submission of a letter of intent to ATSDR (see **ADDRESSES** section of this notice). A Tri-Agency Superfund Applied Research Committee (TASARC) comprised of scientists from ATSDR, the National Toxicology Program (NTP), and EPA, will review all proposals.

The substance-specific priority data needs were based on, and determined from, information in corresponding ATSDR toxicological profiles. Background technical information and justification for the priority data needs in this notice are in the priority data needs documents. These documents are available for review by requesting them in writing from ATSDR (see **ADDRESSES** section of this notice).

DATES: Comments concerning the priority data needs for the two substances must be received by December 5, 2006. Regarding ATSDR's call for voluntary research proposals, the Agency considers the voluntary research effort to be crucial to the continuing development of the Substance-Specific Applied Research Program and believes this effort should be an open and continuous one. Therefore, private-sector organizations are encouraged to volunteer to conduct research to address the identified priority data needs, beginning with the publication of this notice and until that time when ATSDR announces that other research has been initiated for a specific priority data need.

ADDRESSES: Submit comments to Yee-Wan Stevens, M.S., Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333, e-mail: *YStevens@cdc.gov*. Information about pertinent ongoing or completed research that may fill priority data needs cited in this notice should be similarly addressed. Also, use the same address for requests for priority data needs documents and submission of proposals to conduct voluntary research.

FOR FURTHER INFORMATION CONTACT: Yee-Wan Stevens, M.S., Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333, telephone: (770) 488–3325, fax: (770) 488–4178.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)[42 U.S.C. 9604(i)], requires that ATSDR (1) develop jointly with EPA a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare toxicological profiles of these substances, and (3) assure the initiation of a research program to address identified priority data needs associated with the substances.

The Substance-Specific Applied Research Program (SSARP) was initiated in 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the **Federal Register** on October 17, 1991 (56 FR 52178). The list was subsequently revised based on public comments and published in final form on November 16, 1992 (57 FR 54150). In 1997, ATSDR finalized the priority data needs for a second list of 12 substances and announced the list in the **Federal Register** on July 30, 1997 (62 FR 40820). Ten substances constitute the third list of hazardous substances for which priority data needs were identified by ATSDR. The final list was published in the **Federal Register** on April 29, 2003 (68 FR 22704) after it was subjected to public comment.

This ATSDR SSARP supplies necessary information to improve the database to conduct public health assessments. This link between research and public health assessments, and the process for distilling priority data needs for ranked hazardous substances from data needs identified in associated ATSDR toxicological profiles, are described in the ATSDR "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (54 FR 37618, September 11, 1989).

Implementation of Substance-Specific Applied Research Program

In Section 104(i)(5)(D), CERCLA states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under the Toxic Substances Control Act of 1976 (TSCA) and by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of the SSARP are being conducted via regulatory mechanisms (TSCA/FIFRA), private-sector voluntarism, and the direct use of CERCLA funds.

CERCLA also requires that ATSDR consider recommendations of the Interagency Testing Committee (ITC), established under Section 4(e) of TSCA, on the types of research to be done. ATSDR actively participates on this committee. Acrolein was added to the Priority Testing List in the ITC 27th Report in 1990, but barium has never been added to the Priority Testing List.

The mechanisms for implementing the SSARP are discussed next. The status of the SSARP in addressing priority data needs of the first 60 priority hazardous substances via these mechanisms was described in a **Federal Register** notice on December 13, 2005 (70 FR 73749).

A. TSCA/FIFRA

In developing and implementing the SSARP, ATSDR and EPA established procedures to identify those priority data needs of common interest to multiple Federal programs. Where practicable, these data needs will be addressed through a program of

toxicologic testing under TSCA or FIFRA. This part of the research will be conducted according to established TSCA/FIFRA procedures and guidelines.

B. Private-Sector Voluntarism

As part of the SSARP, on February 7, 1992, ATSDR announced a set of proposed procedures for conducting voluntary research (57 FR 4758). Revisions based on public comments were published on November 16, 1992 (57 FR 54160). ATSDR strongly encourages private-sector organizations to propose research to address priority data needs at any time until ATSDR announces that research has already been initiated for a specific priority data need. Private-sector organizations may volunteer to conduct research to address specific priority data needs identified in this notice by indicating their interest through submission of a letter of intent.

The letter of intent should be a brief statement (1–2 pages) that identifies the priority data need(s) to be filled and the methods to be used. The Tri-Agency Superfund Applied Research Committee (TASARC) will review these proposals and make recommendations to ATSDR regarding which specific voluntary research projects should be pursued—and how they should be conducted—with the volunteer organizations. ATSDR will enter into only those voluntary research projects that lead to high quality, peer-reviewed scientific work. Additional details regarding the process for voluntary research are in the **Federal Register** notices cited in this section.

C. CERCLA

Those priority data needs that are not addressed by TSCA/FIFRA or initial voluntarism will be considered for funding by ATSDR through its CERCLA budget. A large part of this research program is envisioned to be unique to CERCLA—for example, research on substances not regulated by other programs or research needs specific to public health assessments. A current example of the direct use of CERCLA funds is a cooperative agreement with the Minority Health Professions Foundation (MHPF) that supports the MHPF's Environmental Health, Health Services and Toxicology Research Program.

Mechanisms to address these priority data needs may include a second call for voluntarism. Again, scientific peer review of study protocols and results would occur for all research conducted under this auspice.

Substance-Specific Priority Data Needs

The priority data needs are identified in Table 1. Specifically, for acrolein, three priority data needs have been identified, while one priority data need was identified for barium. ATSDR encourages private-sector organizations and other governmental programs to use ATSDR's priority data needs to plan their research activities.

Dated: September 1, 2006.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDN) FOR FOURTH SET OF TWO PRIORITY HAZARDOUS SUBSTANCES

Substance	Priority data needs
Acrolein	Exposure levels in humans living near hazardous waste sites.
	Exposure levels of children.
	Dose-response data for chronic-duration (1) via inhalation exposure.
Barium	Dose-response data for acute-duration (2) via oral exposure.

(1) 365 days or more.
(2) 14 days or less.

[FR Doc. E6–14870 Filed 9–7–06; 8:45 am]
BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Commercial Truck Driver Health and Safety—Preventing Injury and Illness, Request for Applications (RFA) 07–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Commercial Truck Driver Health and Safety—Preventing Injury and Illness, RFA 07–001.

Times and Dates: 7 p.m.–9 p.m., October 11, 2006 (Closed).

8 a.m.–5 p.m., October 12, 2006 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 20036, telephone (703) 684–5900.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to RFA 07–001, "Commercial Truck Driver Health and Safety—Preventing Injury and Illness."

Contact Person for More Information: George Bokosh, Designated Federal Officer, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–6465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–14863 Filed 9–7–06; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Insecticide-Impregnated Bednet

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease

Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a limited field of use, exclusive license in India to practice the inventions embodied in the patent referred to below to Molecular Diagnostic Laboratory, having a place of business in Lucknow, India. The patent rights in these inventions have been assigned to the government of the United States of America. The patent(s) to be licensed are:

US 6,896,892 B2 entitled "Insecticide-Impregnated Fabric and Method of Production," issue date 05.24.2005. CDC Technology ID No. I–008–99.

Status: Issued.

Issue Date: 05.24.2005

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology: This technology provides a new insecticide-impregnated fabric and method of production for bednets.

SUPPLEMENTARY INFORMATION: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), CDC is providing public notice of its intention to grant an exclusive license. CDC will accept written comments concerning this notice for 30 days. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to Suzanne Seavello Shope, J.D., Technology Licensing and Marketing Specialist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8613; facsimile: (770) 488–8615.

Dated: August 31, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–14871 Filed 9–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Diagnostics of Fungal Infections

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, limited field of use, co-exclusive license to practice the inventions embodied in the patent and patent applications referred to below to Myconostica, Inc. (Myconostica) having a place of business in Manchester, United Kingdom. CDC intends to grant no more than three licenses to these inventions. The patent rights in these inventions have been assigned to the government of the United States of America. The patent and patent applications to be licensed are:

Title: Nucleic Acids for Detecting Aspergillus Species and Other Filamentous Fungi.

U.S. Patent Application Serial No.: 09/423,233.

Filing Date: 6/27/2000.

Domestic Status: 6,372,430.

Issue Date: 4/16/2002.

Title: Molecular Identification of Aspergillus Species.

U.S. Patent Application Serial No.: 60/381,463.

Filing Date: 5/17/2002.

Domestic Status: Pending.

Issue Date: N/A.

Title: Nucleic Acids for the Identification of Fungi and Methods for Using the Same.

U.S. Patent Application Serial No.: 60/325,241.

Filing Date: 9/26/2001.

Domestic Status: Pending.

Issue Date: N/A.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Specific DNA (oligonucleotide) probes have been developed for a wide variety of systemic disease causing fungi, including *Aspergillus* species and others. A probe has been developed for identification of all dimorphic fungi. These probes can be used for the rapid identification of fungal pathogens and for the diagnosis of mycotic diseases.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: August 31, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–14872 Filed 9–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0349]

Risk Communication on Medical Devices: Sharing Perspectives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), in cooperation with the Advanced Medical Technology Association (AdvaMed), is announcing a public meeting entitled "Risk Communication on Medical Devices: Sharing Perspectives." This 1-day workshop is intended to bring together various creators and recipients of medical device risk/benefit information to discuss how this information is developed, disseminated, and perceived; and to explore ways in which the process might be improved.

DATES AND TIMES: The public meeting will be held on September 26, 2006, from 7:30 a.m. to 5 p.m. Online registration is available until 5 p.m. on

September 25, 2006; however, onsite registration will be permitted if space remains (see the **Registration** section of this document for details).

ADDRESSES: The public meeting will be held at the Marriott Bethesda North Hotel and Conference Center, 5701 Marinelli Rd., North Bethesda, MD 20852. Additional information about, and directions to, the facility are available on the Internet at *http://marriott.com/property/factsheet/wasbn.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

FOR FURTHER INFORMATION CONTACT:

For FDA: Margaret Tolbert, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–3240, e-mail *margaret.tolbert@fda.hhs.gov.*

For AdvaMed: Ellen Bielinski by e-mail at *ebielinski@advamed.org*, by telephone at 202–434–7223, or by FAX at 202–783–8750.

SUPPLEMENTARY INFORMATION:

I. Background

Through lectures and panel discussions, participants will learn from senior FDA and industry representatives how the Government and the medical device industry communicate expected and unexpected risks to practitioners, patients, and the general public. FDA will present the results of its recent research on risk communication. Participants will also learn from clinical practitioners, risk managers, patient advocacy organizations, and the news media how this information is received and transmitted to patients and the public. These issues will be discussed, with audience participation, by a core panel comprised of representatives from FDA, industry, and academia. Additional information regarding the public meeting agenda is available on the Internet at *http://www.advamed.org/publicdocs/risk_communication_wkshp.shtml.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

II. Registration

Those interested in attending may register online at *http://www.advamed.org/publicdocs/risk_communication_wkshp.shtml.* You may register online until September 25, 2006; however, onsite registration will be permitted if space remains. There is a $350 registration fee to attend the meeting. Please submit registration early in order to reserve a space, as space is limited. If you require special accommodations due to a disability, please contact Margaret Tolbert (see **FOR FURTHER INFORMATION CONTACT**) or the Marriott North Hotel and Conference Center at 301–822–9200, at least 7 days in advance of the meeting.

Dated: August 31, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–14852 Filed 9–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-day Proposed Information Collection: Indian Health Service Medical Staff Credentials and Privileges File

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval.

The IHS received no comments in response to the 60-day **Federal Register** notice (71 FR 35921) published on June 22, 2006. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." *Type of Information Collection Request:* Extension of a currently approved information collection, 0917–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." *Form Number:* None. *Need and Use of Information Collection:* This collection of information is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these service, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physicians assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. The IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contractors who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Center for Medicare and Medicaid Services (formerly the Health Care Financing Administration), the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), and other accrediting organizations required health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require all medical staff applicants to provide information concerning their education, training licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: Former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current

competence of the medical staff and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. Prior to the establishment of this JCAHO requirement, the degree to which medical staff applications were verified for completeness and accuracy varied greatly across America. *Affected Public:* Individuals and households. *Type of Respondents:* Health care providers requesting medical staff privileges at IHS health facilities.

The table below provides the following: Types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response	Total annual burden hours
Application to Medical Staff	600	1	600	1.00	600.0
Reference Letter	1800	1	1800	0.33	594.0
Reappointment Request	200	1	200	1.00	200.0
Medical Privileges	387	1	387	1.00	387.0
Ob-Gyn Privileges	25	1	25	1.00	25.0
Surgical Privileges	23	1	23	1.00	23.0
Psychiatric Privileges	18	1	18	1.00	18.0
Anesthesia Privileges	16	1	16	1.00	16.0
Dental Privileges	128	1	128	0.33	42.2
Optometric Privileges	21	1	21	0.33	6.9
Psychology Privileges	23	1	23	0.17	3.9
Audiology Privileges	6	1	6	0.08	0.48
Podiatric Privileges	6	1	6	0.08	0.48
Radiology Privileges	9	1	9	0.33	2.9
Pathology Privileges	3	1	3	0.33	.99
Total	3,265				1,920.85

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Allison Eydt, Desk Officer for IHS.

For Further Information: Send requests for more information on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to Mrs. Christina Rouleau, IHS Reports Clearance Officer, 801 Thompson Avenue, TMP Suite 450, Rockville, MD 20852, call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: *crouleau@hqe.ihs.gov*.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 1, 2006.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 06–7522 Filed 9–7–06; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–22–]

Announcement of Funding Awards Fair Housing Initiatives Program Fiscal Year 2004

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the SuperNotice of Funding Availability (SuperNOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2004. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Support Division, Office of Programs, 451 Seventh Street, SW., Room 5230, Washington, DC 20410. Telephone number (202) 708–2215 (this is not a toll-free number). A

telecommunications device (TTY) for hearing and speech impaired persons is available at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The Department announced under separate solicitations in the **Federal Register** on May 14, 2004 (69 FR 94, pp 26942–27021, 27135–27156, and 27157–27168), the availability of approximately $17,730,525 out of a FY 2004 appropriation of $20,130,525 and any potential recapture, to be utilized on a competitive basis for FHIP projects and activities. Under the first solicitation for 2004, funding availability follows: The Private Enforcement Initiative (PEI/ $11,850,000), the Education and Outreach Initiative (EOI), including EOI-National ($3,780,525), and the Fair Housing Organizations Initiative (FHOI/ $2,100,000); for the second solicitation, $1,000,000 is for an EOI-College and University Component or a fair housing education and outreach effort in partnership with Minority Serving Institutions (MSIs) with law schools. This Notice announces awards of approximately $19,732,734.21 to 111 organizations and $1,265,207.00 to one contractor.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2004 SuperNOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: August 10, 2006.

Bryan Greene,

Deputy Assistant Secretary for Enforcement and Programs.

APPENDIX A

Applicant name	Contact person	Region	Award amount
Fair Housing Initiatives Program Awards FY 2004 Education and Outreach Initiative/General Component			
HAP, Inc., 322 Main Street, Springfield, MA 01105–2473	Peter Gagliardi, ph. 413–233–1661, fx. 413–731–8723.	1	$79,971.20
Champlain Valley Office of Economic Opportunity, P.O. Box 1603, Burlington, VT 05402–1603.	Tim Searles, ph. 802–862–2771, fx. 802–651–4179.	1	80,000.00
Neighborhood Economic Development Advocacy, 73 Spring Street, Ste. 506, New York, NY 10012.	Sarah Ludwig, ph. 212–680–5100, fx. 212–680–5104.	2	80,000.00
Citizens Action of New Jersey, 400 Main Street, Hackensack, NJ 07601–5903.	Phyllis Salowe-Keye, ph. 201–488–2804, fx. 201–488–1253.	2	80,000.00
Piedmont Housing Alliance, 2000 Holiday Drive, Ste. 200, Charlottesville, VA 22901–2899.	Karen Reifenberge, ph. 434–817–2436, fx. 434–817–0664.	3	70,264.80
American Environmental Justice Project, 16 West 25th Street, Baltimore, MD 21218–5002.	Johnnie M. Tasker, ph. 504–943–5954.	3	80,000.00
ACORN Fair Housing, A Project Of American Institute, 739 8th Street, SE., Washington, DC 20003–2802.	Valerie Coffin, ph. 410–735–3373, fx. 410–735–3383.	3	80,000.00
Fair Housing Council of Montgomery County, 105 E. Glenside Avenue, Ste. 3, Glenside, PA 19038–4602.	Elizabeth Albert, ph. 215–576–7711, fx. 215–576–1509.	3	80,000.00
North Carolina Fair Housing Center, 114 W. Parrish Street, 2nd Floor, Durham, NC 27701–3321.	Stella Jones, ph. 919–667–0888, fx. 919–667–1558.	4	78,134.40
Fair Housing Agency of Alabama, 1111 E Interstate 65, Service Road # 109, Mobile, AL 36606.	Enrique Lang, ph. 251–471–9333, fx. 251–471–9882.	4	79,924.00
Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37206–3809.	Esperanza Soriano-McCrary, ph. 615–252–8535, fx. 615–780–7059.	4	63,663.20
Waccamaw Regional Council of Governments, 1230 Highmarket Street, Georgetown, SC 29440–3227.	C. Kenneth Thompson, ph. 843–546–8502, fx. 843–527–2302.	4	79,445.60
Prairie State Legal Services, Inc., 975 N. Main Street, Rockford, IL 61103–7064.	David Wolowitz, ph. 630–690–2130, fx. 630–690–2279.	5	80,000.00
Fair Housing Center of Southwest Michigan, 323 N. Burdick Street, Kalamazoo, MI 49007.	Patricia L. Winston, ph. 269–927–6777.	5	80,000.00
Indiana Civil Rights Commission, 100 N. Senate Avenue, Rm. N103, Indianapolis, IN 48204–2255.	Judy Kochanczyk, ph. 317–233–6306, fx. 317–232–6580.	5	80,000.00
Housing Opportunities Made Equal of Greater Cincinnati, 2400 Reding Road, Ste. 404, Cincinnati, OH 31606–2015.	Deborah Jetter, ph. 513–721–4663, fx. 513–721–1642.	5	80,000.00
ACORN Housing Corporation, Inc, 757 Raymond Avenue, #215, St. Paul, MN 55114–1723.	Michael Shea, ph. 651–203–0008, fx. 651–203–1046.	5	80,000.00
City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504–0909	Alexandra Ladd, ph. 505–955–6567, fx. 505–955–6671.	6	77,493.60

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
ACORN Institute, Inc., 1024 Elysian Fields Avenue, New Orleans, LA 70117–8402.	Carolyn Carr, ph. 202–546–3499, fx. 202–546–2483.	6	80,000.00
CCC Service of Greater Dallas, Inc., 8737 King George Drive, Dallas, TX 75235–2222.	Bettye Banks, ph. 214–638–2227, fx. 214–540–6900.	6	80,000.00
Housing Partners of Tulsa, Inc., 415 East Independence, Tulsa, OK 74106–5727.	Susan Olivarez, ph. 918–581–5711, fx. 918–581–0645.	6	57,262.86
High Plains Community Development Corporation, Inc., 130 East 2nd Street, Chadron, NE 69337–2329.	Marguerite Vey-Miller, ph. 308–432–4346, fx. 308–432–4655.	7	34,871.54
Colorado Coalition for the Homeless, 2111 Champa Street, Denver, CO 80203–2529.	John Panvensky, ph. 303–239–2217, fx. 303–207–1653.	8	80,000.00
Greater Napa Fair Housing Center, 611 Cabot Way, Napa, CA 94559–4731.	Kathryn Winter, ph. 707–224–9720, fx. 707–224–1566.	9	79,992.00
Legal Aid Society of Oregon, 921 SW Washington Street, Ste. 570, Portland, OR 97205–2831.	Thomas Matsuda, ph. 503–471–1159, fx. 503–471–0147.	10	79,588.80
Idaho Legal Aid Services, Inc, 310 North Fifth Street, Boise, ID 83702–5907.	Kelly Miller, ph. 208–336–8980, fx. 208–342–2561.	10	80,000.00
Housing Network of Rhode Island Association, 48 Nashua Street, Providence, RI 02904–1815.	Carrie Zaslow, ph. 401–521–1461, fx. 401–521–1478.	1	47,261.50
Office of Human Affairs, P.O. Box 37, Newport News, VA 23607–0037	Robert Ayers, ph. 757–247–0379, fx. 757–247–0652.	3	34,769.34
D.C. Department of Housing and Community Development, 801 North Capitol Street, NE., Ste. 800, Washington, DC 20002–4202.	Patricia Gutierrez, ph. 202–442–7238, fx. 202–535–1392.	3	18,104.17
Mid-Florida Housing Partnership, Inc., 330 North Street, Daytona Beach, FL 32114–2612.	Harry Lapins, ph. 386–252–7200, fx. 386–239–7119.	4	50,000.00
Greenville County Human Relations Community, 301 University Ridge, Ste. 1600, Greenville, SC 29601–3613.	Sharon Smathers, ph. 864–467–7095	4	50,000.00
ACORN Housing Corporation of Texas, 2600 South Loop W, Ste. 270, Houston, TX 77054–2604.	Ernest Brown, ph. 713–863–9002	6	49,865.00
Arkansas Community Housing Corporation, Little Rock, AR 72206–1527	Dickson Bell, ph. 501–376–7151, fx. 501–376–3952.	6	50,000.00
Urban League of Metropolitan St. Louis, 3701 Gradel Square, St. Louis, MO 63156–8138.	Linda Harris, ph. 618–274–1150, fx. 618–482–2581.	7	50,000.00
Legal Aid Foundation of Los Angeles, 1102 Crenshaw Boulevard, Los Angeles, CA 90040–2922.	Mary Heiman, ph. 323–801–7971	9	50,000.00
Education and Outreach Initiative/Disability Component			
Peaceful Sanctuary Christian Church, 3575 West River Commons, Douglasville, GA 30135–3081.	Evelyn Beacham, ph. 770–942–0552, fx. 770–942–8949.	4	100,000.00
Boley Centers for Behavior Health Care, 445 31st Street North, Saint Petersburg, FL 33713–7605.	Jack Humburg, ph. 727–821–4819, fx. 727–822–6240.	4	90,922.00
Statewide Independent Living Council Of Illinois, 122 South Fourth Street, Springfield, IL 62701–1204.	Robin Benson, ph. 217–523–2587, fx. 217–523–0427.	5	86,400.00
Housing Research and Advocacy Center, 3631 Perkins Avenue 3A–2, Cleveland, OH 44114–4702.	Charles Bromley, ph. 216–361–9240, fx. 216–426–1290.	5	100,000.00
Advocacy Center, 225 Baronne Street, Ste. 2112, New Orleans, LA 70112–1724.	Lois Simpson, ph. 504–522–2337, fx. 504–522–5507.	6	100,000.00
AIDS Legal Referral Panel, 1663 Mission Street, Ste. 500, San Francisco, CA 94103–2484.	Bill Hirsh, ph. 415–701–1200, fx. 415–701–1400.	9	22,678.00
Education and Outreach Initiative/Hispanic Fair Housing Awareness Component			
Ceiba Housing and Economic, Development Advocacy, 252 Lauro Pinero Avenue, Ceiba, PR 00735–2707.	Hector Nieves, ph.787–885–3020, fx. 787–885–0716.	4	92,386.00
ACORN Community Land Association, 411 Bellamah Avenue, NW., Albuquerque, NM 87102–1315.	Sharon Trotter, ph. 505–244–1086, fx. 505–244–1088.	6	99,775.00
Housing Authority of the County of Fresno, P.O. Box 11985, Fresno, CA 93776–1985.	Martha Cabellero, ph. 530–742–7235, fx. 530–741–0854.	9	7,999.00
ACORN Housing Corporation of Arizona, 1018 West Roosevelt, Phoenix, AZ 85007–2107.	Marilyn Perez, ph. 602–253–1111, fx. 602–258–7143.	9	99,840.00
LaRaza Centro Legal, 474 Valencia Street, Ste. 295, San Francisco, CA 94103–3471.	Anamaria Loya, ph. 415–553–3429, fx. 415–255–7593.	9	100,000.00
Private Enforcement Initiative			
Fair Housing Center of Greater Boston, 59 Temple Place, Ste. 1105, Boston, MA 02111–1344.	David Harris, ph. 617–399–0491, fx. 617–399–0492.	1	219,996.00
Connecticut Fair Housing Center, 221 Main Street, Hartford, CT 06106–1890.	Erin Kemple, ph. 860–247–4400, fx. 860–247–4236.	1	220,000.00
New Hampshire Legal Assistance, 1361 Elm Street, Ste. 307, Manchester, NH 03101–1323.	Christine Wellington, ph. 603–206–2214, fx. 603–625–1840.	1	219,602.40

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
Housing Discrimination Project, 57 Suffolk Street, Holyoke, MA 12201–5054.	Jamie Williamson-Marley, ph. 413–539–9796, fx. 413–533–9978.	1	220,000.00
Pine Tree Legal Assistance, 88 Federal Street, Portland, ME 04112–4205	Nan Heald, ph. 207–774–4753, fx. 207–828–2300.	1	220,000.00
Fair Housing Council of Central New York, Inc, 327 West Fayette Street, Ste. 408, Syracuse, NY 13202–1264.	Merrilee Witherell, ph. 315–471–0420, fx. 315–471–0549.	2	210,723.20
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07601–7052.	Lee Porter, ph. 201–489–3552, fx. 201–489–8472.	2	220,000.00
South Brooklyn Legal Services, 105 Court Street, Brooklyn, NY 11201–5645.	Edward Josephson, ph. 718–237–5500, fx. 718–875–8546.	2	220,000.00
Long Island Housing Services, Inc., 3900 Veterans Memorial Hwy.#251, Bohemia, NY 11716–1042.	Michelle Santantonio, ph. 631–467–5111, fx. 631–467–5131.	2	200,176.80
Fair Housing Council of Suburban Philadelphia, 225 South Chester Road, Ste. 1, Swarthmore, PA 19081–1919.	James Berry, ph. 610–604–4411, fx. 610–604–4424.	3	219,760.80
Equal Rights Center, 11 Dupont Circle, NW., 4th Floor, Washington, DC 20036–1207.	Bruce Kahn, ph. 202–234–3062, fx. 202–234–3106.	3	220,000.00
Fair Housing Partnership of Greater Pittsburgh, Conestoga Building, 7 Wood Street, Ste. 6, Pittsburgh, PA 15222–1920.	Marian Kent, ph. 412–391–2535, fx. 412–391–2647.	3	219,736.80
Baltimore Neighborhoods, Inc., 2217 St. Paul Street, Baltimore, MD 21218–5806.	Joseph Coffey, ph. 410–243–4468, fx. 410–243–1342.	3	182,468.80
Fair Housing Center of Northern Alabama, 1728 3rd Avenue, North, Ste. 400C, Birmingham, AL 35203–2033.	Lila Hackett, ph. 205–324–0111, fx. 205–320–0238.	4	219,992.00
Jacksonville Area Legal Aid, Inc., 126 West Adams Street, Jacksonville, FL 32202–3849.	Michael Figgins, ph. 904–356–8371, fx. 904–356–8780.	4	219,868.00
Bay Area Legal Services, Inc., 829 W. Dr. Martin Luther King Blvd., Tampa, FL 33603–8309.	Richard Woltman, Ph. 813–232–1343, fx. 813–232–1403.	4	152,701.60
Metro Fair Housing Services, 1514 E. Cleveland Avenue, Ste. 118, East Point, GA 30344–6967.	Foster Corbin, ph. 404–765–3985, fx. 404–765–3985.	4	220,000.00
Housing Opportunities Project for Excellence, 18441 NW 2nd Avenue, Ste. 218, Miami, FL 33169–4517.	Keenya Robertson, ph. 305–651–4673, fx. 305–493–0108.	4	220,000.00
North Delta Mississippi Enterprise Community, P.O. Box 330, Sardis, MS 39666–0330.	Robert Avant, ph. 662–487–1968, fx. 662–487–0088.	4	220,000.00
Central Alabama Fair Housing Center, Inc., 1817 West Second Street, Montgomery, AL 36106–1503.	Faith Cooper, ph. 334–263–4663, fx. 334–263–4664.	4	219,200.00
Lexington Fair Housing Council, Inc., 205 E. Reynolds Road, Ste. E, Lexington, KY 40517–1316.	Arthur Crosby, ph. 859–971–8067, fx. 859–971–1652.	4	207,531.20
West Tennessee Legal Services, 210 West Main Street, P.O. Box 2066, Jackson, TN 38302–2066.	Carol Gish, ph. 731–426–1309, fx. 731–423–2600.	4	220,000.00
Tennessee Fair Housing Council, 107 Music City Circle, Ste. 318, Nashville, TN 37214–1214.	Tracey McCartney, ph. 615–874–2344, fx.615–874–1636.	4	200,918.40 (PEI)
HOPE Fair Housing Center, 2100 Manchester Road, Ste. 2070 B, Wheaton, IL 60187–4591.	Bernard Kleina, ph. 630–690–6500, fx. 630–690–6586.	5	219,586.40
Miami Valley Fair Housing Center, Inc., 21–23 East Babbit Street, Dayton, OH 45405–4968.	Jim McCarthy, ph. 937–223–6035, fx. 937–223–6279.	5	219,999.02
Fair Housing Center of Southeastern Michigan, P.O. Box 7825, 420 N 4th Avenue, Ann Arbor, MI 48107–7825.	Pamela Kisch, ph. 734–994–3426, fx. 734–665–2974.	5	67,384.86
Chicago Lawyers' Committee for Civil Rights, 100 N LaSalle Street, Ste. 600, Chicago, IL 60602–2448.	Gaylene Henry, ph. 312–630–09744, fx. 312–630–1127.	5	219,988.80
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Ste. 200, Milwaukee, WI 53202–3831.	William Tisdale, ph. 414–278–1240, fx. 414–278–8033.	5	219, 994.40
Fair Housing Center, 1000 Monroe Street, Ste. 4, Toledo, OH 43624–1954	Michael Marsh, ph. 419–243–6163, fx. 419–243–3536.	5	220,000.00
John Marshall Law School, 315 S Plymouth Court, Chicago, IL 60604–3969.	Michael Seng, ph. 312–987–1446, fx. 312–427–9438.	5	219,668.80
Fair Housing Center of Metro Detroit, 1249 Washington Boulevard, Detroit, MI 48226–1828.	Clifford Schrupp, ph.313–963–1274, fx. 313–963–4817.	5	98,985.60
Tri-County Independent Living Center, 680 East Market Street, Ste. 205, Akron, OH 44304–1640.	Rose Juriga, ph. 330–762–0007, fx. 330–762–7416.	5	220,000.00
South Suburban Housing Center, 18220 Harwood Avenue, Ste. 1, Homewood, IL 60430–2151.	John Petruszak, ph.708–957–4674, fx. 708–957–4761.	5	200,000.00
Legal Services of Eastern Michigan, 436 S. Saginaw Street, Flint, MI 48502–1812.	Teresa Trantham, ph. 810–234–2621, fx. 810–234–9039.	5	161,034.40
Fair Housing Center of Greater Grand Rapids,1514 Wealthy SE., Ste. 226, Grand Rapids, MI 49506–2755.	Nancy Haynes, ph. 616–451–2980, fx. 616–451–2657.	5	175,820.00
Legal Aid Society of Minneapolis, 430 First Avenue North, Ste 300, Minneapolis, MN 55401–1780.	Lisa Cohen, ph. 612–746–3702, fx. 612–334–5755.	5	220,000.00
Fair Housing Contact Service, 333 South Main Street, Ste. 300, Akron, OH 44308.	Tamala Skipper, ph. 330–376–6191, fx. 330–376–8391.	5	138,880.80 (PEI)
New Mexico Legal Aid, Inc., P.O. Box 25486, Albuquerque, NM 87125–5486.	John Arango, ph. 505–243–7871, fx. 505–842–9864.	6	220,000.00
Austin Tenants Council, 1619 E. Cesar Chavez Street, Austin, TX 78702–4455.	Katherine Stark, ph. 512–474–7007, fx. 512–474–0197.	6	218,946.40

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
Greater New Orleans Fair Housing Action Center, 938 Lafayette Street, Ste. 413, New Orleans, LA 70113–1034.	Jeffery May, ph. 504–596–2100, fx. 504–596–2004.	6	219,999.20
Metropolitan Fair Housing Council, 1500 NE 4th Street, Ste., 201, Oklahoma City, OK 73117–3003.	George Wesley, ph. 405–232–3247, fx. 405–232–5119.	6	216,380.80
Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68110–3831.	Jill Fenner, ph. 402–934–6675, fx. 412–934–7928.	7	220,000.00
Metropolitan St. Louis Equal Housing Opportunity, 1027 S Vandeventer, 4th Street, St. Louis, MO 63110–3805.	Willie Jordan, ph. 314–534–5800, fx. 314–534–2551.	7	219,999.32
North Dakota Housing Council, Inc., 533 Airport Road, Ste. C, Bismark, ND 58504–6177.	Amy Nelson, ph. 701–221–2530, fx. 701–221–9597.	8	219,360.00
Montana Fair Housing, Inc., 2522 South 3rd Street, West, Missoula, MT 59804–1329.	Robert Liston, ph. 406–542–2611, fx. 406–542–2235.	8	219,869.60
California Rural Legal Assistance, 631 Howard Street, Ste. 300, San Francisco, CA 94105–3935.	Ilene Jacobs, ph. 530–742–7235, fx. 530–741–0854.	9	220,000.00
Bay Area Legal Aid, 405 14th Street, 8th Floor, Oakland, CA 94612–2704	Ramon Arias, ph. 510–663–4755, fx. 510–663–4719.	9	220,000.00
Sentinel Fair Housing, 510 16th Street, Ste. 560, Oakland, CA 94612–1520	Mona Breed, ph. 510–836–2687, fx. 510–836–0461.	9	187,040.80
Southwest Fair Housing Council, 2030 Broadway, Ste. 101, Tucson, AZ 85719–5908.	Richard Rhey, ph. 520–798–1568, fx. 520–620–6796.	9	218,535.20
Silver State Fair Housing Council, 855 E. Fourth Street, Ste. E, Reno, NV 89512–3555.	Katherine Copeland, ph. 775–324–0990, fx. 775–324–7507.	9	218,462.40
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813–4304 ..	N. Nalan Fujimori, ph. 808–527–8014, fx. 808–527–8088.	9	220,000.00
Arizona Fair Housing Center, 615 N 5th Avenue, Phoenix, AZ 85003–1528	Edward Valenzuela, ph. 602–548–1599, fx. 602–548–1695.	9	213,655.20
Orange County Fair Housing Council, Inc., 201 S. Broadway, Santa Ana, CA 92701–5633.	Deborah Pierson, ph. 714–569–0823, fx. 714–835–0281.	9	123,600.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901–3884	Nancy Kenyon, ph. 415–457–5025, fx. 415–457–6382.	9	220,000.00
Fair Housing Council of Central California, Inc., 560 E Shields Avenue, Ste. 103, Fresno, CA 93728–4648.	Marilyn Borelli, ph. 559–244–2950, fx. 559–244–2956.	9	220,000.00
Project Sentinel, Inc., 430 Sherman Avenue, Ste. 308, Palo Alto, CA 94306–1854.	Ann Marquart, ph. 650–321–6291, fx. 650–321–4173.	9	220,000.00
Northwest Fair Housing Alliance, 35 W Main Street, Ste. 250, Spokane, WA 99201–0116.	Florence Brassier, ph. 509–325–2665, fx. 509–325–2716.	10	220,000.00
Fair Housing Council of South Puget Sound, 1517 South Fawcett, Ste. 250, Tacoma, WA 98402–1807.	Lauren Walker, ph. 253–274–9523, fx. 253–274–8220.	10	220,000.00
Fair Housing Council of Oregon, 1020 SW Taylor Street, Ste. 700, Portland, OR 97205–2512.	Pegge McGuire, ph. 503–223–3542, fx. 503–223–3396.	10	219,931.20
Fair Housing Organizations Initiative/ Establishing New Organizations Component			
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Ste. 200, Milwaukee, WI 53202–3831.	William Tisdale, ph. 414–278–1240, fx. 414–278–8033.	2	1,049,985.00
Fair Housing Council of Central New York, 327 West Fayette Street, Ste. 408, Syracuse, NY 13202–1275.	Merrilee Wetherell, ph. 315–471–0420, fx. 315–471–0549.	2	200,000.00
Legal Services of Eastern Michigan, 436 South Saginaw Street, Flint, MI 48502.	Teresa F. Trantham, ph. 810–234–2621, fx. 810–234–9039.	5	200,000.00
ACORN Community Land Association of Louisiana, c/o 16 West 25th Street, Baltimore, MD 21218.	Valerie Coffin, ph. 410–735–3373, fx. 410–735–3383.	9	200,000.00
Education and Outreach Initiative/National Component			
Leadership Conference on Civil Rights Education, 1629 K Street NW 10th Floor, Washington, DC 20006–1602.	Karen Lawson, ph. 202–466–3434, fx. 202–466–3435.	3	499,938.00
FY 2003 Continuation Funding of Fair Housing Initiatives Program Award Out of FY 2004 Funding Education and Outreach Initiative/Partnership with Historically Black Colleges and Universities			
Howard University School of Law, 2400 6th Street, NW, P.O. Box 1071, Washington, DC 20059–0001.	Tamar Meekins, ph. 202–806–8082, fx. 202–806–8436.	3	1,000,000.00
Secretary Initiated Projects/ Contracts Project for Training and Technical Assistance Guidance—Contract			
BearingPoint, LLC (formerly KPMG Consulting), 1676 International Dr., McClean VA 22102–4828.	Wendy F. Carr, 703–747–4230	3	1,265,207.00

[FR Doc. E6–14840 Filed 9–7–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–FA–11]

Announcement of Funding Awards Fair Housing Initiatives Program Fiscal Year 2003

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the SuperNotice of Funding Availability (SuperNOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2003. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Support Division, Office of Programs, Room 5230, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2215 (this is not a toll-free number). A telecommunications device (TTY) for hearing or speech-impaired persons is available at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125. The Department announced in the **Federal Register** on April 25, 2003 (68 FR 21001–21082 and 21195–21240), the availability of approximately $17,618,375 out of an appropriation of $20,118,375 and any potential recapture, to be utilized for the FHIP projects and activities through the Education and Outreach Initiative (EOI), including an EOI—National Program—Model Codes Partnership Component (MCPC), the Private Enforcement Initiative (PEI), and the Fair Housing Organizations Initiative (FHOI). The remaining approximately $2,500,000 is designated "for contracts, including the continuation of activities for the third option year under the Project for Training and Technical Assistance Guidance (PATTG) [announced under a previous solicitation] and in furtherance of fair housing education and outreach to meet HUD's Minority Serving Institution (MSI) goals. The funds to further the Department's goals to work with MSIs will be announced under a separate solicitation." This Notice was amended on June 17, 2003 (68 FR 36426–36444) to make certain technical corrections.

This Notice announces the award of approximately $18,534,463.78 in grants to 120 organizations and $1,400,000.00 in a contract to 1 organization.

The Department reviewed, evaluated and scored the applications received based on the criteria in the fiscal year 2003 SuperNOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: August 10, 2006.

Bryan Greene,

Deputy Assistant Secretary for Enforcement and Programs.

APPENDIX A

Applicant name	Contact person	Region	Award amount
Fair Housing Initiatives Program Awards FY 2003 Education and Outreach Initiative/General Component			
Pro-Home, Inc., 45 School Street, Taunton, MA 02780	Mary Ellen Rochette, (508) 821–1092	1	$45,076.80
HAP, Inc., 322 Main Street, Springfield, MA 01105	Carol B. Walker, (413) 233–1668	1	79,996.00
Champlain Valley Office of Economic Opportunity, 191 North Street, Burlington, VT 05402.	Robert Meehan, (802) 651–0551	1	79,692.00
New Jersey Department of Community Affairs, P.O. Box 806, 101 South Broad Street, Trenton, NJ 08625.	Sheri Malnak, (609) 984–8453	2	79,667.20
Westchester Residential Opportunities, Inc., 470 Mamaroneck Avenue, Ste. 410, White Plains, NY 10605.	Ann Seligsohn, (914) 428–4507	2	79,974.40
Housing Council in the Monroe County Area, Inc., 183 East Main Street, Ste. #1100, Rochester, NY 14604.	Anne S. Peterson, (585) 546–3700	2	79,984.00
Neighborhood Economic Development Advocacy Project, 73 Spring Street, Ste. 506, New York, NY 10012.	Sarah Ludwig, (212) 680–5100	2	80,000.00
NJ Citizens Action, 400 Main Street, Hackensack, NJ 07601	Phyllis Salowe-Kaye, (201) 488–2804	2	80,000.00
HELP Social Service Corporation, 30 E. 33rd Street, 9th Floor, New York, NY 10016.	Ronnie Silverman, (212) 779–3350	2	80,000.00
AAFE Community Development Fund, Inc., 111 Division Street, New York, NY 10016.	Siu-Kwan Chan, (212) 964–2288	2	80,000.00
Delaware Community Reinvestment Action Council, Inc., 601 N Church Street, Wilmington, DE 19801.	Rashmi Rangan, (302) 654–5024	3	51,200.00

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
St. Martins Center, Inc., 1701 Parade Street, Erie, PA 16503	David J. Pesch, (814) 452–6113 x 27	3	54,400.00
United Neighborhood Center of Lackawanna County, Inc., 425 Alder Street, Scranton, PA 18505.	Michal J. Hanley, (570) 346–0759	3	59,698.74
Piedmont Housing Alliance, 2000 Holiday Drive, Ste. 200, Charlottesville, VA 22902.	Karen Klick, (434) 817–2436	3	62,559.19
Harford County Maryland, 220 S Main Street, Bel Air, MD 21014	Mary Lobo-Dorsey, (410) 638–3329	3	77,712.80
Fair Housing Council of Suburban Philadelphia, Inc., 225 S Chester Road, Ste. 1, Swarthmore, PA 19081–1919.	James Berry, (610) 604–4411	3	79,986.40
ACORN Fair Housing, 739 8th Street, S.E., Washington, DC 20003	Carolyn Carr, (202) 547–2500	3	79,988.00
LCCR Education Fund, 1629 K Street, NW., 10th Floor., Washington, DC 20006.	Karen McGill-Lawson, (202) 466–3311.	3	79,998.40
ACORN Institute, Inc, 1024 Elysian Fields Avenue, New Orleans, LA 70117	Carolyn Carr, (202) 547–250	4	79,896.80
Fair Housing Agency of Alabama, 1111 E Interstate 65, Mobile, AL 36606	Enrique L. Lang, (251) 471–9333	4	78,324.00
Housing Education and Economic Development, 3405 Medgar Evers Blvd., Jackson, MS 39213.	Charles Harris, (601) 981–1960	4	79,080.00
City of Savannah, P.O. Box 1027, 2203 Abercom Street, Savannah, GA 31042.	Michael B. Brown, (912) 651–6415	4	79,999.20
City of Chattanooga, 100 E. 11th Street, Ste. 104, Chattanooga, TN 37402	Mary Simons, (423) 757–5093	4	80,000.00
Housing Rights Center of Wake County, Inc., P.O. Box 1800, 3948 Browning Place, Ste. 210, Raleigh, NC 27602.	David West, (919) 247–9695	4	80,000.00
Greenville County Human Relations Commission, 301 University Ridge, Ste. 1600, Greenville, SC 29601.	Sharon Smathers, (864) 467–7095	4	80,000.00
City of Memphis, 701 North Main Street, Memphis, TN 38107	Robert Lipscomb, (901) 576–7307	4	80,000.00
Latinos United, 36 S Wabash, Ste. 1325, Chicago, IL 60603	Juanita Irizarry, (312) 782–7500	5	79,220.88
Minneapolis Urban League, 2100 Plymouth Avenue North, Minneapolis, MN 55411.	David Oguamanam, (612) 302–3103	5	79,240.00
Housing Advocates, Inc., 3755 Prospect Avenue, Cleveland, OH 44115	Edward G. Kramer, (216) 391–5444	5	80,000.00
Acorn Housing Corporation, 757 Raymond Avenue #200, St. Paul, MN 55114.	Jordan Ash, (651) 203–0008	5	80,000.00
Interfaith Housing Center of The Northern Suburbs, 620 Lincoln Avenue, Winnetka, IL 60096–2308.	Gail Schechter, (847) 501–5760	5	80,000.00
Housing Partners of Tulsa, Inc., P.O. Box 6369, Tulsa, OK 74148	George Sanderson, (918) 581–5709	6	69,974.24
Tarrant County, 1509 B S University Drive, Ste. 276, Fort Worth, TX 76107	Patricia Ward, (817) 338–9129	6	73,936.80
City of Sante Fe, P.O. Box 909, Sante Fe, NM 87504	Alexandra Ladd, (505) 955–6567	6	79,840.00
ACORN Community Land Association of LA, 1024 Elysian Fields Avenue, New Orleans, LA 70117.	Beulah Labostrie, (504) 943–0044	6	80,000.00
Kansas Legal Services, Inc., 712 S Kansas Avenue, Ste. 200, Topeka, KS 66603.	Wayne A. White, (785) 233–2068	7	52,581.69
High Plains Community Development Corp. Inc., 130 East 2nd Street, Chadron, NE 69337.	Marquerite Vey-Miller, (308) 432–4346.	7	58,652.00
Iowa Civil Rights Commission, Grimes Bldg. 400 E 14th, Des Moines, IA 50309.	Ron Pothas, (515) 281–8084	7	79,632.80
Urban League of Wichita, Inc., 1802 East 13th, Wichita, KS 67214	Prentice Lewis, (316) 262–2463	7	80,000.00
Colorado Coalition for the Homeless, 2111 Champa Street, Denver, CO 80205.	John Pervensky, (303) 293–2217	8	80,000.00
Silver State Fair Housing Council, P.O. Box 3935, Reno, NV 89505	Katherine K. Copeland, (776) 324–0990.	9	80,000.00
Legal Services of Northern California, Inc., 619 North Street, Woodland, CA 95695.	John Gianola, (530) 662–1065	9	80,000.00
Consumer Credit Counseling of Central Valley, 4969 E McKinley Avenue, Ste. 107, Fresno, CA 93727.	Martha Lucey, (559) 454–1700 x 101	9	80,000.00
Legal Aid Services of Oregon, 700 SW Taylor Street, Ste. 310, Portland, OR 97205.	Thomas Matsuda, (503) 471–1159	10	79,727.20
Idaho Legal Aid Services, Inc., P.O. Box 913, 310 N 5th Street, Boise, ID 83701–0913.	Ernesto G. Sanchez, (208) 336–8980 x 109.	10	80,000.00
Fair Housing Center of Puget Sound, 517 South Fawcett, Ste. 250, Tacoma, WA 98402.	Lauren Walker, (253) 274–9523	10	80,000.00
Education and Outreach Initiative/Disability Component			
Vermont Center for Independent Living, 11 East State Street, Montpelier, VT 05602.	Janet Dermody, (802) 229–0501	1	65,336.80
Bronx Independent Living Services, Inc., 3225 Decatur Avenue, Bronx, NY 10467.	Barbara Linn, (718) 515–2800	2	100,000.00
Community Health Law Project, 185 Valley Street, South Orange, NJ 07079.	Harold Garwin, (973) 275–1175	2	100,000.00
University of Southern Mississippi Research & Sponsored Program, P.O. Box 5157, Jacksonville, MS 39211.	Dr. Royal P. Walker, (601) 432–6261	4	100.000.00
Progress Center for Independent Living, 7521 Madison Street, Forest Park, IL 60130.	Diane Coleman, (708) 209–1500	5	100,000.00
Accessible Communities, Inc., 1537 Seventh Street, Corpus Christi, TX 7804.	Judy Teige, (361) 883–8461	6	100,000.00

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
Protection and Advocacy System, 1720 Louisiana NE, #204 Albuquerque, NM 87110.	Bernadine Chavez (505) 256–3100 ...	6	100,000.00
Mental Health Advocacy Services, Inc., 3255 Wilshire Blvd., #902, Los Angeles, CA 90010.	James Pries (213) 389–2077	9	95, 000.00
Education and Outreach Initiative/Fair Housing and Minority Homeownership Component			
The Buffalo Urban League, 15 E. Genessee Street, Buffalo, NY 14203	Harold Garwin, (973) 275–1175	2	100,000.00
Office of Human Affairs, P.O. Box 37, 2410 Wickham, Avenue, Newport News, VA 23607.	Robert Ayers, (757) 247–0379 x 328	3	67,567.59
DC Department of Housing and Community Development, 801 North Capitol Street, NE., Washington, DC 20002.	Sonia P. Gutierrez, (202) 442–7203 ..	3	100,000.00
Crawford-Sebastian Community Development Council, 4831 Armour Street, Fort Smith, AR 72914.	Karen Phillips	3	29,045.95
Arkansas Community Housing Corp., 2101 South Main Street, Little Rock, AR 72206.	Dickson Bell, (501) 374–2114	6	100,000.00
Urban League of Metropolitan St. Louis, Inc., 3701 Grandel Square, St. Louis, MO 63108.	Brenda Wrench, (314) 615–3635	7	100,000.00
Education and Outreach Initiative/Hispanic Fair Housing Awareness Component			
Consumer Credit Counseling of Kern County, 5300 Lennox Avenue, Ste. 200, Bakersfield, CA 93309.	Katy Hudson, (661) 324–4140	9	56,000.00
ACORN Housing Corporation of AZ, 1018 West Roosevelt, Phoenix, AZ 85007.	Blanca Cordova, (602) 253–1111	9	95,000.00
LA Raza Centro Legal, Inc., 474 Valencia Street, Ste. 295, San Francisco, CA 94103.	Anamaria Loya, (415) 255–7593	9	100,000.00
Fair Housing Council of San Diego, 625 Broadway #1114, San Diego, CA 92101.	Mary Scott Knoll, (619) 699–5888 x203.	9	100,000.00
Fair Housing Organization Initiative/Establishing New Organizations Component			
Fair Housing Council of Suburban, Philadelphia, Inc., 225 S Chester Road, Ste. 1, Swarthmore, PA 19001–1919.	James Berry, (610) 604–4411	3	1,050,000.00
Fair Housing Continuum, Inc., 840 N Cocoa Blvd. Suite F, Cocoa, FL 32922.	David Baade, (321) 633–4551	4	1,050,000.00
Private Enforcement Initiative			
Connecticut Fair Housing Center, Inc., 221 Main Street, Hartford, CT 06106.	Erin Kemple, (860) 247–4000	1	203,252.79
Fair Housing Center of Greater, Boston, 59 Temple Place, Ste. 1105, Boston, MA 02111.	David Harris, (617) 399–0491	1	206,486.04
Housing Discrimination Project, 57 Suffolk Street, Holyoke, MA 01404	Jamie Williamson, (413) 539–9796 ...	1	206,489.79
Fair Housing Council of Central New York, 327 W. Fayette Street, Syracuse, NY 13202.	Merrilee Witheren, (315) 471–0420 ...	2	132,065.96
South Brooklyn Legal Services, 105 Court Street, Brooklyn, NY 11201	Josh Zinner, (718) 237–5500	2	135,239.79
Long Island Housing Services, Inc., Suite 251, 3900 Veterans Memorial Hwy, Bohemia, NY 11716.	Michelle Santantonio, (631) 467–5111.	2	204,239.79
Fair Housing Council of Northern, New Jersey, 131 Main Street, Hackensack, NJ 07601.	Lee Porter, (201) 489–3552	2	206,489.79
Legal Aid of Monroe County Area, Inc., 80 St. Paul Street, Ste. 700 Rochester, NY 14604.	Laurie Lambrix, (585) 325–2520	2	206,489.79
Housing Opportunities of Northern Delaware, 100 W 10th Street, Ste. #1004, Wilmington, DE 19801.	Gladys Spikes, (302) 429–0794	3	112,739.79
Housing Partnership of Greater Pittsburgh, Conestoga Building, 7 Wood Street, Suite 602, Pittsburgh, PA 15222.	Marian Kent, (412) 391–2535	3	203,821.29
National Community Reinvestment Coalition, 733 15th Street, NW #540, Washington, DC 20005.	David Berenbaum, (202) 628–8866 ..	3	206,156.04
Fair Housing Council of Montgomery County, 105 E Glenside Avenue, Glenside, PA 19038.	Elizabeth Albert, (215) 576–7711	3	206,489.79
Bay Area Legal Services, Inc., 2nd Floor, 829 W. Dr. Martin Luther King Blvd., Hillsborough, FL 33603.	Richard C. Woltmann, (813) 232–1343.	4	128,846.79
Lexington Fair Housing Council, Inc., 205 E. Reynolds Road, Suite E, Lexington, KY 40517.	Arthur Crosby, (859) 971–8067	4	178,000.29
Mobile Fair Hosing Center, Inc., P.O. Box 161202, 600 Bel-Air Blvd., Ste. 112, Mobile, AL 36616–2202.	Teresa F. Bettis, (251) 479–1532	4	194,851.92
North Delta MS Enterprise Community, P.O. Box 330, Sardis, MS 38666 ...	Robert Avant, (662) 487–1968	4	200,732.04
Central Alabama Fair Housing Center, 725 Montgomery Street, Ste. 725, Montgomery, AL 36104.	Faith R. Cooper, (334) 263–4563	4	205,739.79
Jacksonville Area Legal Aid, Inc., 126 West Adams Street, Jacksonville, FL 32202.	Michael G. Figgins, (904) 356–8371	4	206,417.79

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
Kentucky Fair Housing Council, 436 S 7th Street, Suite 201, Louisville, KY 40203.	Galen Martin, (502) 583–3247	4	206,484.17
Fair Housing Center of Northern Alabama, 1728 3rd Avenue North, 400C, Birmingham, AL 35203.	Lila E. Hackett, (205) 324–0111	4	206,489.79
Fair Housing Continuum, Inc., 840 N Cocoa Blvd., Ste. F, Cocoa, FL 32922.	David Baade, (321) 633–4551	4	206,489.79
West Tennessee Legal Services, Inc., 27 Brentshire Square, Ste. A, Jackson, TN 38305.	Carol Gish, (901) 482–5858	4	206,489.79
Tennessee Fair Housing Counsel, 719 Thompson Lane, Ste. 200, Nashville, TN 37204.	Tracey McCartney, (615) 383–6155	4	179,712.00
Legal Services of Eastern Michigan, 436 S Saginaw Street, Flint, MI 48502	Patricia Baird, (810) 234–2621	5	161,438.04
South Suburban Housing Center, 18220 Harwood Avenue, Ste. 1, Homewood, IL 60430.	John R. Petruszak, (709) 957–4674	5	177,239.79
Chicago Lawyers' Committee, 100 N Lasalle Street, Ste. 600, Chicago, IL 60602.	Sharon Legenza, (312) 630–9744	5	206,222.79
Housing Opportunities Made Equal of Cincinnati, 2400 Reading Road, Ste. 109, Cincinnati, OH 45202–1429.	Karla Irvine, (513) 721–4663	5	206,357.04
Miami Valley Fair Housing Center, Inc., 21–23 East Babbitt Street, Dayton, OH 45405–4968.	Jim McCarthy, (937) 223–6035	5	206,488.29
Access Living of Metropolitan Chicago, 614 West Roosevelt Road Chicago, IL 60607.	Lauren Holhut, (312) 253–7000	5	206,489.79
HOPE Fair Housing Center, 2100 Manchester Road, Ste. 1070–B, Wheaton, IL 60187.	Bernard D. Kleina, (630) 690–6500	5	206,468.04
Legal Aid Society Of Minneapolis, 430 1st Avenue North, Ste. 300, Minneapolis, MN 53621.	Lisa Cohen, (612) 746–3702	5	206, 489.79
Metropolitan Milwaukee Fair Housing Council, Inc., 600 East Mason, Suite 200, Milwaukee, WI 53202.	William Tisdale, (414) 278–1240	5	206,489.79
Fair Housing Contact Service, 333 South Main Street, Akron, OH 44308	Lynn M. Clark, (330) 376–6191	5	206,489.79
Leadership Council for Metropolitan Open Communities, 111 West Jackson Blvd, 12th Floor, Chicago, IL 60604.	Mary A Davis, (312) 341–5678	5	206,489.79
Fair Housing Resource Center, Inc., 54 South State Street, Ste. 303, Painesville, OH 44077.	Patricia A. Kidd, (440) 392–0147	5	206,489.79
Fair Housing Center, 1000 Monroe Street, #4, Toledo, OH 43624–1954	Ricardo King, (419) 243–6163	5	206,489.79
Housing Research & Advocacy Center, 3631 Perkins Avenue, Cleveland, OH 44114–4705.	Charles H. Bromley, (216) 361–9240	5	206,489.79
Austin Tenants Council, 1619 E. Cesar Chavez Street, Austin, TX 78702	Katherine Stark, (515) 474–7007	6	195,503.79
San Antonio Fair Housing Council, Inc., 4414 Centerview Drive, Ste. 170, San Antonio, TX 78228.	Sandra Tamez, (210) 733–3247	6	204,173.04
Greater Houston Fair Housing Center, Inc., 1900 Kane, Room 111, Houston, TX 77007.	Daniel Bustamante, (713) 641–3247	6	206,106.54
Family Housing Advisory Services, Inc., 2505 24th Street, Ste. 218, Omaha, NE 68110.	Jill Fenner, (402) 934–6675	7	206,462.04
Metropolitan St Louis Equal Housing Opportunity, 1027 S Vandevender Avenue, 4th Flr., St. Louis, MO 63110.	Will Jordon, (314) 534–5800	7	206,489.79
Fair Housing Council of Orange County, Inc., 201 South Broadway, Santa Ana, CA 92701	David Levy, (714) 569–0823	9	159,240.00
Inland Fair Housing and Mediation Board, 1005 Begonia Avenue, San Bernardino, CA 91762.	Lynne Anderson, (909) 984–2254	9	178,203.00
Sentinel Fair Housing, 510 16th Street, Ste. 560, Oakland, CA 94612	Mona Breed, (510) 836–2687 x 308	9	205,830.00
Southwest Fair Housing Council, 2030 E Broadway, Ste. 101, Tucson, AZ 85719.	Richard Rhey, (520) 798–1568	9	205,964.00
California Rural Legal Assistance, Inc., 631 Howard Street, Ste. 300, San Francisco, CA 94105.	Ilene Jacobs, (530) 742–7235	9	206,490.00
Project Sentinel, 430 Sherman Avenue, Ste. 308, Palo, CA 94306	Ann Marquart, (650) 321–6291	9	206,490.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901	Nancy Kenyon, (415) 457–5025	9	206,490.00
Arizona Fair Housing Center, 615 N 5th Avenue, Phoenix, AZ 85003	Edward Valenzuela, (602) 548–1599	9	206,489.00
Bay Area Legal Aid, 405 14th Street, 9th Floor, Oakland, CA 94612	Jean Crawford, (408) 283–3700x 417	9	206,490.00
Intermountain Fair Housing Council, 310 North 5th Street, Boise, ID 83701–0913	Shirleane Hayes, (208) 383–0695	10	206,471.79
Fair Housing Council of Oregon, 1020 SW Taylor Street, Ste. 700, Portland, OR 97205.	Peggy Micah, (503) 223–8295	10	206,471.79.
Education and Outreach Initiative/Partnership With Historically Black Colleges and Universities			
Howard University School of Law, 2400 6th Street, NW., Washington DC 20059.	Prof. Tamar Meekins, Clinic Dir., ph. 202–806–8082, fx. 202–806–8436.	3	996,762.00

APPENDIX A—Continued

Applicant name	Contact person	Region	Award amount
Secretary Initiated Projects/Contracts Project for Training and Technical Assistance Guidance—Contract			
Bearing Point, Inc. (Formerly KPMG Consulting), 22454 Three Notch Road, 2nd Floor, Lexington Park, MD 20653.	Wendy F. Carr, 703–747–4230	3	1,400,000.00

[FR Doc. E6–14842 Filed 9–7–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–36]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Kathryn Halvorson, Director, Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 2209–2802; (703) 696–5532; *Energy:* Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–0072; *GSA:* Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 513–0747; *Navy:* Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: August 31, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 9/8/06

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 7525
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200230009
Status: Unutilized
Comment: 26,226 sq. ft., need rehab, possible asbestos/lead paint, most recent use—dormitory, off-site use only

Mai Residence
212 5th Avenue
Seward Co: AK 99664–
Landholding Agency: GSA
Property Number: 54200630010
Status: Excess
Comment: 1070 sq. ft., presence of asbestos/lead paint, off-site use only
GSA Number: 9–I–AK–805

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comment: 462 sq. ft., concrete storage facility

Minnesota

Memorial Army Rsv Ctr
1804 3rd Avenue
International Falls Co: Koochiching MN 56649–
Landholding Agency: GSA
Property Number: 54200620002
Status: Excess
Comment: 8992 sq. ft., presence of asbestos/lead paint, most recent use—admin/storage
GSA Number: 1–D–MN–586

Missouri

Bldgs. 90A/B, 91A/B, 92A/B
Jefferson Barracks Housing
St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 18200220002
Status: Excess
Comment: 6450 sq. ft., needs repair, includes 2 acres

Montana

Border Patrol Station
906 Oilfield Avenue
Shelby Co: Toole MT 59474–
Landholding Agency: GSA
Property Number: 54200620010
Status: Excess
Comment: Bldg/1944 sq. ft.; garage/650 sq. ft.; shed/175 sq. ft.; potential asbestos/lead paint/radon
GSA Number: 7–Z–MT–0617

New Mexico

Federal Building
1100 New York Ave.
Alamogordo Co: Otero NM 88310–
Landholding Agency: GSA
Property Number: 54200630001
Status: Surplus
Comment: 12,690 sq. ft., subject to Historic preservation covenants, occupied until 9/30/08
GSA Number: 7–G–NM–0569

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comment: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comment: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comment: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comment: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Fleet Mgmt. Center
5—32nd Street
Brooklyn Co: NY 11232–
Landholding Agency: GSA
Property Number: 54200620015
Status: Surplus
Comment: 12,693 sq. ft., most recent use—motor pool, heavy industrial
GSA Number: 1–G–NY–0872B

8 Family Apt. Bldgs.
Watervliet Arsenal Housing
325 Duanesburg Road
Rotterdam Co: Schenectady NY
Landholding Agency: GSA
Property Number: 54200630011
Status: Excess
Comment: 8 multi family apt. bldgs. w/ garages and 1 maintenance shop, presence of asbestos/lead paint
GSA Number: 1–D–NY–0877

2 Residential Bldgs.
Watervliet Arsenal Housing
1138, 1134, 1132 North Westcott Rd.
Rotterdam Co: Schenectady NY
Landholding Agency: GSA
Property Number: 54200630012
Status: Excess
Comment: 2 residential bldgs. (one duplex/one single), each unit has one garage, shared driveway
GSA Number: 1–D–NY–877

North Dakota

Residence #1
Hwy 30/Canadian Border
St. John Co: Rolette ND 58369–
Landholding Agency: GSA
Property Number: 54200620005
Status: Excess
Comment: 1300 sq. ft., possible asbestos/lead paint, off-site use only
GSA Number: 7–G–ND–0504

Residence #2
Hwy 30/Canadian Border
St. John Co: Rolette ND 58369–
Landholding Agency: GSA
Property Number: 54200620006
Status: Excess
Comment: 1300 sq. ft., possible asbestos/lead paint, off-site use only
GSA Number: 7–G–ND–0505

Residence #1
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329–
Landholding Agency: GSA
Property Number: 54200620007
Status: Excess
Comment: 1640 sq. ft. bldg and garage, possible asbestos/lead paint, off-site use only
GSA Number: 7–G–ND–0508

Residence #2
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329–
Landholding Agency: GSA
Property Number: 54200620008
Status: Excess
Comment: 1490 sq. ft., attached garage, possible asbestos/lead paint, off-site use only
GSA Number : 7–G–ND–0507

Residence #3
Hwy 281/Canadian Border
Dunseith Co: Rolette ND 58329–
Landholding Agency: GSA
Property Number: 54200620009
Status: Excess
Comment: 1490 sq. ft., attached garage, possible asbestos/lead paint, off-site use only
GSA Number : 7–G–ND–0506

Residence #1
Hwy 42/Canadian Border
Ambrose Co: Divide ND 58833–
Landholding Agency: GSA
Property Number: 54200620012
Status: Excess
Comment: 2010 sq. ft., possible lead paint, most recent use—residential/office/storage, off site use only
GSA Number: 7–G–ND–0510

Residence #2
Hwy 42/Canadian Border
Ambrose Co: Divide ND 58833–
Landholding Agency:GSA
Property Number: 54200620013
Status: Excess
Comment: 2010 sq. ft., possible lead paint, most recent use—residential/office/storage, off site use only
GSA Number: 7–G–ND–0509

Sherwood Garage
Hwy 28
Sherwood Co: Renville ND 58782–
Landholding Agency: GSA
Property Number: 54200630002
Status: Surplus
Comment: 565 sq. ft., off-site use only
GSA Number: 7–G–ND–0512

Noonan Garage
Hwy 40
Noonan Co: Divide ND 58765–
Landholding Agency: GSA
Property Number: 54200630003
Status: Surplus
Comment: 520 sq. ft., presence of asbestos, off-site use only
GSA Number: 7–G–ND–0511

Westhope Garage
Hwy 83
Westhope Co: Bottineau ND 58793–
Landholding Agency: GSA
Property Number: 54200630004
Status: Surplus
Comment: 515 sq. ft., off-site use only
GSA Number: 7–G–ND–0513

Oklahoma

Warehouse 2E
2800 S. Eastern Ave.
Oklahoma City Co: OK 73129–
Landholding Agency: GSA
Property Number: 54200630005
Status: Surplus
Comment: 5618 sq. ft., presence of asbestos/lead paint, most recent use—warehouse, off-site use only
GSA Number: 7–G–OK–0572

South Carolina

4 Bldgs.
Charleston AFB
N. Charleston Co: SC 29404–
Location: 2314A/B, 2327A/B, 2339A/B, 2397A/B
Landholding Agency: Air Force
Property Number: 18200430025
Status: Excess
Comment: 2722 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

4 Bldgs.
Charleston AFB
N. Charleston Co: SC 29404–
Location: 2315A/B, 2323A/B, 2330A/B, 2387A/B
Landholding Agency: Air Force
Property Number: 18200430027
Status: Excess
Comment: 2756 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

3 Bldgs.
Charleston AFB
N. Charleston Co: SC 29404–
Location: 2321A/B, 2326A/B, 2336A/B
Landholding Agency: Air Force
Property Number: 18200430028
Status: Excess
Comment: 2766 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 2331A /B
Charleston AFB
N. Charleston Co: SC 29494–
Landholding Agency: Air Force
Property Number: 18200430029
Status: Excess
Comment: 2803 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 2341A/B
Charleston AFB
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430030
Status: Excess
Comment: 2715 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

11 Bldgs.
Charleston AFB
Floor Plan G6
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430042
Status: Excess
Comment: 1390 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

9 Bldgs.
Charleston AFB
Floor Plan GV
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430043
Status: Excess
Comment: 1390 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

8 Bldgs.
Charleston AFB
Floor Plan H6
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430044
Status: Excess
Comment: 1396 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldgs. 1841A/B, 1849A/B
Charleston AFB
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430045
Status: Excess
Comment: 2249 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

9 Bldgs.
Charleston AFB
Floor Plan I6
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430046
Status: Excess
Comment: 1400 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

7 Bldgs.
Charleston AFB
Floor Plan IV
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430047
Status: Excess
Comment: 1400 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

4 Bldgs.
Charleston AFB
N. Charleston Co: SC 29404–
Location: 1846A/B, 1853A/B, 1862A/B, 2203A/B
Landholding Agency: Air Force
Property Number: 18200430048
Status: Excess
Comment: 2363 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 1828A/B
Charleston AFB
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200430052
Status: Excess
Comment: 2330 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Land (by State)

Pennsylvania

18.8 acres
Tract 19
Curwensville Lake Project
Clearfield Co: PA
Landholding Agency: GSA
Property Number: 54200630007
Status: Excess
Comment: heavily wooded/undeveloped/limited access
GSA Number : 4–D–PA–0801

South Dakota

S. Nike Ed. Annex Land
Ellsworth AFB
Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200220010
Status: Unutilized
Comment: 7 acres w/five foundations from demolished bldgs. remain on site; with a road and a parking lot

Tennessee

Army Rsv Training Area
6510 Bonny Oaks Dr.
Chattanooga Co: Hamilton TN 37416–
Landholding Agency: GSA
Property Number: 54200630006
Status: Surplus
Comment: 80–110 acres, contains 5.6 acre retention pond, easements present, may flood periodically
GSA Number: 4–D–TN–05946A

Suitable/Unavailable Properties

Buildings (by State)

California

Social Security Building
505 North Court Street
Visalia Co: Tulare CA 93291–
Landholding Agency: GSA
Property Number: 54200610010
Status: Surplus
Comment: 11,727 sq. ft., possible lead paint, most recent use—office
GSA Number: 9–G–CA–1643

Colorado

Bldg. 100
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230001
Status: Excess
Comment: 7760 sq. ft., most recent use—admin/electronic equip. maintenance

Bldg. 101
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230002
Status: Excess
Comment: 336 sq. ft., most recent use—storage

Bldg. 102
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230003
Status: Excess
Comment: 1056 sq. ft., most recent use—storage

Bldg. 103
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230004
Status: Excess
Comment: 784 sq. ft., most recent use—storage

Bldg. 104
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230005
Status: Excess
Comment: 312 sq. ft., most recent use—storage

Bldg. 106
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230006
Status: Excess
Comment: 100 sq. ft., most recent use—storage

Illinois

SSA Federal Building
1530 4th Street
Peru Co: IL 61354–
Landholding Agency: GSA
Property Number: 54200540012
Status: Excess
Comment: 6007 sq. ft., most recent use—office/storage
GSA Number: 1–G–IL–732

Minnesota

Lakes Project Office
307 Main Street East
Remer Co: Cass MN
Landholding Agency: GSA
Property Number: 54200410015
Status: Surplus
Comment: Office bldg/oil shed/maintenance garage, minor water damage
GSA Number: 5–D–MN–548–A

Nevada

Young Fed Bldg/Courthouse
300 Booth Street
Reno Co: NV 89502–
Landholding Agency: GSA
Property Number: 54200620014
Status: Surplus
Comment: 85,637 sq. ft. available, presence of asbestos/lead paint, seismic issues
GSA Number: 9–G–NV–529–2

New Mexico

Federal Building
517 Gold Avenue, SW
Albuquerque Co: Bernalillo NM 87102–
Landholding Agency: GSA
Property Number: 54200540005
Status: Excess
Comment: 273,027 sq. ft., 8 floors + basement, top two floors structurally unsafe to occupy, 3 additional floors do not meet local code requirements for occupancy, presence of asbestos/lead paint
GSA Number: 7–G–NM–0588

New York

Bldg. 1225
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220014
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1226
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220015
Status: Unutilized
Comment: 7500 sq. ft., most recent use—storage

Bldg. 1227
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220016
Status: Unutilized
Comment: 1152 sq. ft., presence of asbestos/lead paint, most recent use—power station

Bldg. 1231
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220017
Status: Unutilized
Comment: 3865 sq. ft., presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1233
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220018
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—power station

Bldgs. 1235, 1239
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220019
Status: Unutilized
Comment: 144/825 sq. ft., need repairs, presence of lead paint, most recent use—electric switch station

Bldg. 1241
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220020
Status: Unutilized
Comment: 159 sq. ft., presence of lead paint, most recent use—sewage pump station

Bldg. 1243
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220021
Status: Unutilized
Comment: 25 sq. ft., most recent use—waste treatment

Bldg. 1245
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220022
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1247
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220023
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—power station

Bldg. 1250 + land
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220024
Status: Unutilized
Comment: 11,766 sq. ft. offices/lab with 495 acres, presence of asbestos/lead paint/wetlands

Bldg. 1253
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220025
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1255
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220026
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of lead paint/volatile organic compounds, access requirement, most recent use—power station

Bldg. 1261
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220027
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1263
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220028
Status: Unutilized
Comment: 576 sq. ft. needs repair, presence of lead paint, most recent use—power station

Bldgs. 1266, 1269
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220029
Status: Unutilized
Comment: 3730/3865 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1271
Verona Test Annex

Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220030
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1273
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220031
Status: Unutilized
Comment: 87 sq. ft., presence of asbestos, most recent use—sewage pump station

Bldg. 1277
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220032
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1279
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220033
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1285
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220034
Status: Unutilized
Comment: 4690 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1287
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220035
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Social Sec. Admin. Bldg.
517 N. Barry St.
Olean NY 10278–0004
Landholding Agency: GSA
Property Number: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1–G–NY–0895

North Carolina

Ft. Johnston Family
Housing Area
E. Moore/Ft. Johnston Place
Southport Co: Brunswick NC 28461–
Landholding Agency: GSA
Property Number: 54200610012
Status: Excess
Comment: 7994 sq. ft. includes residence, duplexes, tennis courts, service bldg., garage, present of asbestos/lead paint, National Register of Historic Places
GSA Number: 4–D–NC–0748

Washington

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420001
Status: Unutilized
Comment: 1625 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comment: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comment: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comment: 1425 sq. ft., possible asbestos/lead paint, most recent use—residential

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comment: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comment: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comment: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comment: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB 222, 224, 271, 295, 260
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comment: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB 102, 183, 118, 136, 113
Spokane WA 99224–
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comment: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Land (by State)

Indiana

Tanner's Creek
Access Site off Rt. 50
Lawrenceburg Co: IN
Landholding Agency: GSA
Property Number: 54200430022
Status: Excess
Comment: 8.45 acres, boat launch, flowage easement
GSA Number: 1–D–IN–571–C

Maryland

Railroad
Indian Head
White Plains Co: Charles MD
Landholding Agency: GSA
Property Number: 54200610006
Status: Excess
Comment: 160.01 acres containing railroad track 13.39 miles long and 100 feet wide with 6 railroad cars, easements present, adjacent to wetlands
GSA Number: 4–N–MD–0617

Michigan

IOM Site
Chesterfield Road
Chesterfield Co: Macomb MI
Landholding Agency: GSA
Property Number: 54200340008
Status: Excess
Comment: Approx. 17.4 acres w/concrete block bldg. in poor condition, most recent use—radio antenna field, narrow right-of-way
GSA Number: 1–D–MI–0603F

Lots 2–6
Lawndale Park Addition
Ludington Co: Mason MI 49431–
Landholding Agency: GSA
Property Number: 54200540007
Status: Excess
Comment: 0.81 acre—undeveloped
GSA Number: 1–G–MI–537–2

New Mexico

Portion/Medical Center
2820 Ridgecrest
Albuquerque Co: Bernalillo NM 87103–
Landholding Agency: GSA
Property Number: 54200620003
Status: Unutilized
Comment: 7.4 acres—vacant land
GSA Number: 7–GR–NM–04212A

New York

Youngstown Test Annex
Porter Center Road
Porter Co: NY 14174–0189
Landholding Agency: GSA
Property Number: 54200620004
Status: Surplus
Comment: 98.62 overgrown acres with 6 deteriorated buildings, abuts an industrial waste treatment facility
GSA Number: 1–D–NY–0879–1A

Ohio

Plats 9–72, 9–73

Davis Street
Niles Co: OH 44446–
Landholding Agency: GSA
Property Number: 54200530007
Status: Excess
Comment: 12,082 sq. ft., narrow right of way, no utilities
GSA Number: 1–1–OH–826

Pennsylvania

Parcel B
Valley Forge Army Hospital
Schuylkill Township
Phoenixville Co: Cheste PA 19460–
Landholding Agency: GSA
Property Number: 54200610009
Status: Surplus
Comment: 1.172 acres, parking area
GSA Number: 4GRPA0666B

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comment: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comment: 121 acres, bentonite layer in soil, causes movement

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 15532
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200220001
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 8354
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200240001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11827
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200240002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 7537
Elmendorf Air Force Base
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9340
Elmendorf Air Force Base
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9342
Elmendorf Air Force Base
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12737
Elmendorf Air Force Base
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13251
Elmendorf Air Force Base
Elemendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 29453
Elmendorf Air Force Base
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200320006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6527
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200330001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12739
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200330002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4314
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6527
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7541
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8111
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9489
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10547
Elmendorf AFB
Elmendorf AFB AK 99506–
Landholding Agency: Air Force
Property Number: 18200340006
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3270, 3274, 3278
Elmendorf AFB
Anchorage Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200630001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldgs. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldgs. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldgs. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldgs. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldgs. 30306, 30335, 30782
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldgs. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force

Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldgs. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldgs. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldgs. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldgs. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldgs. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldgs. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Bldg. 06522
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200330004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 98
Vandenberg AFB
Oak Mountain Annex
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 488
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 535
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 734, 738–739
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430004
Status: Unutilized
Reason: Secured Area

Bldg. 946
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430005
Status: Unutilized
Reason: Secured Area

Bldgs. 1200, 1201
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430006
Status: Unutilized
Reasons: Secured Area

Extensive deterioration
Bldg. 1205
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number: 18200430007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 719
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510001
Status: Unutilized
Reason: Secured Area

Bldg. 725
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510002
Status: Unutilized
Reason: Secured Area

Bldg. 729
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510003
Status: Unutilized
Reason: Secured Area

Bldg. 734
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510004
Status: Unutilized
Reason: Secured Area

Bldg. 737
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510005
Status: Unutilized
Reason: Secured Area

Bldg. 742
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510006
Status: Unutilized
Reason: Secured Area

Bldg. 746
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200510007
Status: Unutilized
Reason. Secured Area

Bldg. 11237
Vandenberg AFB
Lompoc Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200520001
Status: Unutilized
Reason: Secured Area

Bldgs. 01423, 01428
Edwards AFB
Kern Co: CA
Landholding Agency: Air Force
Property Number: 18200540001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

Structure 2600
Edwards AFB
Kern Co: CA –
Landholding Agency: Air Force.
Property Number: 18200540002
Status: Unutilized
Reason: Secured Area

Structure 08672
Edwards AFB
Kern Co: CA
Landholding Agency: Air Force
Property Number: 18200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

Bldgs. 5001 thru 5082
Edwards AFB
Area A
Los Angeles Co: CA 93524–
Landholding Agency: Air Force
Property Number: 18200620002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Garages 25001 thru 25100
Edwards AFB
Area A

Los Angeles Co: CA 93524–
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Park Village 3
Cow Creek
Death Valley Co: Inyo CA 92328–
Landholding Agency: Interior
Property Number: 61200630002
Status: Unutilized
Reason: Extensive deterioration

Park Village 42
Cow Creek
Death Valley Co: Inyo CA 92328–
Landholding Agency: Interior
Property Number: 61200630003
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2–8, 3–10
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 6–11, 6–12, 6–819
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 85
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 120, 123
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 724
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 764
Naval Base
Port Mugu Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200630014
Status: Unutilized
Reason: Secured Area

Bldg. 115
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 323
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 488
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 842
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 927
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630019
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1150
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1361
Naval Base
Port Hueneme Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77200630021
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Colorado

Bldg. 105
Peterson AFB
Colorado Springs Co: El Paso CO 80914–
Landholding Agency: Air Force
Property Number: 18200310003
Status: Underutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 106
Peterson AFB
Colorado Springs Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340010
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

Bldg. 107
Peterson AFB
Colorado Springs Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340011
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

Bldg. 108
Peterson AFB
Colorado Springs Co: El Paso CO 80914–8090
Landholding Agency: Air Force
Property Number: 18200340012
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

District of Columbia

Bldg. 396
Naval Support Facility
Anacostia Annex Co: DC 20373–
Landholding Agency: Navy
Property Number: 77200630008
Status: Unutilized
Reasons:
Within 2000 ft. of flammable or explosive material; Secured Area

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1705
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200330005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area Extensive deterioration

Bldg. 70500 V.I.B.
Cape Canaveral
Brevard Co: FL 32907–
Landholding Agency: Air Force
Property Number: 18200510010
Status: Underutilized
Reason: Secured Area

Tract 104–03
Canaveral Natl Seashore
Smyrna Beach Co: FL –
Landholding Agency: Interior
Property Number: 61200630004
Status: Excess
Reason: Extensive deterioration

Tract 104–22
Canaveral Natl Seashore
Smyrna Beach Co: FL –
Landholding Agency: Interior
Property Number: 61200630005
Status: Excess
Reason: Extensive deterioration

Bldg. 834
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy

Property Number: 77200630022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2658
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200630023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3483
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200630024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6144
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200630025
Status: Unutilized
Reason: Extensive deterioration

Bldg. F11
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. A225, A409
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630027
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. A515
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630028
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. A635
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630029
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. A993, A994
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630030
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. A1068
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630031
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. A4021
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630032
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 4080
Naval Air Station
Key West Co: FL 33040–
Landholding Agency: Navy
Property Number: 77200630033
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Georgia

Bldg. 340
Savannah IAP
Garden City Co: Chatham GA 31418–
Landholding Agency: Air Force
Property Number: 18200430010
Status: Excess
Reason: Secured Area

Federal Records Center
1557 St. Joseph Ave.
East Point Co: GA 33303–44
Location: GA0000AA (GA0501AA, GA0502AA, GA503AA).
Landholding Agency: GSA
Property Number: 54200630008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–G–GA–06402

Hawaii

Bldg. 503
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 907
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 954
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 980
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330011
Status: Unutilized
Reason: Secured Area

Bldg. 992
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330012
Status: Unutilized
Reason: Secured Area

Bldg. 1035
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330013
Status: Unutilized
Reason: Secured Area

Bldgs. 1709, 1721
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2041
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2044
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2104
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330017
Status: Unutilized
Reason: Secured Area

Bldg. 3018
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3202
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldgs. 3338, 3356
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3432
Hickam AFB
Hickam AFB HI
Landholding Agency: Air Force
Property Number: 18200330021
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3375
Hickam AFB
Hickam AFB HI

Landholding Agency: Air Force
Property Number: 18200330031
Status: Unutilized
Reason: Secured Area

Bldgs. 743, 1002, 6100
Johnston Atoll Airfield
Honolulu HI
Landholding Agency: Air Force
Property Number: 18200340013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Extensive deterioration

Bldgs. 1091, 1092
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510011
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area; Extensive deterioration

Bldg. 1864
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2074
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2174
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 3426
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510015
Status: Unutilized
Reasons: Floodway; Secured Area; Extensive deterioration

Bldg. 3431
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200510016
Status: Unutilized
Reasons: Floodway; Secured Area; Extensive deterioration

Bldgs. 12, 14
Kokee AFB
Kokee Co: HI
Landholding Agency: Air Force
Property Number: 18200510017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3389
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200520002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 4027
Hickam AFB
Hickam Co: HI
Landholding Agency: Air Force
Property Number: 18200530003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Idaho

Bldg. 1328
Mountain Home AFB
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18200240003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Illinois

Bldg. 3101
Capital MAP, DCFT
Springfield Co: Sangamon IL 62707–
Landholding Agency: Air Force
Property Number: 18200520003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 301
Argonne National Laboratory
Argonne Co: IL 60439–
Landholding Agency: Energy
Property Number: 41200630005
Status: Unutilized
Reason: Extensive deterioration

Iowa

Bldg. 902
185ARW Air Base
Sioux City Co: Woodbury IA 51111–
Landholding Agency: Air Force
Property Number: 18200630002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Kansas

Bldgs. 2031, 2029, 2025, 2023
McConnell AFB
Sedgwick Co: KS 67210–
Landholding Agency: Air Force
Property Number: 18200630003
Status: Unutilized
Reason: Secured Area

Bldgs. 2033, 2018, 2016
McConnell AFB
Sedgwick Co: KS 67210–
Landholding Agency: Air Force
Property Number: 18200630004
Status: Unutilized
Reason: Secured Area

Bldgs. 2039, 2036
McConnell AFB
Sedgwick Co: KS 67210–
Landholding Agency: Air Force
Property Number: 18200630005
Status: Unutilized
Reason: Secured Area

Bldgs. 2041, 2027, 2021
McConnell AFB
Sedgwick Co: KS 67210–
Landholding Agency: Air Force
Property Number: 18200630006
Status: Unutilized
Reason: Secured Area

Bldg. 2507
McConnell AFB
Sedgwick Co: KS 67210–
Landholding Agency: Air Force
Property Number: 18200630007
Status: Unutilized
Reason: Secured Area

Montana

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1084
Malmstrom AFB
Malmstrom AFB Co. Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 2025
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240007
Status: Unutilized
Reason: Secured Area

Bldg. 1700
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200330022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 546
Malmstrom AFB
Cascade Co: MT 59402–
Landholding Agency: Air Force
Property Number: 18200520007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1708
Malmstrom AFB
Cascade Co: MT 59402–
Landholding Agency: Air Force
Property Number: 18200610007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 26, 64
Great Falls IAP
Cascade Co: MT 59404–
Landholding Agency: Air Force
Property Number: 18200630008
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

New Mexico

Bldg. 14170
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230010

Status: Unutilized
Reason: Secured Area

Bldg. 14240
Cannon AFB
Cannon AFB NM
Landholding Agency: Air Force
Property Number: 18200230011
Status: Unutilized
Reason: Secured Area

Bldg. 14270
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230012
Status: Unutilized
Reason: Secured Area

Bldg. 14330
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230013
Status: Unutilized
Reason: Secured Area

Bldg. 14350
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230014
Status: Unutilized
Reason: Secured Area

Bldg. 14370
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230015
Status: Unutilized
Reason: Secured Area

Bldg. 14390
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230016
Status: Unutilized
Reason: Secured Area

Bldg. 524
Holloman AFB
Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18200330024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1076
Holloman AFB
Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18200330025
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1190
Holloman AFB
Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18200330026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1264
Holloman AFB
Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18200330027
Status: Unutilized
Reason: Secured Area

Bldg. 615
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 736
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340015
Status: Unutilized
Reason: Secured Area

Bldg. 1013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340016
Status: Unutilized
Reason: Secured Area

Bldg. 20419
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340017
Status: Unutilized
Reason: Secured Area

Bldgs. 29014, 29016, 29017
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 30102
Kirtland AFAB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340019
Status: Unutilized
Reason: Secured Area

Bldgs. 37532, 37534
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 57005
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340021
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 57006, 57013
Kirtland AFB
Kirtland AFB Co: Bernalillo NM 87117–5663
Landholding Agency: Air Force
Property Number: 18200340022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 10, 11
Holloman AFB
Holloman Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 18200410005
Status: Unutilized
Reason: Secured Area

Bldgs. 15000, 15010, 15020
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630009
Status: Unutilized
Reason: Secured Area

Bldgs. 15030, 15040, 15060
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630010
Status: Unutilized
Reason: Secured Area

Bldgs. 15070, 15080, 15090
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630011
Status: Unutilized
Reason: Secured Area

Bldgs. 15100, 15110, 15120
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630012
Status: Unutilized
Reason: Secured Area

Bldgs. 15130, 15140, 15160
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630013
Status: Unutilized
Reason: Secured Area

Bldgs. 15170, 15180, 15190
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630014
Status: Unutilized
Reason: Secured Area

Bldgs. 15200, 15210, 15220
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630015
Status: Unutilized
Reason: Secured Area

Bldgs. 15230, 15240, 15250
Cannon AFB
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630016
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Cannon AFB
15260, 15270, 15280, 15290
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630017
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Cannon AFB
15300, 15310, 15320, 15330
Curry Co: NM 88101–
Landholding Agency: Air Force
Property Number: 18200630018
Status: Unutilized
Reason: Secured Area

New York

6 UG Missle Silos
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 100
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 109
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220009
Status: Unutilized
Reason: Extensive deterioration

South Carolina

Bldg. 277
McEntire Air Natl Station
Eastover Co: Richland SC 29044–
Landholding Agency: Air Force
Property Number: 18200530008
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Building
N. Charleston Training Annex
N. Charleston Co: SC 29404–
Landholding Agency: Air Force
Property Number: 18200540004
Status: Excess
Reason: Extensive deterioration

Bldgs. B323, B324
McEntire Air Natl Guard
Eastover Co: Richland SC 29044–
Landholding Agency: Air Force
Property Number: 18200540005
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Bldg. 6000
Ellsworth AFB
Meade Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200510021
Status: Underutilized
Reason: Secured Area

Bldgs. 7437, 7513, 7616
Ellsworth AFB
Meade Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200530009
Status: Unutilized
Reason: Secured Area

Bldg. 7219
Ellsworth AFB
Meade Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200540006
Status: Unutilized
Reason: Secured Area

Tennessee

Facility 00721
Nashville IAP
Nashville Co: Davidson TN 37217–
Landholding Agency: Air Force
Property Number: 18200630019
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Bldg. 1307
Hensley Field ANG Station
Dallas TX 75211–9820
Landholding Agency: Air Force
Property Number: 18200330030
Status: Excess
Reason: Extensive deterioration

Bldg. B1274
Ellington Field
Houston Co: TX 77034–5586
Landholding Agency: Air Force
Property Number: 18200540007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Federal Center
Bldgs. 1–4, 40
501 West Felix Street
Fort Worth Co: Tarrant TX 76115–
Landholding Agency: GSA
Property Number: 54200610002
Status: Surplus
Reason: Extensive deterioration
GSA Number : 7–G–TX–07672

Helium Plant
10001 Interchange 552
Amarillo Co: Potter TX 79106–
Landholding Agency: GSA
Property Number: 54200620020
Status: Surplus
Reason: Extensive deterioration
GSA Number: 7–I–TX–0772–1

Naval Weapon Industrial Reserve Plant
9314 East Jefferson St.
Dallas Co: TX 75211–
Landholding Agency: GSA
Property Number: 54200630009
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; Floodway

GSA Number : 7–N–TX–0846

Wyoming

Bldg. 360
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18200240013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 354
F.E. Warren AFB
Laramie Co: WY 820057–
Landholding Agency: Air Force
Property Number: 18200510022
Status: Underutilized
Reason: Secured Area

[FR Doc. 06–7473 Filed 9–7–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of 14 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces 5-year reviews of the Alabama beach mouse (*Peromyscus polionotus ammobates*), eastern indigo snake (*Drymarchon corais couperi*), Red Hills salamander (*Phaeognathus hubrichti*), Ozark cavefish (*Amblyopsis rosae*), bayou darter (*Etheostoma rubrum*), southern combshell (*Epioblasma = Dysnomia penita*), Arkansas fatmucket (*Lampsilis powelli*), Louisiana pearlshell (*Margaritifera hembeli*), black clubshell (*Pleurobema curtum*), flat pigtoe (*Pleurobema marshalli*), heavy pigtoe (*Pleurobema taitianum*), stirrupshell (*Quadrula stapes*), Kral's water-plantain (*Sagittaria secundifolia*), and Alabama streak-sorus fern (*Thelypteris pilosa* var. *alabamensis*) under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before November 7, 2006. However, we will continue to accept

new information about any listed species at any time.

ADDRESSES: Information submitted on the Alabama beach mouse should be sent to the Field Supervisor, Daphne Field Office, Fish and Wildlife Service, 1208-B Main Street, Daphne, Alabama 36526. Information submitted on the eastern indigo snake, Red Hills salamander, bayou darter, southern combshell, black clubshell, flat pigtoe, heavy pigtoe, stirrupshell, Kral's water plaintain, and Alabama streak-sorus fern should be sent to the Field Supervisor, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Information submitted on the Ozark cavefish and the Arkansas fatmucket should be sent to the Field Supervisor, Conway Field Office, Fish and Wildlife Service, 110 South Amity Road, Suite 300, Conway, Arkansas 72032. Information submitted on the Louisiana pearlshell should be sent to the Field Supervisor, Lafayette Field Office, Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506. Information received in response to this notice of review will be available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Rob Tawes at the Daphne, Alabama, address above for the Alabama beach mouse (telephone 251/441–5830); Cary Norquist at the Jackson, Mississippi, address above for the eastern indigo snake, Red Hills salamander, bayou darter, southern combshell, black clubshell, flat pigtoe, heavy pigtoe, stirrupshell, Kral's water plaintain, and Alabama streak-sorus fern (telephone 601/312–1128); Chris Davidson at the Conway, Arkansas, address above for the Ozark cavefish and the Arkansas fatmucket (telephone 501/513–4481); and Karen Soileau at the above Lafayette, Louisiana, address for the Louisiana pearlshell (telephone 337/291–3132).

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1533 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process.

The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently federally listed as endangered: Alabama beach mouse, southern combshell, black clubshell, flat pigtoe, heavy pigtoe, and stirrupshell. This notice also announces our active review of the following species that are currently federally listed as threatened: eastern indigo snake, Red Hills salamander, Ozark cavefish, bayou darter, Arkansas fatmucket, Louisiana pearlshell, Kral's water-plantain, and Alabama streak-sorus fern.

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants) and is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species*. Amendments to the List through final rules are published in the **Federal Register**.

What information is considered in the review?

A 5-year review will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions Related to this Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Specific Information Requested for the Alabama Beach Mouse

We are especially interested in information regarding genetics, effective population size, or general population viability. We are also interested in any data regarding the influence of tropical cyclones on the subspecies. In addition, we are seeking information on future patterns of development (particularly changes in development density) along the Fort Morgan Peninsula in Baldwin County, Alabama.

Specific Information Requested for the Ozark Cavefish

We are especially interested in information on species biology, population trends, distribution, abundance, demographics, and genetics; habitat conditions, including amount, distribution, and stability; conservation measures that have been implemented that benefit the species; threat status and trends; and other new information, data, or corrections, including taxonomic or nomenclatural changes, identification of erroneous information and improved analytical methods.

Specific Information Requested for the Arkansas Fatmucket

We are especially interested in information on species biology, population trends, distribution, abundance, demographics, and genetics; habitat conditions, including amount, distribution, and stability; conservation measures that have been implemented that benefit the species; threat status and trends; and other new information, data, or corrections, including taxonomic or nomenclatural changes, identification of erroneous information and improved analytical methods.

Specific Information Requested for the Black Clubshell, Flat Pigtoe, Stirrupshell

We are especially interested in learning of extant locations for these three mussels. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What could happen as a result of this review?

If we find that there is new information concerning any of these 14 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Public Solicitation of New Information

We request any new information concerning the status of any of these 14 species. See "What information is considered in the review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. We will not consider anonymous comments, however. 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.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14866 Filed 9–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Joint Programmatic Candidate Conservation Agreement with Assurances and Safe Harbor Agreement for Select Species in the Upper Little Red River Watershed, Arkansas

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service's Arkansas Ecological Service Field Office (ARFO), Arkansas Game and Fish Commission (AGFC), Natural Resources Conservation Service (NRCS), and The Nature Conservancy (TNC), have applied to the Fish and Wildlife Service (we or Service) for an enhancement of survival permit (permit) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposal that combines a Candidate Conservation Agreement with Assurances (CCAA) for the candidate yellowcheek darter (*Etheostoma moorei*; YCD) with a Safe Harbor Agreement (SHA) for the federally endangered speckled pocketbook (*Lampsilis streckeri*; SPB)—jointly referred to as the "Agreement." The term of the Agreement will be 30 years. If approved, the Agreement would allow the Applicants to issue Certificates of Inclusion (CI) throughout the upper Little Red River Watershed in Arkansas to eligible non-Federal landowners that complete an approved Property Owner Management Agreement (POMA).

We announce the opening of a 30-day comment period and request comments from the public on the Applicant's permit application, the accompanying proposed Agreement, and the supporting National Environmental Policy Act (NEPA) documentation.

DATES: Written comments should be received on or before October 10, 2006.

ADDRESSES: You may obtain a copy of the information available by contacting the Field Supervisor, Fish and Wildlife Service, Arkansas Ecological Services Field Office, 1500 Museum Road, Suite 105, Conway, Arkansas 72032. Alternatively, you may set up an appointment to view these documents during normal business hours. Written data or comments should be submitted to the Service's Regional Safe Harbor Coordinator, Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. Note that requests for any documents must be in writing to be processed. When you are requesting or reviewing the information provided in this notice, please reference "Programmatic CCAA and SHA in the Upper Little Red River" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Davidson, Fish and Wildlife Biologist, Arkansas Ecological Services Field Office (see **ADDRESSES** above), telephone (501) 513–4481; or Mr. Rick Gooch, Regional Safe Harbor Program Coordinator, Regional Office (see **ADDRESSES** above), telephone (404) 679–7124.

SUPPLEMENTARY INFORMATION: Under a CCAA, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting candidate species for listing under the Act. CCAAs encourage private and other non-Federal property owners to implement conservation efforts for candidate species by assuring property owners they will not be subjected to increased property use restrictions should the species become listed as threatened or endangered under the Act. Under a SHA, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species under the Act. SHAs encourage private and other non-Federal property owners to implement conservation efforts for federally listed species by assuring property owners they will not be subjected to increased property use restrictions under the Act. Application requirements and issuance criteria for SHAs and CCAAs are found in 50 CFR 17.22(d) and 50 CFR 17.32(d), respectively. Because of the significant overlap between the two covered

species' habitat requirements and the anticipated beneficial effects from implementation of the voluntary conservation measures on both species, we believe that it is appropriate to combine the CCAA/SHA elements in a single Agreement for consideration in this notice.

The ARFO, AFGC, NRCS, and TNC's proposed watershed wide joint Agreement is designed to encourage voluntary habitat restoration and/or enhancement actions to benefit either or both of the covered species. The geographic scope of the Agreement is approximately 558,615 acres of the upper Little Red River watershed in north central Arkansas. Lands potentially eligible for inclusion include all privately owned lands, State lands, and public lands owned by cities, counties, and municipalities, with potentially suitable habitat for the covered species in the upper Little Red River watershed. Simultaneous to implementation of voluntary management actions through the individual landowner agreements (the POMA), the Agreement will provide specific regulatory assurances.

Under the Agreement's CCAA program element (covering the YCD), the landowner will not have any responsibility under the Act beyond that which exists at the time he or she enters into the program, even if the YCD becomes federally listed. The POMA will identify any existing YCD habitat and will describe the actions that the landowner commits to take (e.g., riparian revegetation, livestock fencing, etc.) or will allow to be taken to improve YCD habitat on the property, and the time period within which those actions are to be taken and maintained. When combined with actions of other landowners throughout the watershed, conservation actions taken by a specific landowner should preclude the need to list the YCD as threatened or endangered under the Act.

Under the Agreement's SHA element (covering the SPB), each POMA will identify any existing SPB habitat on the landowner's property and will describe the actions that the landowner commits to take (e.g., riparian revegetation, livestock fencing, etc.) or will allow to be taken to improve SPB habitat on the property, and the time period within which those actions are to be taken and maintained. Under the POMA, the landowner will have the option of returning the enrolled lands to baseline conditions, even if such actions will result in the incidental taking of SPB.

The proposed Agreement is being evaluated for Categorical Exclusion from the NEPA process. As a result, no other alternatives have been evaluated to implement conservation efforts for either the YCD or SPB at this time. Entering into a POMA is strictly voluntary for landowners. We do not foresee any detrimental effects to the human environment resulting from approval and implementation of this application and Agreement. We believe that the net effect of the Agreement will be to increase the amount of habitat available for the two covered species and improve overall water quality conditions throughout the watershed. It is therefore likely that the Agreement will meet the requirements to be categorically excluded from the NEPA process.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the proposed Agreement, associated documents, and comments submitted thereon to determine whether the requirements of section 10(a) of the Act and NEPA regulations have been met. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(A) of the Act to the Applicants in accordance with the applicable regulatory requirements. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: August 30, 2006.

Ed Buskirk,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14867 Filed 9–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed John W. Starr Memorial Forest, Mississippi State University Red-Cockaded Woodpecker Safe Harbor Agreement, Oktibbeha and Winston Counties, MS

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Mississippi State University (MSU or Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit (ESP) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The ESP application includes a proposed Safe Harbor Agreement (Agreement) for the endangered red-cockaded woodpecker (*Picoides borealis*) (RCW) for a period of 20 years. If approved, the Agreement would allow the Applicant to establish and enhance RCW habitat on the John W. Starr Memorial Forest (JSMF).

We announce the opening of a 30-day comment period and request comments from the public on the Applicant's ESP application, the accompanying proposed Agreement, and the supporting Environmental Action Statement (EAS) Screening Form.

DATES: Written comments should be received on or before October 10, 2006.

ADDRESSES: You may obtain a copy of the information available by contacting the Field Supervisor, Fish and Wildlife Service, Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Alternatively, you may set up an appointment to view these documents during normal business hours. Written data or comments should be submitted to the Service's Regional Safe Harbor Coordinator, Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. Note that requests for any documents must be in writing to be processed. When you are requesting or reviewing the information provided in this notice, please reference "Proposed Mississippi State University Red-cockaded Woodpecker Safe Harbor Agreement" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lunceford, Fish and Wildlife Biologist, Mississippi Ecological Services Field Office (see **ADDRESSES**), telephone: (601) 321–1132; or Mr. Rick Gooch, Regional Safe Harbor Program Coordinator at the Service's Southeast Regional Office (see **ADDRESSES**), telephone: (404) 679–7124.

SUPPLEMENTARY INFORMATION: Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distributions of listed species already on their property. Application requirements and issuance criteria for ESPs through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

MSU's proposed Agreement is designed to allow for management activities for the RCW on the JSMF and

to provide regulatory assurance to MSU by relieving it from any additional responsibility under the Act beyond that which exists at the time it enters into the program, *i.e.*, the Safe Harbor Agreement. Specifically, the Applicant will restore and enhance RCW habitat by the following actions: (1) Grow and maintain trees of sufficient size and quantity for suitable nesting /roosting habitat for three recruitment clusters; (2) Install artificial nesting cavity inserts; and (3) Control hardwood mid and under story vegetation and provide diverse herbaceous groundcover by thinning timber and prescribing frequent fire.

No RCWs currently occupy the JSMF; therefore, MSU has a zero baseline. As a result of the specific conservation actions, however, it is expected that the RCW population on the JSMF will increase from this baseline. Under the Agreement, MSU may be allowed the opportunity to incidentally take RCWs at some point in the future if above-baseline RCWs are attracted to the enrolled property by the proactive management measures undertaken by MSU. The authorization for incidental take in the Agreement and ESP will have certain conditions. Further details on the topics described above are found in the aforementioned documents available for review under this notice.

The geographic scope of the Applicant's Agreement is approximately 8,136 acres of land (*e.g.*, the JSMF), which is located in Oktibbeha and Winston Counties, Mississippi.

We have made a preliminary determination that execution of the Agreement and associated issuance of the ESP will not result in significant environmental, economic, social, historical or cultural impacts and is, therefore, categorically excluded from review under the National Environmental Policy Act (NEPA) of 1969, as amended, pursuant to 516 Department Manual 2, Appendix 1 and 516 Department Manual 6 Appendix 1. In addition, we have evaluated the proposed Agreement and ESP application under section 106 of the National Historic Preservation Act and have concluded that approval will not affect cultural resources on, or eligible for, the National Historic Register of Historic Places. We base our conclusions on our review of the process for protection and consideration of cultural resources included in the associated Agreement as well as on the scope of the voluntary management actions identified in the Agreement. We have consulted with the Mississippi State Historic Preservation Officer and have received concurrence with our conclusion.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531, *et seq.*) and under our implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the proposed Agreement, associated documents, and comments submitted thereon to determine whether the requirements of section 10(a) of the Act and NEPA have been met. If we determine that the requirements are met, we will issue an ESP under section 10(a)(1)(A) of the Act to the Applicant in accordance with the terms of the Agreement and specific terms and conditions of the authorizing ESP. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: August 30, 2006.

Ed Buskirk,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14868 Filed 9–7–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Tensas River National Wildlife Refuge in Madison, Tensas, and Franklin Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment for Tensas River National Wildlife Refuge, pursuant to the National Environmental Policy Act of 1969 and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandate, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to machine the following:

(1) Advise other agencies and the public of our intentions, and

(2), Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: To ensue consideration, written comments must be received no later than November 7, 2006.

ADDRESSES: Address comments, questions, and requests for more information to Tina Chouinard, Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, 401 Island Road, Marksville, Louisiana 71351.

SUPPLEMENTARY INFORMATION: Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of meeting dates and opportunities for input throughout the planning process. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA, regulations [40 CFR 15076.6(f)].

Tensas River National Wildlife Refuge lies within a physiographic region known as the Mississippi Alluvial Valley. This valley was, at one time, a 25-million-acfre forested wetland complex that extended along both sides of the Mississippi River from Illinois to Louisiana. More than 90 percent of the original forest has been cleared for agriculture. Congress authorized the establishment of the refuge in June 1980, in an effort to conserve the largest privately owned tract of bottomland hardwoods remaining in the region. It was acquired through a joint effort of the Fish and Wildlife Service and the Army Corps of Engineers to mitigate the loss of fish and wildlife resources associated with six flood control projects under construction, or being planned in that portion of the state.

The refuge, totaling 71,217 acres, is located in the Tensas River Basin in northeast Louisiana, approximately 60 miles east of Monroe, Louisiana, and 25 miles west of Vicksburg, Mississippi. The office/visitor center and maintenance facilities are located on the

refuge approximately 12 miles southwest of Tallulah, Louisiana.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Natural Resource Planner, Central Louisiana National Wildlife Refuge Complex, telephone: 318/253–4238; fax: 318/253–7139; e-mail: *tina_chouinard@fws.gov* or mail (write to the Natural Resource Planner at address in **ADDRESSES** section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 9, 2006.

Cynthia K. Dohen,

Acting Regional Director.

[FR Doc. 06–7503 Filed 9–7–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, Clean Air Act, and the Emergency Planning and Community Right-to-Know Act

Under the policy set out as 28 CFR 50.7, notice is hereby given that on August 31, 2006, the United States lodged with the United States District Court for the Northern District of Iowa, Eastern Division, a proposed consent decree ("Consent Decree") in the case of *United States* v. *AgriProcessors, Inc.*, Civ. A. No. C04–1037–LRR.

The Consent Decree settles claims by the United States, pursuant to Sections 301 and 307 of the Clean Water Act ("CWA"), 33 U.S.C. 1311 and 1317; Section 112(r) of the Clean Air Act ("CAA"), 42 U.S.C. 7412(r); and Sections 312 and 313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11022 and 11023, against AgriProcessors, Inc. ("Agri"), regarding its meat processing plant in Postville, Iowa. A complaint filed in December 2004 alleged, *inter - alia*, that Agri (1) contributed wastewater from its plant to the City of Postville's publicly owned treatment works in violation of Section 307 of the CWA; (2) failed to properly submit emergency and hazardous chemical inventory forms and other records in violation of Sections 312(a) and 313 of EPCRA; and (3) failed to properly develop and implement a risk management program in violation of Section 112(r) of the CAA.

Under the Consent Decree, Agri agrees to a resolve the United States' claims for a civil penalty and a Supplemental Environmental Project ("SEP"). For the SEP, Agri will expend at least $12,330 to purchase certain emergency response equipment needed by the City of Postville Fire Department. Agri will pay the cash penalty, $590,756, over a two-year period with interest. In addition, Agri agrees to perform an environmental compliance audit at is Postville facility, to assess current compliance with the CAA and EPCRA, including applicable state analogues. Agri will also perform an environmental compliance audit at its new meat processing facility in Gordon, Nebraska, to assess current compliance with all applicable Federal and state environmental requirements.

The Department of Justice will receive comments relating to the Consent Decree for a period ending on October 5, 2006. Comments must be submitted by close of business on October 5, 2006, and should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AgriProcessors, Inc.*, DOJ Ref. No. 90–5–1–1–08078/2.

The Consent Decree may be examined at the offices of the United States Attorney, Northern District of Iowa, 401 First Street, SE., Hach Building, Suite 400, Cedar Rapids, IA 52401–1825, and at the offices of U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.25 (25 cents per page reproduction cost) payable to the U.S. Treasury).

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7515 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")

Consistent with Section 122(d) of the Comprehensive Environmental Response, compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 1, 2006, a proposed Partial Consent Decree with Gerdau Ameristeel US Inc. in *United States* v. *American Cyanamid, et al.*, Nos. 1:02–CV–109–1 and 1:03–CV–122–3 (M.D. Ga.), was lodged with the United States District Court for the Middle District of Georgia.

In this action, the United States seeks to recover from various defendants, pursuant to Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Phosphate Company Site ("Site") in Pelham, Mitchell County, Georgia. Under the proposed Partial Consent Decree, Defendant Gerdau Ameristeel US Inc. will pay $7,250,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid, et al.*, (M.D. Ga.) (Partical Consent Decree with Gerdau Ameristeel US Inc., DOJ Ref. No. 90–11–3–07602).

The Partical Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forysth Street, SW., Atlanta, Georgia 30303 (contact Bonnie Sawyer, Esq. (404) 562–9539). During the public comment period, the Partial Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Partial Consent Decree may also be

obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *American Cyanamid, et al.*, (M.D. Ga.) (Partial Consent Decree with Gerdau Ameristeel US Inc., DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7508 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on August 25, 2006, a proposed Consent Decree was lodged in *U.S.* v. *Government of the Virgin Islands,* Civil No. 2006–139–CVG (D.V.I.). The proposed Consent Decree resolves the liability of the Government of Virgin Islands under Section 107 of CERCLA related to the response costs of the U.S. Environmental Protection Agency for the Virgin Islands Department of Health Site, Charlotte Amalie, St. Thomas; the Virgin Islands Sub Base Site, St. Thomas; and the Virgin Islands Department of Agriculture Site, St. Croix. The United States alleges that the Government of Virgin Islands is liable as an owner and operator under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. 9607(a)(1) and (2). Under the settlement, the Government agrees to pay $354,500 of EPA's response costs, along with interest since December 1, 2005.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Government of the Virgin Islands,* Civil No. 2006–139–CVG (D.V.I.), D.J. Ref #90–11–3–07531.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 5500 Veterans Drive, Suite 260, St. Thomas, Virgin Islands 00802, and at U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7514 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on August 28, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"). American Society of Mechanical Engineers ("ASME") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, since April 28, 2006, ASME has published several new standards and initiated several new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More details regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on May 2, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 2006 (71 FR 29353).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–7517 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on August 4, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"). Institute of Electrical and Electronics Engineers ("IEEE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, one new standard has been initiated and three existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/07–28–06.html.*

On September 17, 2004, IEEE 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 of November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on July 6, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act of August 9, 2006 (71 FR 45579).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–7516 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on August 3, 2006, 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, Infineon Tech., AG, Neubiberg, Germany; Microhandling GmbH, Thansau, Germany; Bitifeye Digital Solutions GmbH, Boeblingen, Germany; and Carol Dowding/2d Consulting, Loveland, CO have been added as parties to this venture. Also, W.L. Gore, Elkton, MD has withdrawn as a party to this venture. In addition, Racal Instruments has changed its name to EADS North American Defense, Irving, CA.

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 notification 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 May 10, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2006 (71 FR 41258).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–7520 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sequence VID Test Development Consortium

Notice is hereby given that, on August 4, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Sequence VID Test Development Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. 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.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: American Petroleum Institute, Washington, DC; General Motors Corp., Warren, MI; Chevron Products Co., Richmond, CA; Ford Motor Company, Dearborn, MI; Lubrizol Corporation, Wickliffe, OH; Chevron Oronite Company LLC, Richmond, CA; Shell Oil Company, Houston, TX; ExxonMobil Research & Engineering Corporation, Paulsboro, NJ; Infineum International, Ltd., Linden, NJ; Afton Chemical Corporation, Richmond, VA; and R.T. Vanderbilt Co., Inc., Norwalk, CT. The general area of Sequence VID Test Development Consortium's planned activity is to develop an engine dynamometer-based fuel economy test for ILSAC GF–5 that will represent the viscometric and friction modifier oil effects on the fuel economy of current and future North American and Japanese engines.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–7519 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine

Notice is hereby given that, on August 7, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine ("HEDGE") 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, DaimlerChrysler Corporation, Auburn Hills, MI has been added as a party 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 HEDGE intends to file additional written notification disclosing all changes in membership.

On June 10, 2005, HEDGE 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 July 7, 2005 (70 FR 39339).

The last notification was filed with the Department on May 16, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 28, 2006 (71 FR 36830).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–7518 Filed 9–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

1. FKZ Coal, Inc.

[Docket No. M–2006–019–C]

FKZ Coal, Inc., P.O. Box 62, Locust Gap, Pennsylvania 17840 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its No. 1 Slope Mine (MSHA I.D. No. 36–08637) located in Northumberland County, Pennsylvania. The petitioner requests that previously granted petition for modification, docket number M–98–012–C, be amended to change the wire rope from 7/8-inch wire

rope to 5/8 inch wire rope. As in the previously granted petition for modification, the petitioner proposes to use the slope (gunboat) to transport persons in shafts and slopes without safety catches or other no less effective devices. Instead, petitioner proposes to use an increased rope strength/safety factor and secondary safety rope connection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. McElroy Coal Company

[Docket No. M–2006–020-C]

McElroy Coal Company, RD #4, Box 425, Route 2, Moundsville, West Virginia 26041 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its McElroy Mine (MSHA I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to abandon the escape shaft by filling it with cement grout and capping the shaft with a 6-inch thick concrete cap along with a minimum 5-foot thick by 25-foot wide clay cap. They previously described this proposal in the Sealing Plan submitted on April 6, 2006 to the MSHA District 3 office in Morgantown, West Virginia and included it as "Attachment 1" to the petition for modification. Further, the petitioner proposes to backfill around and or near the abandoned shaft with coarse coal refuse as part of the expansion of the Conner Run Dam after the abandonment of the shaft is completed. In addition, petitioner avers that abandonment of the shaft with cement grout will eliminate the potential of material consolidation, void formation or seepage flows between the abandoned shaft and underground workings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. AMFIRE Mining Company, LLC

[Docket No. M–2006–021-C]

AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Madison Mine (MSHA I.D. No. 36–09127) located in Cambria County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance with the firefighting equipment required at temporary electrical installations. The petitioner proposes to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations, in lieu of using 240 pounds of rock dust. In support of the request, petitioner asserts that having two (2) fire extinguishers at each temporary electrical installation will eliminate or minimize the problems associated with the maintenance of rock dust at temporary electrical installations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. R S & W Coal Company, Inc.

[Docket No. M–2006–022-C]

R S & W Coal Company, Inc., 207 Creek Road, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use and location requirements) to its RS&W Drift Mine (MSHA I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 200 feet vertically, which exposes the miner to trip and fall hazards and the necessity of carrying supplies up narrow entries while wearing the SCSRs may result in damage to the SCSR and also may result in a diminution of safety to the miner. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail to *zzMSHA-Comments@dol.gov*. Include "petitions for modification" in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include "petitions for modification" on the subject line of the fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before October 10, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 25th day of August 2006.

Ria Moore Benedict,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E6–14888 Filed 9–7–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) was established to advise the Secretary of Labor on issues relating to the occupational safety and health of Federal employees. The purpose of this **Federal Register** notice is to announce the upcoming FACOSH meeting. The Agenda items for the meeting will include:

1. Call to Order.
2. Program Updates.
   a. GAO Audit.
   b. SHARE.
   c. Federal Recordkeeping.
   d. Federal Agency Training.
   e. Pandemic Flu Guidance for Federal Agencies.
3. New Business.
4. Adjournment.

DATES: The Council will meet on Thursday, September 28, 2006, from 10 a.m. to 4:30 p.m.

ADDRESSES: The Council will meet at the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) located at 1100 Wilson Boulevard, Arlington, VA 22209. The meeting will be held in MSHA Conference Rooms 2537G–2540K.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Diane Brayden, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2187. Individuals with disabilities who need special accommodations and wish to attend the meeting should contact Ms. Brayden at the address indicated above.

SUPPLEMENTARY INFORMATION: The FACOSH meeting is open to the public.

All interested persons are invited to attend the FACOSH meeting at the time and location listed above. Anyone wishing to attend this meeting must be prepared to exhibit photo identification and sign-in at MSHA's front office, located in Suite 2176, for authorization to enter the meeting area.

Public Participation: Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. All such submissions received by September 21, 2006 will be provided to the Federal Advisory Council members and included in the meeting record. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on September 21, 2006. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation's content. Those who request the opportunity to address the Council may be allowed to speak, as time permits, at the discretion of the Chairperson. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Authority: Edwin G. Foulke, Jr., Assistant Secretary of Labor Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 1–5 of Executive Order 12196 and the Federal Advisory Committee Act (5 U.S.C. App.2).

Signed at Washington, DC, this 30th day of August, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E6–14875 Filed 9–7–06; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30074]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29–28056–01, for Unrestricted Release of the Celgene Corporation's Facility in Warren, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406; telephone (610) 337–5366; fax number (610) 337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–28056–01. This license is held by Celgene Corporation (the Licensee), for the facility located at 7 Powder Horn Drive in Warren, New Jersey (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated January 17, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's January 17, 2006, license amendment request, resulting in release of Celgene Corporation's Warren, NJ facility for unrestricted use. License No. 29–28056–01 was issued on September 10, 1987, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility occupies 38,500 square feet and consists of administrative office and laboratories. The Facility is located in a light industrial area. Use of licensed material was confined to Rooms 13, 14, 15, 18A, 20, 105, 106, 113, Waste and Chemical Storage areas, associated hallways, and undeveloped areas of approximately 10,000 square feet within the Facility.

On August 15, 2005, the Licensee ceased licensed activities and initiated a survey, and decontamination of the areas in which licensed materials were used within the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with its NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the areas where licensed materials were used and provided information to the NRC to demonstrate that it meets the criteria in subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey on December 5–7, 2005. This survey covered Rooms 13, 14, 15, 18A, 20, 105, 106, 113, Waste and Chemical Storage areas, underdeveloped areas and associated hallways. The final status survey report was enclosed with the Licensee's amendment request dated January 17, 2006, as supplemented in a letter dated April 28, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC concludes that the Licensee's final status survey results are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, a denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey Department of Environmental Protection for review on June 13, 2006. On June 29, 2006, the Department of Environmental Protection responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Amendment Request Letter dated January 17, 2006 [ML060240189];
2. Letter with additional information dated April 28, 2006 [ML061300452];
3. NUREG–1757, "Consolidated NMSS Decommissioning Guidance;"
4. Title 10 Code of Federal Regulations, part 20, subpart E, "Radiological Criteria for License Termination;"
5. Title 10, Code of Federal Regulations, part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"
6. NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia, PA, this 29th day of August 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E6–14874 Filed 9–7–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 173rd meeting on September 18–21, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The schedule for this meeting is as follows:

Monday, September 18, 2006

10 a.m.–10:05 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman, Dr. Michael Ryan, will make opening remarks regarding the conduct of today's sessions.

10:05 a.m.–11:30 a.m.: Observations from ACNW Members and Staff on recent Activities (Open)—ACNW members and staff will present a summary of their visit to Crow Butte In Situ Leach Facility in Nebraska and attendance at the U.S. Department of Energy (DOE) Workshop on Low Dose Radiation Research Program; and the International Commission on Radiological Protection (ICRP) Workshop.

12:30 p.m.–5 p.m.: Discussion of Draft ACNW Letter Reports (Open)—The Committee will discuss proposed ACNW letters.

Tuesday, September 19, 2006

ACNW Working Group Meeting on Using Monitoring to Build Model Confidence—Day 1 (Open)

8:30 a.m.–8:45 a.m.: Opening Remarks and Introductions (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions. ACNW Member Dr. James Clarke will provide an overview of the Working Group Meeting (WGM), including the meeting purpose and scope, and introduce invited subject matter experts.

Session I: Role of Models and Monitoring Programs in Licensing

8:45 a.m.–12 p.m.: Representatives from the industry (Energy Solutions-Duratek-Chem Nuclear, and Radiation Safety Control, Inc.) will discuss the licensee's perspective on the role of models and monitoring in demonstrating compliance with licensing criteria. NRC staff will address NRC's perspectives on the use of ground water monitoring and modeling for regulatory decision making. At the end of this Session, a panel discussion by Committee members and invited subject matter experts will take place.

Session II: Evaluating Radionuclide Releases and Ground Water Contamination (Case Studies)

1 p.m.–5 p.m.: Representatives from national laboratories (Pacific Northwest, Savannah River, and Brookhaven) will discuss lessons learned from remedial, characterization, modeling and monitoring efforts at their sites. A representative from Energy Solutions-Duratek-Chem Nuclear will discuss ground water contaminant migration modeling projections at the Barnwell low-level waste site. At the end of this Session, a panel discussion by Committee members and invited subject matter experts will take place.

Wednesday, September 20, 2006

ACNW Working Group Meeting on Using Monitoring to Build Model Confidence—Day 2 (Open)

8:30 a.m.–8:45 a.m.: Opening Remarks and Introductions—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions. ACNW Member Clarke will provide an overview of the WGM, including the meeting purpose and scope, and introduce invited subject matter experts.

Session III: Field Experience and Insights

8:45 a.m.–12 p.m.: Representatives from U.S. Geological Survey, U.S. Environmental Protection Agency, U.S. Department of Energy, Pacific Northwest National Laboratory, and University of Wisconsin-Madison will discuss their efforts in developing, bench marking and improving models for different waste sites. At the end of this Session, a panel discussion by Committee members and invited subject matter experts will take place.

Session IV: Opportunities for Integrating Modeling and Monitoring

1 p.m.–4:30 p.m.: A representative from NRC's Office of Research will discuss modeling and monitoring integration issues. A representative from Fluor Hanford will discuss integrating modeling and monitoring activities to support long-term interactions and control of contaminants. At the end of this Session, a panel discussion by Committee members and invited subject matter experts will take place. A roundtable wrap up discussion will follow, when all participants will be able to provide their comments. Committee members will discuss their impressions of the WGM and a possible letter report to the Commission.

Thursday, September 21, 2006

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: Disposition of Public Comments on Spent Nuclear Fuel Transportation Package Responses to Tunnel Fire Scenarios (NUREG/CR–6886 for the Baltimore Tunnel and NUREG/CR–6894 for the Caldecott Tunnel) (Open)—NMSS/SFPO representatives will brief the Committee on the public comments received for the two tunnel fire studies and how these comments were addressed in the final versions of the two NUREGs, expected to be released shortly for publication.

10:30 a.m.–4:30 p.m.: Discussion of Potential and Draft ACNW Letter Reports (Open)—The Committee will discuss potential and proposed ACNW letters reports.

4:30 p.m.–5 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2005 (70 FR 59081). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Dias.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact

Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: September 1, 2006.
Annette L. Vietti-Cook,
Secretary of the Commission.
[FR Doc. E6–14873 Filed 9–7–06; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on September 21, 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, September 21, 2006, 8:30 a.m. until 5 p.m.

The purpose of the meeting is to discuss draft final NUREG–1824 (EPRI 1011999), "Verification and Validation of Selected Fire Models for Nuclear Power Plant Applications." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Electric Power Research Institute (EPRI), and other interested persons regarding this matter. The Subcommittee will also be briefed by representatives of the NRC staff on draft NUREG–1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire." The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Hossein P. Nourbakhsh (telephone 301/415–5622), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 31, 2006.
Michael R. Snodderly,
Branch Chief, ACRS/ACNW.
[FR Doc. E6–14864 Filed 9–7–06; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 12d1–1; SEC File No. 270–526; OMB Control No. 3235–0584.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Under current law, an investment company ("fund") is limited in the amount of securities the fund ("acquiring fund") can acquire from another fund ("acquired fund"). In general under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or "Act"), a registered fund (and companies it controls) cannot: (i) Acquire more than three percent of another fund's securities; (ii) invest more than five percent of its own assets in another fund; or (iii) invest more than ten percent of its own assets in other funds in the aggregate.[1] In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund's shares to another fund if, as a result: (i) The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or (ii) all acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.[2] Rule 12d1–1 (17 CFR 270.12d1–1) under the Act provides an exemption from these limitations for "cash sweep" arrangements, in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments. An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.[3] The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) and rule 17d–1, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.[4] These provisions could otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,[5] or prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.[6]

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a–7 under the Act (17 CFR 270.2a–7), and undertakes to comply with all the other provisions of rule 2a–7. In addition the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7, (ii) complies with sections 17(a), (d), (e), 18, and 22(e) of the Act[7] as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a–1(b)(2)(ii), 31a–

[1] *See* 15 U.S.C. 80a–12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

[2] *See* 15 U.S.C. 80a–12(d)(1)(B).

[3] *See* Rule 12d1–1(b)(1).

[4] *See* 15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d); 17 CFR 270.17d–1.

[5] An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. *See* 15 U.S.C. 80a–2(a)(3)(C) (definition of "affiliated person"). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(9). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11. To the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule's exemptions from section 17(a) and rule 17d–1.

[6] *See* 15 U.S.C. 80a–2(a)(3)(A), (B).

[7] *See* 15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d), 15 U.S.C. 80a–17(e), 15 U.S.C. 80a–18, 15 U.S.C. 80a–22(e).

1(b)(2)(iv), and 31a–1(b)(9);[8] and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a–7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a–7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. By allowing funds to invest in registered and unregistered money market funds, rule 12d1–1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

Commission staff estimates that registered funds currently invest in 40 unregistered money market funds in excess of the statutory limits under an exemptive order issued by the Commission, and will invest in approximately 6 new unregistered money market funds each year.[9] Staff estimates that each of these unregistered money market funds spends 1220 hours to perform the record of credit risk analysis and other determinations annually, and in the first year after the rule's adoption, each will spend 21 hours to implement the board procedures.[10] Finally, Commission staff estimates that 10 unregistered money market funds spends 4.5 hours to review and amend procedures annually. The estimated total of annual responses under rule 12d1–1 is 57,131.[11]

Commission staff estimates that in addition to the costs described in section 12, unregistered money market funds will incur costs to preserve records, as required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In its Rule 2a–7 submission, Commission staff estimated that the amount an individual money market fund may spend ranged from $100 per year to $300,000. We have no reason to believe the range would be different for unregistered money market funds. As noted before, we have no information on the amount of assets managed by unregistered money market funds. Accordingly, Commission staff has estimated that an unregistered money market fund in which registered funds would invest in reliance on rule 12d1–1 would have, on average, $376.4 million in assets under management.[12] Based on a cost of $0.0000005 per dollar of assets under management for medium-sized funds, the staff estimates compliance with rule 2–7 would cost these types of unregistered money market funds $8000 annually.[13] Commission staff estimates that unregistered money market funds will not incur any capital costs to create computer programs for maintaining and preserving compliance records for rule 2a–7.[14]

The collections of information required for unregistered money market funds by rule 12d1–1 are necessary in order for acquiring funds to able to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 30, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–14854 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* 17 CFR 270.31a–1(b)(2)(ii), 17 CFR 270.31a–1(b)(2)(iv), 17 CFR 270.31a–1(b)(9).

[9] This estimate is based on the number of applications filed with the Commission in 2005. This estimate may be understated because applicants generally do not identify the name or number of unregistered money market funds in which registered funds intend to invest, and each application also applies to unregistered money market funds to be organized in the future.

[10] The Commission adopted rule 12d1–1 on June 20, 2006. *See* Fund of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006).

[11] This estimate is based on the following calculation: (40 × 1220) + (6 × 1220) + (40 × 21) + (6 × 21) + (10 × 4.5) = 57,131.

[12] This estimate is based on the average of assets under management of medium-sized registered money market funds ($50 million to $999 million).

[13] This estimate was based on the following calculation. 46 unregistered money market funds x $357.7 million in assets under management × $0.0000005 = $8227. The estimate of cost per dollar of assets is the same as that used for medium-sized funds in the Rule 2a–7 submission.

[14] This estimate is based on information Commission staff obtained in its survey for the Rule 2a–7 submission. Of the funds surveyed, no medium-sized funds incurred this type of capital cost. The funds either maintained record systems using a program the fund would be likely to have in the ordinary course of business (such as Excel) or the records were maintained by the fund's custodian.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27475; 812–12420]

Delaware Investments Dividend and Income Fund, Inc., et al., Notice of Intention To Rescind an Order

September 1, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of the Commission's intention to rescind an order pursuant to section 38(a) of the Investment Company Act of 1940 ("Act").

SUMMARY: On April 15, 2002, the Commission issued an order on an application filed by Delaware Investments Dividend and Income Fund, Inc. and Delaware Investments Global Dividend and Income Fund (together, the "Applicants") under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 under the Act (the "Application").[1] On August 31, 2006, the Commission issued an order finding, among other things, that Delaware Service Company, Inc. ("DSC") caused and aided and abetted the Applicants' violations of section 19(a) of the Act and rule 19a–1 under the Act and violated

[1] Delaware Investments Dividend and Income Fund, Inc., *et al.*, Investment Company Act Release Nos. 25465 (Mar. 18, 2002) (notice) and 25524 (Apr. 15, 2002) ("Exemptive Order").

section 34(b) of the Act by making a material misrepresentation to the Commission in the Application ("Order Finding Violations").[2] The Commission is issuing this notice of the Commission's intention to rescind the Exemptive Order on the basis of the Order Finding Violations.

Hearing or Notification of Hearing: An order rescinding the Exemptive Order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2006. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

Background

1. Each Applicant is a closed-end investment company registered under the Act. The Exemptive Order granted each Applicant relief from section 19(b) of the Act and rule 19b–1 under the Act so that the Applicant may make up to twelve distributions of long-term capital gains in any one taxable year in accordance with the Applicants' distribution policy with respect to its common stock. Section 19(b) and rule 19b–1 generally limit to one the number of distributions of long-term capital gains that a registered investment company may make each year. The Exemptive Order was issued pursuant to the Commission's authority set forth in section 6(c) of the Act which provides, in relevant part, that the Commission, by order upon application, may exempt any person from any provision of the Act or any rule under the Act, if and to the extent that the 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.

2. DSC, a Delaware corporation, provides accounting and administrative services to the Applicants. According to the Order Finding Violations, DSC was responsible for determining the amount and composition of the Applicants' distributions to shareholders; providing the Applicants' transfer agent, dividend disbursing agent, and custodian with information necessary to effect payment of dividends and distributions; and preparing and filing all reports and notices required by the Federal securities laws and regulations, including any notices required by section 19(a) of the Act.

3. Section 19(a) of the Act and rule 19a–1 under the Act make it unlawful for a registered investment company to pay any dividend or make any distribution in the nature of a dividend payment, wholly or partly, from any source other than net income unless such payment is accompanied by a written statement which adequately discloses the source of such payment ("section 19(a) notice"). According to the Order Finding Violations, from January 2000 through March 2004, the Applicants, among others, made distributions to their common shareholders that, in large part, were a return of the shareholders' capital, and none of the distributions was accompanied by the required section 19(a) notice. Thus, during the relevant time period, the Applicants failed to provide the section 19(a) notices required by the Act. The Order Finding Violations found that DSC caused and aided and abetted the Applicants' violations of section 19(a) and rule 19a–1.

4. The Order Finding Violations also found that the Exemptive Order was granted, in part, on the basis of a representation in the Application that the Applicants were providing the required 19(a) notices to their shareholders, but that the representation was an untrue statement of a material fact. The Application was prepared by DSC on behalf of the Applicants. The Order Finding Violations thus found that DSC violated section 34(b) of the Act. Section 34(b) of the Act, in relevant part, makes it unlawful for any person to make any untrue statement of a material fact in any application filed pursuant to the Act.

Legal Analysis

Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. The Commission issues orders under section 6(c) of the Act, such as the Exemptive Order, based on the representations, and subject to the terms and conditions, contained in the applications seeking the orders. If an application contains an untrue statement of a material fact, the Commission cannot properly exercise its power to make the findings required by section 6(c) of the Act.[3] The Commission therefore believes that it is necessary and appropriate to the exercise of the powers conferred upon the Commission in section 6(c) of the Act to rescind the Exemptive Order on the basis of the Order Finding Violations.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–14879 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[2] In the Matter of Delaware Service Company Inc., Release No. IC–27473, Administrative Proceeding File No. 3–12403 (August 31, 2006).

[3] The Commission also reiterates that any exemption provided by an order issued under the Act is available only to a person that complies with the terms and conditions set forth in the application based on which the exemption was granted.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54396]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Declaration of Effectiveness of the Philadelphia Stock Exchange Fingerprinting Plan

August 31, 2006.

On July 17, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") a fingerprint plan ("Plan") pursuant to Rule 17f–2(c)[1] under the Securities Exchange Act of 1934 ("Act").[2] A copy of the Plan is attached as Exhibit A.

The Phlx believes that the Plan will facilitate compliance by Exchange members with Section 17(f)(2) of the Act and Rule 17f–2 thereunder by providing a facility for the fingerprints of directors, partners, officers and employees of Exchange members to be submitted to the Attorney General of the United States and processed electronically.

Under the Plan, all persons who are seeking registration with the Phlx or are currently registered with the Phlx submit fingerprint cards or fingerprint results to the NASD, which then forwards the fingerprints to the Federal Bureau of Investigation ("FBI") (the fingerprint processing arm of the Attorney General). The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports to the NASD. Phlx members will be able to

[1] 17 CFR 240.17f–2(c).

[2] 15 U.S.C. 78a *et seq.*

view the status and results of fingerprints, including any relevant criminal history information, through the NASD's Web Central Registration Depository (Web CRD®) system after submission to the Attorney General.

The Commission has reviewed the procedures detailed in the Plan and believes that the Plan is consistent with the public interest and the protection of investors. Thus, the Commission declares the Plan effective.

The Commission notes that securities industry fingerprinting procedures are in a state of flux due to rapidly advancing technology. In the event that an industry-wide standard is adopted or becomes prevalent and in the event that this Plan substantially differs therefrom, the Commission would expect the Phlx to revise its fingerprint plan to incorporate the industry-wide standard.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Nancy M. Morris,

Secretary.

Exhibit A—Philadelphia Stock Exchange Fingerprinting Plan

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submits this amendment to its Fingerprinting Plan ("Amended Fingerprinting Plan") pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 ("Act") and Rule 17f–2(c) thereunder. This Amended Fingerprinting Plan supersedes and replaces the Exchange's current fingerprinting plan.[4] The purpose of this Amended Fingerprinting Plan is to facilitate compliance by Exchange Members with Section 17(f)(2) of the Act and Rule 17f–2 thereunder by providing a facility for the fingerprints of directors, partners, officers and employees of Exchange members to be submitted to the Attorney General of the United States and processed electronically.

The Exchange has established an arrangement with the National Association of Securities Dealers, Inc. ("NASD") to permit all individuals that must be registered or approved by the Exchange ("registered persons") to be electronically registered with the Exchange through the NASD's Web Central Registration Depository ("Web CRD"). Web CRD is a Web-based system that provides broker-dealers and their associated persons with "one-stop filing" with the Commission, the NASD and other self-regulatory organizations and regulators. Web CRD is operated by the NASD and is used by participating regulators in connection with registering and licensing broker-dealers and their associated persons. Pursuant to its Memorandum of Understanding with the NASD[5], all members submit hard copy fingerprint cards or results of processed cards to the NASD.

In connection with the arrangement with the NASD, all persons who are seeking registration with the Exchange or are currently registered with the Exchange, submit fingerprint cards or fingerprint results to the NASD for processing and/or submission to the Attorney General. The Attorney General provides the NASD with fingerprint processing results for persons seeking registration, and the results are provided to the members. The NASD notifies the Exchange if the fingerprint results received by the NASD contain information indicating that the person is subject to a statutory disqualification. In such an instance, the Exchange reviews the fingerprint results to determine the possible existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and takes appropriate action, if necessary, concerning eligibility or continued eligibility of the individual for employment or association with an Exchange member. Any maintenance of fingerprint records by the Exchange shall be for the Exchange's own administrative purposes, and the Exchange is not undertaking to maintain fingerprint records on behalf of Exchange members pursuant to Rule 17f–2(d)(2). The Exchange advises its members and member applicants of any fees charged in connection with processing of fingerprints pursuant to the Amended Fingerprinting Plan. The Exchange will file any such Exchange member fees with the Commission pursuant to Section 19(b) of the Act.

The Exchange shall not be liable for losses or damages of any kind in connection with the fingerprint services, as a result of a failure to properly follow the procedures described above, or as a result of lost or delayed fingerprint cards, fingerprint records, or fingerprint processing results, or as a result of any action by the Exchange or the Exchange's failure to take action in connection with this Amended Fingerprinting Plan.

[FR Doc. E6–14876 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 200.30–3(a)(17)(iii).

[4] The Exchange's current fingerprinting plan was approved on a permanent basis by the Securities and Exchange Commission ("Commission") on December 23, 1976. See Securities Exchange Act Release No. 13105, 42 FR 753 (January 4, 1977).

[5] The Exchange and NASD executed a Memorandum of Understanding on September 22, 2005.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54397; File No. SR–BSE–2005–11]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Rules to Allow the Listing and Trading of Options on Indices on the Boston Options Exchange

August 31, 2006.

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 May 5, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 12, 2006, BSE filed Amendment No. 1 to the proposed rule change.[3] On August 29, 2006, BSE filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to adopt rules which would allow the Boston Options Exchange ("BOX") to list and trade options on indices, including rules pursuant to Rule 19b–4(e) for the listing and trading of broad-based index options.[5] BSE also seeks approval herein for BOX to list and trade index options and long term index options ("LEAPs") on the full value of the Nasdaq 100 index ("NDX"), the one tenth value of the Nasdaq 100 index ("MNX"), and the Russell 2000 Index ("RUT"). The text of the proposed rule change, as amended is available on BSE's Web site (*http://www.bostonstock.com*), at BSE's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[4] In Amendment No. 2, BSE removed its proposal to have generic listing standards for narrow-based options and added its proposal to list and trade options and long term index options on the full value of the Nasdaq 100 index, the one tenth value of the Nasdaq 100 index and the Russell 2000 index. Amendment No. 2 replaced and superseded the original rule filing in its entirety.

[5] 17 CFR 240.19b–4(e).

principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to BSE, the purpose of the proposed rule change is to adopt rules necessary to allow BOX to list and trade options on indices. The proposed rules include, among other items, listing and maintenance criteria for options on underlying indices, rules on dissemination of index values, positions and exercise limits for index options, strike price intervals, and exemptions from the limits and terms of index options contracts. All of the proposed rules and changes to existing BOX Rules are based on the existing rules of the other five options exchanges.[6]

Because the rules related to trading options on indices are product specific in many areas, BSE, on behalf of BOX, will need to file additional proposed rule changes with the Commission when BOX identifies specific products (with the exception of those products that satisfy the "generic" broad-based listing standards pursuant to Rule 19b–4(e)). For purposes of this proposed rule change, certain rules indicate that they apply to "specified" indices. Proposed Sections 2(l), 5(a), 7(a), 8(a), 10, and 12 of proposed Chapter XIV of the BOX Rules all contain provisions that are dependant upon the BSE identifying specific index products in the rule. Accordingly, proposed Section 1 of proposed Chapter XIV of the BOX Rules states that where the rules in Chapter XIV indicate that particular indices or requirements with respect to particular indices will be "Specified," the BSE shall file a proposed rule change with the Commission pursuant to Section 19 of the Act[7] and Rule 19b–4 thereunder[8] to specify such indices or requirements.

New Chapter XIV to BOX Rules. The Exchange proposes to add a new Chapter XIV to the BOX Rules, as well as conforming changes to certain existing BOX rules. The following are the specific rule changes:

Proposed Section 1 of Chapter XIV: This proposed rule specifies that Chapter XIV is applicable only to index options, and that the rules in Chapters I through XIII also apply to index options, unless they are replaced by the new rules or the context otherwise requires.

Proposed Section 2 of Chapter XIV: This proposed rule contains the necessary definitions for index options trading.

Proposed Section 3 of Chapter XIV: This proposed rule contains the general listing standards for broad-based index options. Under proposed Section 3(a) of Chapter XIV the Exchange would be able to list broad-based index options pursuant to Rule 19b–4(e) under the Act, if each of the conditions set forth in proposed Section 3(b) of Chapter XIV are satisfied. Pursuant to proposed Section 3(b) of Chapter XIV, the proposed rule change would provide ongoing maintenance standards for broad-based index options listed pursuant to proposed Section 3(a) of Chapter XIV. These options would, in all other respects, be traded pursuant to the Exchange's trading rules and procedures applicable to index options.

The Exchange notes that other options exchanges currently have rules that contain generic listing standards pursuant to Rule 19b–4(e) of the Act[9] for broad-based index options.[10] Other exchanges also have rules that contain generic listing standards for narrow-based indexes and micro-based index options.[11] The Exchange states that the standards contained in these proposed generic listing standards for broad-based index options are based on the standards contained in the generic listing standards for narrow-based index options and micro-based index options that were previously approved by the Commission, but have been modified to reflect the characteristics of broad-based index options. The proposed Section 3 of Chapter XIV is based on the broad-based index option rules of the ISE.[12] At this time, the Exchange is only proposing generic listing standards for broad-based index options.

In order to list broad-based index options pursuant to the generic Rule 19b–4(e) listing standards, the underlying index must satisfy all the conditions contained in proposed Section 3(b). If the underlying index does not satisfy all of the conditions, the Exchange would be required to file a proposed rule change with the Commission on Form 19b–4 pursuant to Section 19(b)(2) of the Act and obtain Commission approval in order to list options on that index. Following are the conditions contained in proposed Section 3(b) of Chapter XIV.

Under proposed Section 3(b) of Chapter XIV, the index must be broad-based as defined in Section 2 of Chapter XIV as an index designed to be representative of a stock market as a whole or for a range of companies in unrelated industries. The index must be designated as A.M. settled and must be either: (i) Capitalization-weighted; (ii) price-weighted; (iii) equal-dollar weighted; or (iv) modified-capitalization weighted. Broad-based indexes must consist of 50 or more component

[6] *See* rules of the American Stock Exchange LLC ("Amex), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), NYSE Arca, Inc. ("NYSE Arca") and the International Stock Exchange, Inc. ("ISE"). *See, e.g.*, Amex Rules 900C through 905C; CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, and 23.1 through 24.20; ISE Rules 413, 418, 803, 1100, and 2000 through 2012; NYSE Arca Rules 5.10 through 5.26; and Phlx Rules 1000A through 1104A. The proposed new rules and changes to existing BOX Rules are primarily based on the ISE Rules previously referenced. Any differences are due to the following: (i) Section 11 of Chapter VI of the BOX Rules, unlike ISE Rule 1407, currently incorporates the NASD's "hedging exception" and therefore does not need to be amended to accommodate the listing and trading of options on indices; (ii) the different terminology and defined terms in the BOX Rules; (iii) different cross-references; (iv) the regulatory role of the Boston Options Exchange Regulation LLC (BOXR); (v) that BOX does not have "trading rotations" as that term is used in ISE's Rules; and (vi) other minor differences in current rules. BOX does not have "trading rotations" as that term is used in ISE's Rules because BOX is not a specialist driven system. On BOX, there are no designated specialists, primary market makers, or lead market makers with authority to control trading in a particular options class. Instead, BOX has multiple and competing market makers trading in each options class. On a specialist driven system, the specialist maintains control over the open and the close, whereas on BOX, the electronic trading system maintains control over the open and the close.

[7] 15 U.S.C. 78s.

[8] 17 CFR 240.19b–4.

[9] 17 CFR 240.19b–4(e).

[10] The ISE, CBOE, Amex, and Phlx have broad-based index generic listing standard rules. *See* Securities Exchange Act Release Nos. 52578 (October 7, 2005), 70 FR 60590 (October 18, 2005) (SR–ISE–2005–27); 52781 (November 16, 2005), 70 FR 70898 (November 23, 2005) (SR–Amex–2005–069); 53266 (February 9, 2006), 71 FR 8321 (February 16, 2006)(SR–CBOE–2005–59); 54158 (July 17, 2006), 70 FR 41853 (July 24, 2006) (SR–Phlx–2006–17).

[11] Examples of narrow-based rules are NYSE Arca Rule 5.13 and ISE Rule 2002. Examples of micro-based rules are NYSE Arca Rule 5.13 and CBOE Rules 24.2(d), 24.2(e) and 24.4B.

[12] *See* ISE Rules 2002(d) and 2002(e).

securities. The Exchange believes that a 50 component minimum is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, would result in indexes that are sufficiently broad-based in scope and not readily subject to manipulation.[13] Component securities comprising at least 95% of the index by weight must have a minimum market capitalization of $75 million. Component securities comprising at least 65% of the index by weight must have a minimum market capitalization of $100 million.

Component securities comprising at least 80% of the index by weight must satisfy the requirements of Section 3 of Chapter IV of BOX Rules which sets forth the criteria for underlying securities. Accordingly, those securities must be "options eligible," meaning they must have, for example, at least a $7 million share float, 2000 holders, total annual trading volume of 2,400,000 shares, a minimum price of $3 per share, and the issuer must be in compliance with its obligations under the Act. The Exchange believes that an 80% weighting is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that contain components that are sufficiently liquid and not readily subject to manipulation. The Exchange notes that broad-based indexes may consist of thousands of components (for example, the Russell 3000 Index), and the components comprising the bottom 10% to 20% of the weight of the index generally are the smallest capitalized stocks and tend not to meet the requirements of Section 3 of Chapter IV of BOX Rules.[14]

Each component security that accounts for at least 1% of the weight of the index must have an average daily trading volume ("ADTV") of at least 90,000 shares over the prior six-month period. The Exchange believes that 90,000 ADTV is reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes in which the more heavily-weighted components are sufficiently liquid and not readily subject to manipulation.

No single component security may account for more than 10% of the weight of an index, and the five highest weighted components securities in the index may not, in the aggregate, account for more than 33% of the weight for an index. The Exchange notes that the 10% and 33% weighting concentration caps are reasonable for broad-based indexes, and, when applied in conjunction with the other listing requirements, will result in indexes that are not unreasonably dominated by a few heavily-weighted components.[15]

All component securities must be NMS Stocks as defined in Rule 600 of Regulation NMS. No more than 20% of the securities in the index, by weight, may be comprised of foreign securities or American Depositary Receipts overlying foreign securities that are not subject to comprehensive surveillance sharing agreements. Section 3(b) of Chapter XIV also requires the current index value to be widely disseminated at least once every fifteen seconds by one or more major market data vendors during the time options on the index are traded on the Exchange.

The Exchange must reasonably believe it has adequate system capacity to support the trading of options on the index. That belief must be based on the performance of a calculation by the Exchange that takes into account the Exchange's current Independent System Capacity Advisor ("ISCA") allocation and the number of new peak messages per second expected to be generated by options on such index.

An equal dollar-weighted index must be rebalanced at least once every calendar quarter.

Broker-dealer maintained indexes must be calculated by a third party who is not a broker-dealer. Further, the broker-dealer must establish procedures including informational barriers, to ensure that the broker-dealer will not possess or be able to misuse any informational advantages with respect to changes in, and adjustments to, an index.

The Exchange must also have written surveillance procedures in place for broad-based index options.[16]

Following the listing of a broad-based index option pursuant to proposed Section 3(b) the underlying index must continue to satisfy the maintenance standards contained in proposed Section 3(c) of Chapter XIV, which are based on the criteria set forth in proposed Section 3(b) of Chapter XIV. If the underlying index fails to satisfy the maintenance standards, the Exchange may not open for trading any additional series of options on that class of index options unless the continued listing of that class of options has been approved by the Commission pursuant to Section 19(b)(2) of the Act.

Proposed Section 4 of Chapter XIV: This proposed rule requires the dissemination of index values as a condition to the trading of options on an index.

Proposed Sections 5 through 8 of Chapter XIV: These proposed rules contain the standard position limit and exercise limits for index options, as well as exemption standards and the procedures for requesting exemptions from those proposed rules. Proposed Section 5 of Chapter XIV sets the standard position limit for broad-based index options listed pursuant to Rule 19b–4(e) in proposed Section 3 of Chapter XIV at 25,000 contracts unless "specified" as defined in Proposed Section 1 of Chapter XIV. The Exchange has specified limits on the three broad-based index options it intends to trade upon Commission approval of these proposed rule changes. The Exchange proposes to have no position limits for the NDX, a 750,000 contract position for the MNX, and to have a 50,000 contact position limit for the RUT. Section 7(a)(5) of this Chapter XIV specifies that the broad-based hedge exemption for the MNX index options is 1,500,000 contracts and for all other broad-based index options 75,000 in addition to the standard limit.

Proposed Section 9 of Chapter XIV: This proposed rule provides that index options will trade until 4:15 p.m. Eastern Time, the same as on other exchanges. The proposed rule also contains procedures for openings, as well as trading halts and suspensions.

Proposed Sections 10 and 11 of Chapter XIV: Proposed Section 10 outlines the terms of index options contracts, while proposed Section 11 applies to debit put spreads. Proposed Section 10 incorporates a rule change proposed by the ISE that was effective upon filing.[17] In the proposal, ISE clarified that the "reporting authority" (or index calculator) for any securities index on which options are traded on the ISE may determine to use the reported sales prices for one or more

[13] The Exchange notes that there are currently a number of broad-based indexes that consist of fewer than 50 components, such as, the Dow Jones Industrial Average Index (30 components) and the Amex Major Market Index (20 components), which would require specific approval for listing and trading by the Commission. Telephone conference between Bill Meehan, General Counsel, BSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission on August 31, 2006 ("August 31 Telephone Conference").

[14] The Exchange further notes that the generic listing standards pursuant to Rule 19b–4(e) for narrow-based index options are less liberal, requiring a 90% weighting. August 31 Telephone Conference.

[15] The Exchange notes that the generic listing standards for narrow-based index options require 30% and 50% weighting concentration caps. August 31 Telephone Conference.

[16] *See infra* Index Surveillance Letter, dated August 29, 2006.

[17] *See* Securities Exchange Act Release No. 51176 (February 9, 2005), 70 FR 7985 (February 16, 2005) (SR–ISE–2005–03).

underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value. Proposed Section 10 also states that the NDX, MNX and RUT, and LEAPS on those index options will be A.M. settled and European Style exercised with strike prices intervals of no less than $2.50 if the strike price is less than $200.

Proposed Section 12 of Chapter XIV: This proposed rule disclaims liability for index reporting authorities.

Proposed Section 13 of Chapter XIV: This proposed rule contains standards for exercising American-style index options.

Amendments to Current Rules:

Amendment to Section 8 of Chapter III: This proposed amendment adds broad-based index options to the market maker exemption from position limits.

Amendments to Section 12 of Chapter III and Section 1 of Chapter VII: In conjunction with proposed Section 13 of Chapter XIV, these proposed rules will govern the exercise of American-style, cash settled index options.

Amendment to Section 6 of Chapter IV: This Section currently provides that at the commencement of trading on BOX of a particular class of options, BOXR usually will open three (3) series of options for each expiration month in that class in the case of individual equity options, or four (4) series of options for each expiration month in that class in the case of index options. The proposal would amend this section to replace BOXR with BOX because BOX, as the options trading facility, is the entity responsible for opening all series of options. In order to conform this Section to the corresponding rule of other options exchanges, the proposal would also amend this section to eliminate the separate reference to index options. However, the Exchange also proposes to clarify this section to reflect actual market practice by specifying that at the commencement of trading on BOX of a particular class of options, BOX usually will open a "minimum" of three (3) series of options for each expiration month in that class.

Amendment to Section 26 of Chapter V: In conjunction with proposed Section 12 of Chapter XIV, this proposed rule would limit liability regarding the dissemination of index information.

Amendment to Section 5 of Chapter VI: This proposed amendment discusses bid/ask differentials for indices.

Amendment to Section 4 of Chapter XII: In conjunction with proposed Section 7 of Chapter XIV (specifically subsection (a)(14) of Section 7 of Chapter XIV), this proposed rule would permit BOXR to impose additional margin upon an account if it determines that additional margin is warranted in light of the risk associated with an under-hedged options position in certain broad-based indices.

NDX, MNX and RUT Index Options. The Exchange proposes to amend its rules to provide for the listing and trading of NDX and MNX (one tenth value of the NDX) [18] including long term index options based upon the full value of the Nasdaq 100 Index ("NDX Leaps") and one tenth value ("MNX Leaps"). These indexes are cash settled, European style options based on the full and one tenth value of the Nasdaq 100, a stock index calculated and maintained by the Nasdaq Stock Market, Inc. ("Nasdaq").[19]

The Nasdaq 100 includes 100 of the largest domestic and international non-financial securities listed on Nasdaq, based on market capitalization. The Nasdaq 100 reflects companies across major industry groups including computer hardware and software, telecommunications, retail/wholesale trade and biotechnology. The Nasdaq 100 is calculated using a modified capitalization-weighted methodology. To be eligible for initial inclusion in the Nasdaq 100, a security must be listed on Nasdaq's Global or Global Select markets, unless it was dually-listed on another exchange prior to January 1, 2004 and has maintained such listing. The security must have an ADTV of at least 200,000 shares, and the issuer must not currently be in bankruptcy proceedings. If a component security is of a foreign issuer, based on its country of incorporation, it must have listed options or be eligible for listed options trading. In addition, the issuer of a component security must not have entered into any definitive agreement or other arrangement that would result in the security no longer being eligible for inclusion in the index within the next six months. In addition, the issuer of a component security must not have annual financial statements with an audit opinion, where the auditor or the issuer indicated that the audit opinion cannot be currently relied upon.

As of July 31, 2006, the following were characteristics of the Nasdaq 100:

- Total capitalization of all components of the Index was approximately $2.4 trillion;
- Component capitalization: (a) The highest capitalization of a component was $158.4 billion; (b) the lowest capitalization of a component was $4.5 billion; (c) the mean capitalization was $24.1 billion; and (d) the median capitalization of the components was $14.5 billion.
- Component price per share: (a) The highest price per share of a component was $386.60; (b) the lowest price per share of a component was $2.13; (c) the mean price per share of the components was $39.98; and (d) the median price per share of the components was $32.31.
- Component weightings: (a) The highest weighting of a component was 6.57%; (b) the lowest weighting of a component was .19%; (c) the mean weighting of the components was 1.00%; and (d) the median weighting of a component was .605%.

Since the full value NDX options trade at a level that may be uncomfortably high for retail investors, the Exchange believes that listing index options on a reduced one-tenth value of the full value of the NDX, such as the MNX, attracts a greater source of customer business and provides an opportunity for investors to hedge or speculate on the market risk associated with the component stocks with a smaller outlay of capital, thereby creating a more active and liquid trading environment.

The Nasdaq maintains and monitors the Nasdaq 100 and is responsible for any adjustments, component deletions and component additions. The NDX component securities are evaluated on an annual basis. The NDX and MNX are calculated continuously, using the last sale price for each component stock in the Index, and are disseminated every 15 seconds throughout the trading day.

The Exchange is also amending its rules to provide for the listing of index options on the Russell 2000 Index ("RUT") [20] and long-term index options on the Russell 2000 Index ("RUT LEAPS").[21] The Russell 2000 is constructed to provide a comprehensive and unbiased small-cap barometer and is completely reconstituted annually to ensure larger stocks do not distort the performance and characteristics of the true small-cap opportunity set. The

[18] MNX and NDX index options are currently listed and trading on the Amex, the CBOE, and the ISE. *See* Securities Exchange Act Release Nos. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (SR–Amex–2005–038); 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993) (SR–CBOE–93–42); and 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR–ISE–2005–01).

[19] A description of the Nasdaq 100 Index is available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm.*

[20] For more detailed description of the Russell 2000 Index, *see http://russell.com/indexes.*

[21] Options on the Russell 2000 Index trade on the CBOE and ISE. *See* Securities Exchange Act Release Nos. 51619 (April 27, 2005), 70 FR 22947 (May 3, 2005) (SR–ISE–2005–09) and 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–92–02).

Russell 2000 includes the smallest of the Russell 3000 stocks representing approximately 8% of the investable U.S. equity market. Component stocks must be trading at or above $1.00 on May 31st of every year to be eligible for inclusion.

The Russell 2000 is capitalization-weighted and includes only common stocks belonging to corporations domiciled in the United States that are traded on the NYSE, AMEX or Nasdaq exchanges. Stocks are weighted by their available market capitalization, which is calculated by multiplying the primary market price by the available shares. As of June 30, 2006, the average market capitalization was $1.07 billion, the median market capitalization was $604 million, the largest company by market capitalization had a $2.335 billion market capitalization, and the smallest company had a market capitalization of $83 million.

The Russell 2000 is monitored and maintained by the Frank Russell Company. The Frank Russell Company is responsible for making any adjustments, component deletions and component additions. The value of the Russell 2000 is calculated by Reuters on behalf of the Frank Russell Company and is disseminated every 15 seconds throughout the trading day.

The Exchange believes the NDX, NDX LEAPS, MNX, MNX LEAPS, RUT, and RUT LEAPS are not readily subject to manipulation because of the broad-based characteristics of the underlying indexes, including the component security criteria, index weighting methodologies, maintenance, evaluation, calculation and dissemination. The trading of NDX, NDX LEAPS, MNX, MNX LEAPS, RUT, and RUT LEAPS would be subject to the same rules proposed in Chapter XIV that would govern the trading of all index options.

The Exchange represents that it will not list any options on indices without first determining that BOX has sufficient capacity to accommodate the anticipated order flow. The Exchange will also not commence the trading of any options on indices without having the appropriate surveillance procedures for such index options trading in operation as set forth to the Commission in the Exchange's Index Surveillance Letter dated August 29, 2006 submitted confidentially under a FOIA request ("Index Surveillance Letter"). Pursuant to the Index Surveillance Letter the Exchange will incorporate new index option products into the Exchange's surveillance reports and procedures prior to trading these products.

2. Statutory Basis

BSE believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act,[22] in general, and Section 6(b)(5) of the Act,[23] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for 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

BSE 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 Number SR–BSE–2005–11 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–BSE–2005–11. 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. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–11 and should be submitted on or before September 29, 2006.

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.[24] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

To list options on a particular broad-based index, BSE currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative security product by a self-regulatory organization ("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

[22] 15 U.S.C. 78(f)(b).

[23] 15 U.S.C. 78(f)(b)(5).

[24] 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).

[25] 15 U.S.C. 78f(b)(5).

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.

As described more fully above, the BSE proposes to establish listing standards for broad-based index options. The Commission's approval of the BSE's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b–4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act and Rule 19b–4, for which notice and comment and Commission approval is necessary.[26] The Exchange's ability to rely on Rule 19b–4(e) to list broad-based index options that meet the requirements of proposed Section 3 of Chapter XIV of BOX Rules potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

With regard to the NDX, MDX, and RUT index options and LEAPs, the Commission finds the current characteristics of these indexes are such that the indexes that contain components that are sufficiently liquid and not readily subject to manipulation; and thus, the Exchange's trading rules and surveillance procedures for these products address the current characteristics of these products.

The Commission notes that the Exchange has represented that it has adequate trading rules, procedures, listing standards and a surveillance program for broad-based index options, including the NDX, MDX, and RUT. BSE's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to proposed Chapter XIV. Other existing BOX rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, BSE proposes to establish position and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to Section 5 of Chapter XIV.[27] The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The BSE represents that its surveillance procedures are adequate to properly monitor the trading of broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to Section 3 of Chapter XIV of BOX Rules. In addition, because Section 3(b)(9) of Chapter XIV requires that each component of an index be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through Nasdaq. Accordingly, the BSE will have access to information concerned trading activity in the component securities of an underlying index through the Intermarket Surveillance Group ("ISG").[28] Section 3(b)(10) of Chapter XIV of BOX Rules also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the BSE and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.[29] The Commission believes that these requirements will help to ensure that the BSE has the ability to monitor trading in broad-based index options listed pursuant to Section 3 of Chapter XIV of BOX Rules and in the component securities of the underlying indexes.

The Commission believes that the requirements Section 3 of Chapter XIV of BOX Rules regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, Section 3 of Chapter XIV of BOX Rules requires that the underlying index be "broad-based," as defined in Section 2 of Chapter XIV of BOX Rules.[30] The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in Section 3(b)(11) of Chapter XIV of BOX Rules that the current index value be widely disseminated at least once every 15 seconds by the Options Price Reporting Authority, the Consolidated Tape Association, the Nasdaq Index Dissemination Service or by one or more major market data vendors during the time an index option trades on the BOX should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in Section 10 of Chapter XIV of BOX Rules that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.[31]

The proposed rule change will permit the Exchange and its members to trade options on indices on BOX and should allow BOX to remain competitive with the other options exchanges that already list and trade options on indices. The proposed rule change should also benefit investors by increasing competition among markets that trade options on indices.

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 in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the ISE, the Amex and CBOE.[32] The Commission does not

[26] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 65 FR 70952 (December 22, 1998) (File No. S7–13–98).

[27] Under Section 10 of Chapter XIV of BOX Rules, the exercise limits for index options are equivalent to the position limits prescribed for option contracts with the nearest expiration in Section 5 or Section 6 of BOX Rules. Also, the position and exercise limits for the NDX, MDX, and RUT options and LEAPs are consistent with those rules approved by the Commission for other options exchanges.

[28] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the National Association of Securities Dealers, Inc. are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

[29] However, such non-U.S. index components, as "NMS stocks," would be registered under Section 12 of the Act and listed and traded on a national securities exchange or Nasdaq, where there is last sale reporting.

[30] Section 2(j) of Chapter XIV of BOX Rules defines "broad-based index" to mean "an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries."

[31] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving CBOE proposal to establish open price settlement for S&P 500 Index options).

[32] *See* Securities Exchange Act Release Nos. 52578 (October 7, 2005), 70 FR 60590 (October 18, 2005) (SR–ISE–2005–27); 52781 (November 16, 2005), 70 FR 70898 (November 23, 2005) (SR–Amex–2005–069); and 53266 (February 9, 2006), 71 FR 8321 (February 16, 2006) (SR–CBOE–2005–59).

believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[33] to approve the proposed rule change, as amended, on an accelerated basis.

BSE also proposes to amend its rules to provide for the listing of the NDX and MNX (one tenth value of the NDX), including long term index options based upon the full value of the Nasdaq 100 Index ("NDX Leaps") and one-tenth value ("MNX Leaps"). These indexes are cash settled. European style options based on the full and one-tenth value of the Nasdaq 100, a stock calculated and maintained by the Nasdaq stock market. The BSE is also amending its rules to provide for the listing of the RUT and RUT LEAPS.

The Commission notes that it previously approved the listing and trading of options on the NDX and MNX on other exchanges.[34] The Commission also notes that it has previously approved the listing and trading of the RUT on other exchanges.[35] The Commission is presently not aware of any regulatory issues that should cause it to revisit that earlier finding or preclude the trading of such options on the BSE.

In approving the proposal, the Commission has specifically relied on the following representations made by the BSE:

1. The BSE will notify the Commission's Division of Market Regulation immediately if Nasdaq ceases to maintain or calculate the Nasdaq 100 Index (or one-tenth Nasdaq 100 value), or if these Nasdaq 100 Index values are not disseminated every 15 seconds by a widely available source during the time the index options trade on BOX. The BSE will notify the Commission's Division of Market Regulation immediately if the Frank Russell Company ceases to maintain or calculate the Russell 2000 Index, or if the Russell 2000 Index value is not disseminated every 15 seconds by a widely available source during the time the index options trade on BOX. If such Indexes cease to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, the BSE will not list any additional series for trading and will limit all transactions in such option to closing transactions for the purpose of maintaining a fair and orderly market and protecting investors.

2. The BSE has an adequate surveillance program in place for index options traded on the Nasdaq 100 Index and the Russell 2000 Index.

3. The additional quote and message traffic that will be generated by listing and trading the NDX, MNX, NDX LEAPS, MNX LEAPS, the RUT and the RUT LEAPS will not exceed the BSE's current message capacity allocated by the Independent System Capacity Advisor.

The Commission further notes that in approving this proposal, it relied on the BSE's discussion of how Nasdaq and the Frank Russell Company currently calculates the respective indexes. If the manner in which Nasdaq or the Frank Russell Company calculates the indexes were to change substantially, the approval might no longer be consistent with the Act and might no longer be effective.

With respect to the NDX, the MNX, and the RUT, the Commission believes that the position limits for these index options and the hedge exemption for such position limits are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.[36]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of the notice thereof in the **Federal Register**. Because options on the NDX, MNX, and the RUT already trade on other exchanges, accelerating approval of the BSE's proposal should benefit investors by creating, without due delay, additional competition in the market for these options.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–BSE–2005–11), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14878 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[33] 15 U.S.C. 78s(b)(2).

[34] Options on the MNX and NDX are currently listed and trading on the Amex, the CBOE and the ISE. *See* Securities Exchange Act Release Nos. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (SR–Amex–2005–038); 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993) (SR–CBOE–93–42); and 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR–ISE–2005–01).

[35] *See* Securities Exchange Act Release Nos. 51619 (April 27, 2005), 70 FR 22947 (May 3, 2005) (SR–ISE–2005–09) and 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–92–02).

[36] *See e.g.*, Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001) (SR–CBOE–00–14) (order approving a proposed rule change by CBOE to increase position limits and exercise limits for Nasdaq 100 Index options, expand the Index hedge exemption, and eliminate the near-term position limits).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54395; File No. SR–CBOE–2006–58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Regarding DPM and e-DPM Membership Ownership Requirements and the Ultimate Matching Algorithm

August 31, 2006.

I. Introduction

On June 14, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to change membership ownership requirements. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2006,[3] which proposed to change certain aspects of the Ultimate Matching Algorithm ("UMA"). The proposed rule change was published for comment in the **Federal Register** on August 1, 2006.[4] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CBOE Rules 8.85 and 8.92 require that a DPM organization and e-DPM organization, respectively, own a certain number of Exchange memberships. Specifically, with respect to DPM organizations, CBOE Rule 8.85 requires that each DPM organization own one Exchange membership for each trading location at which the organization serves as a DPM. CBOE Rule 8.92 requires that until July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM, or

[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* Securities Exchange Act Release No. 54216 (July 26, 2006), 71 FR 35471.

lease one Exchange membership for every 20 products allocated to the e-DPM.[5]

CBOE proposes to modify these membership ownership requirements in connection with the Exchange's determination to apply a specific "appointment cost" to each options class allocated to a DPM organization or an e-DPM organization. With respect to DPM organizations, CBOE Rule 8.85, as proposed to be amended, would require that each DPM organization own one Exchange membership, and own or lease such additional Exchange memberships as may be necessary based on the aggregate "appointment cost" for the classes allocated to the DPM organization. Each membership owned or leased by the DPM organization would have an appointment credit of 1.0. The appointment costs for the Hybrid 2.0 Option Classes and the Non-Hybrid Classes allocated to the DPM organization would be the same as the appointment costs set forth in CBOE Rule 8.3. The appointment cost for Hybrid Option Classes would be .01 per class.

For example, if the DPM organization has been allocated such number of options classes that its aggregate appointment cost is 1.6, the DPM organization would be required to own at least one Exchange membership, and own or lease one additional Exchange membership. As it currently does for purposes of Remote Market Maker ("RMMs") and Market-Maker appointments, the Exchange would rebalance the "tiers" set forth in proposed CBOE Rule 8.3(c)(i), excluding the "AA" and "A+" tiers, once each calendar quarter, which could result in additions or deletions to their composition. When a class changes "tiers" it would be assigned the "appointment cost" of that tier. Upon rebalancing, each DPM organization would be required to own or lease the appropriate number of Exchange memberships reflecting the revised "appointment costs" of the classes that have been allocated to it. CBOE Rule 8.85 also would provide that a DPM organization is required to own or lease the appropriate number of Exchange memberships at the time a new options class allocated to it pursuant to CBOE Rule 8.95 begins trading.

Additionally, because member organizations may be approved and function in a number of capacities at CBOE, including as a DPM organization, e-DPM organization, and as an RMM, CBOE proposes to allow the DPM organization to use any excess membership capacity in its capacity as an RMM or e-DPM. Specifically, in the event the member organization approved as the DPM organization is also approved to act as an RMM and/or e-DPM, and has excess membership capacity above the aggregate appointment cost for the classes allocated to it as the DPM, the member organization would be permitted to utilize the excess membership capacity to quote electronically in an appropriate number of Hybrid 2.0 Classes in the capacity of an RMM and not trade in open outcry, or to quote electronically in the Hybrid 2.0 Classes in which it is appointed an e-DPM. For example, if the DPM organization has been allocated such number of option classes that its aggregate appointment cost is 1.6, the member organization could request an appointment as an RMM in any combination of Hybrid 2.0 Classes whose aggregate "appointment cost" does not exceed .40. The member organization would not function as a DPM in any of these additional classes. In the event the member organization utilizes any excess membership capacity to quote electronically in some additional Hybrid 2.0 Classes as an RMM or e-DPM, it would be required to comply with the provisions of CBOE Rules 8.4(c) and Rule 8.93(vii), respectively. CBOE is also proposing similar changes to CBOE Rule 8.92, to apply to e-DPM organizations.

Finally, CBOE proposes to amend the provisions of CBOE Rules 6.45A for DPMs and 6.45B for DPMs and LMMs, which provide that a DPM or LMM utilizing more than one membership in the trading crowd where a class is traded would count as two market participants for purposes of Component A of UMA. Under the proposal, a DPM (or LMM) would be required to exclusively use the portion of a membership(s) representing one-half the total appointment cost of the classes allocated to the DPM (or, in which the LMM has been appointed) at a particular trading station in order to count as two market participants, and not for any other purpose.

For example, if a DPM's appointment cost is 2.2 for the classes allocated to it at a particular trading station, pursuant to proposed amendments to CBOE Rule 8.85(e), the DPM would be required to own one membership and own or lease two additional memberships. In addition, the DPM would be permitted to choose to count as two market participants for purposes of Component A of the Algorithm if the DPM exclusively utilizes 1.1 (one-half of 2.2) of the membership(s) it owns or leases in order to count as two market participants, and not utilize the 1.1 of the memberships for any other purpose. In this example, to comply with the membership ownership requirements and to count as two market participants for purposes of Component A, the DPM would be required to own one membership, and own or lease three additional memberships to satisfy its total cost of 3.3 (2.2 + 1.1).

In amending CBOE Rules 6.45A and 6.45B, CBOE proposes to make it optional for a DPM (or LMM) to choose whether to exclusively use the portion of its membership(s) representing one-half the total appointment cost of the classes allocated to the DPM at a particular trading station in order to count as two market participants, or, instead, to use the excess membership capacity to quote electronically in Hybrid 2.0 Classes.

III. Discussion

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 and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder.[7] The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal to apply the appointment cost structure that currently governs RMMs and Market Makers to DPMs and e-DPMs is reasonable. The Commission notes that there will continue to be a DPM allocated to each equity options class. Moreover, permitting DPMs and e-DPMs to use any excess membership capacity to trade options classes as RMM or DPM/e-DPM should enable them to more efficiently use their seats. Finally, the Commission believes that in light of the proposed changes to the appointment cost structure, the proposed changes to UMA, and the circumstances under which a DPM or

[5] After July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM.

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

LMM may count as two market participants, are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2006–58), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14855 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54385; File No. SR–NYSEArca–2006–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Exchange's Standard Position and Exercise Limit Pilot Program

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2006, the NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its rules to extend the time period in NYSE Arca Rule 6.8(a), which covers the position limit and exercise limits pilot program for equity option contracts and options on the Nasdaq-100 Tracking Stock ("QQQQ") ("Pilot Program"). The text of the proposed rule change is available on the NYSE Arca's Web site (*http://www.nysearca.com*), at NYSE Arca's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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. NYSE Arca 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 proposal is to extend the period for the Exchange's Pilot Program relating to standard position and exercise limits for equity option contracts and for options on QQQQs until March 1, 2007.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ in accordance with the following levels:

Current equity option contract limit[6]	Pilot Program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Pilot Program QQQQ Option Contract Limit**
300,000	900,000

The Exchange believes that extending the Pilot Program until March 1, 2007 is warranted due to the positive feedback from OTP Holders and for the reasons cited in the original rule filing that proposed the Pilot Program.[7] The Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program until March 1, 2007.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[9] that requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for 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.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program, which was effective upon filing on February 25, 2005 and subsequently extended twice, is set to expire on September 1, 2006. *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2003–55, as amended) ("Pilot Program Notice"). *See also* Securities Exchange Act Release Nos. 53350 (February 22, 2006), 71 FR 10582 (March 1, 2006) (notice of filing and immediate effectiveness of File No. SR–PCX–2006–08); and 52263 (August 15, 2005), 70 FR 49003 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2005–95).

[6] Except when the Pilot Program is in effect.

[7] See Pilot Program Notice, *supra* note 5.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[14]

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 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–NYSEArca–2006–49 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 No. SR–NYSEArca–2006–49. 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. Copies of such filing will also be available for inspection and copying at the principal office of NYSE Arca. 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–NYSEArca–2006–49 and should be submitted on or before September 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14877 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54382; File No. SR–OCC–2005–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Use of Margin Deposit in the Event of a Clearing Member Liquidation

August 29, 2006.

I. Introduction

On December 16, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2005–23 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 19, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Currently, OCC's By-Laws relating to the potential use of securities and other margin assets in the event of a clearing member's liquidation restrict the use of such assets in ways not required under applicable laws and regulations. In addition, certain provisions of OCC's Rules applicable to clearing member liquidations do not fully or clearly reflect limitations imposed by the By-Laws. The proposed rule change amends Chapter XI of the Rules to more precisely reflect appropriate limitations that are imposed by OCC's By-Laws on the use of clearing member margin deposits and amends provisions of the By-Laws to allow OCC to make use of those margin deposits to the fullest extent consistent with (i) applicable customer protection provisions and (ii) the ability of OCC and clearing member systems to identify margin assets subject to those provisions.

Article VI, Section 3 of the By-Laws sets out a number of different types of accounts that a clearing member may establish and maintain on OCC's books. These accounts include firm accounts, separate market-maker's accounts, combined market-makers' accounts, customers' accounts, and others. For each of these account types, Section 3 provides that OCC shall have a lien on property in the account and specifies the extent of the obligations secured by

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 53794, (May 11, 2006), 71 FR 29206.

the lien. For example, in the case of the firm lien account, Section 3(a) of Article VI states that "the Corporation shall have a lien on all positions and on all other securities, margin and other funds in such account as security for all of the clearing member's obligations to the Corporation." This language permits all of the clearing member's assets on deposit with OCC with respect to the firm account to be applied to any obligation of the clearing member to OCC regardless of whether that obligation arises from the firm account or any other account. This is appropriate in that, generally speaking, the clearing member may deposit with respect to the firm account only those assets that it is permitted under applicable law to treat as its own. Such assets include all cash not required by Commission Rule 15c3–3[3] to be deposited in a special reserve bank account for the benefit of customers and any securities that belong to the clearing member and not to its customers as that term is defined in Commission Rules 15c2–1 and 8c–1 ("hypothecation rules").[4]

The lien language applicable to assets in other types of accounts, however, restricts the application of margin assets to obligations of the clearing member arising from that particular account. For example, in the case of a combined market-makers' account other than a proprietary combined market-makers' account, Section 3(c) of Article VI states that "the Corporation shall have a lien on all long positions, securities, margin and other funds in such combined Market-Maker's account with the clearing member as security for the clearing member's obligations to the Corporation in respect of all Exchange transactions effected through such account, short positions maintained in such account, and exercise notices assigned to such account." Under this language, OCC's lien on margin assets deposited with respect to a combined market-makers' account does not secure any obligations of the clearing member other than those arising from this account.[5]

These limitations on the use of assets in an account to obligations arising from the same account were adopted in order to avoid violation by clearing members of the hypothecation rules cited above.[6] The rules containing these limitations, which rules are substantially identical to one another, provide in pertinent part that a broker or dealer may not permit securities carried for the account of any customer to be commingled with securities "carried for any person other than a bona fide customer under a lien for a loan made to such broker or dealer."[7] Although it is not at all clear that this language should apply to OCC's lien, which is not a "lien for a loan" in the ordinary sense, OCC has historically taken the conservative view that it does apply and does not propose now to do otherwise.

Nevertheless, it is clear that the hypothecation rules apply only to "securities carried for the account of any customer." Assets other than securities are not subject to the rule. Thus, a clearing member is not required to segregate cash received by a clearing member from any securities customer from other cash deposited by the clearing member with OCC as margin. Subject to the requirement to fund its special reserve bank account under Rule 15c3–3(e) and to fund a special reserve bank account for any proprietary account of an introducing broker dealer ("PAIB") account that the broker-dealer has agreed to maintain, a broker-dealer may treat cash received from securities customers as its own. Therefore, a clearing member is permitted to deposit cash (other than cash received from commodity customers, which is required to be segregated under provisions of the Commodity Exchange Act ["CEA"]) as margin for any of a broker-dealers' accounts at OCC without regard to the source of the cash. Accordingly, the lien language applicable to combined market-makers' accounts and certain other account types is overly restrictive as applied to cash and any other non-securities assets that might be deposited as margin in an account.[8] OCC's lien could lawfully be applied to such non-securities assets to secure any obligation of the clearing member to the same extent as if the cash had been deposited with respect to the clearing member's firm lien account.

It is also true that when securities other than customer securities are deposited with OCC as margin with respect to a customer account (other than a commodity customer account where securities must be segregated pursuant to provisions of the CEA), those securities would not for that reason alone have to be treated as securities carried for the account of any customer, and OCC's lien could lawfully apply. However, there are no systems in place that allow OCC to distinguish between customer and non-customer securities when they are deposited as margin for a customer account, including a market-maker account. Accordingly, OCC will continue to treat all securities deposited as margin for any securities account other than a proprietary account as if the securities were customer securities for purposes of the hypothecation rules.

In order to address the discrepancies described above, OCC is amending Article I, Section 1 of the By-Laws to define two different types of liens: A "general lien" and a "restricted lien." Assets subject to a general lien will serve as security for all obligations of the clearing member to OCC regardless of the origin or nature of those obligations. The proposed rule change would also define a "general lien account" as one in which OCC has a general lien over all assets in the account. Thus, the firm account and any other proprietary account, such as a proprietary market-maker's account, will be a general lien account, and all general lien accounts will be treated as a single firm lien account in a

---

[3] 17 CFR 240.15c3–3.

[4] 17 CFR 240.15c2–1 and 240.8c–1. The term customer is defined in paragraph (b)(1) of these rules not to include partners, officers, or directors of the broker-dealer or a participant in a joint account with a broker-dealer. Unlike Rule 15c3–3, however, the hypothecation rules do not exclude broker-dealers from the definition of customer. Accordingly, market-makers that do not have any of these specified relationships with their clearing broker must be treated as customers for purposes of the hypothecation rules. 17 CFR 240.15c2–1(a)(2) and 240.8c–1(a)(2).

[5] In some cases, however, multiple accounts of the same account type are treated as a single account as provided in Interpretation .02 following Article VI, Section 3 of the By-Laws. Thus, for example, if a clearing member maintains more than one combined market makers' account for associated market makers, those accounts would be treated as a single account for liquidation purposes. Similarly, multiple securities customers' accounts would be treated as a single securities customers' account for liquidation purposes.

[6] The limitation is actually more restrictive than would be required under the hypothecation rules because OCC could lawfully apply assets in an account to obligations arising from the customers' account and any other accounts in which positions of securities customers as defined in the hypothecation rules are carried. Similarly, assets in the public customers' account could be applied to obligations arising from a market-maker account. As a matter of policy, however, OCC has maintained the separation continued here.

[7] The term customer is defined in paragraph (b)(1) of these rules not to include partners, officers, or directors of the broker-dealer or a participant in a joint account with a broker-dealer. Unlike Rule 15c3–3, however, the hypothecation rules do not exclude broker-dealers from the definition of customer. Accordingly, market-makers that do not have any of these specified relationships with their clearing broker must be treated as customers for purposes of the hypothecation rules.

[8] At present, the only other non-securities assets that may be deposited as margin are letters of credit ("LOCs"). LOCs are subject to special OCC rules in that an LOC may be secured by customer securities pledged by the broker-dealer to the issuer of the LOC. In such a situation, the LOC would be subject to the restrictions applicable to the securities. The broker-dealer may comply with those restrictions under OCC's Rules by designating the LOC as a "restricted" LOC and by specifying which account type is secured by the LOC.

liquidation of the clearing member. This is precisely the same result as under the present rules.

The definition of a restricted lien will provide that assets in an account that are specified as subject to a restricted lien serve as security only for obligations arising from that particular account or from a specified group of accounts to which that account belongs.[9] A restricted lien account will be defined as an account in which specified assets are subject to a restricted lien. All accounts other than the various types of proprietary accounts will be restricted lien accounts. However, not all assets in those accounts would be subject to a restricted lien. Cash and any other non-securities assets in a restricted lien account, because they are not subject to the restrictions of the hypothecation rules, would be subject to a general lien. However, an exception will be made for the securities customers' account and the customer lien account where all assets, including cash, would be subject only to a restricted lien. The reason for this exception is that although these non-securities assets are not subject to the hypothecation rules, the provisions of Rule 15c3–3(e) and in particular the reserve formula used in calculating the amount of funds a clearing member is required to deposit in the special reserve bank account for the exclusive benefit of customers provide a debit (*i.e.*, a reduction in the required deposit) for "[m]argin required and on deposit with [OCC] for all option contracts written or purchased in customer accounts." Given this debit in the reserve formula, it would appear to be inconsistent to use funds in the account as collateral for obligations other than those arising in such accounts. This limitation is reflected in the proposed rule change.

In order to eliminate unnecessary restrictions on the use of non-securities assets in certain accounts as described above, OCC is modifying the lien language appearing in the following paragraphs of Article VI, Section 3: Paragraph (a) to the extent applicable to firm non-lien accounts; paragraph (b) to the extent applicable to separate market-maker accounts other than proprietary market-maker accounts; paragraph (c) to the extent applicable to combined market-makers' accounts other than proprietary combined market-makers' accounts; and paragraph (h) applicable to JBO Participants' accounts. The modification necessary in each case is to provide that margin assets deposited with respect to the applicable account and consisting of cash and other non-securities collateral may be applied to any obligation of the clearing member rather than only to obligations arising from that account. This is accomplished by subjecting securities assets in the accounts to a restricted lien while subjecting non-securities assets in certain of the account to a general lien. Other changes in Article VI, Section 3 are non-substantive changes intended to make use of the newly defined terms, to improve consistency, to eliminate repetition, and to clarify ambiguities.[10]

In order to conform its Rules to the changes made in provisions of Article VI, Section 3(a) of the By-Laws relating to firm non-lien accounts and in Section 3(e) relating to the securities customers' account, OCC is deleting the specific lien language applicable to unsegregated long positions currently set forth in Rule 611. The extent of these liens would be set forth in the cited provisions of Article VI, Section 3.

Notwithstanding the limitations of the existing lien language described above applicable to accounts other than proprietary accounts, the limitations of the use of margin are not fully reflected in the provisions of OCC's Rule 1104(a), which governs the creation of a liquidating settlement account and payments from that account in a clearing member liquidation. Rule 1104(a) presently provides, in effect, that proceeds from restricted letters of credit,[11] unsegregated long positions, and variation payments resulting from positions in security futures in a public customers' account, may not be applied to obligations other than those arising from the public customers' account. It does not similarly restrict the use of proceeds of securities deposited directly as margin for that account even though the application of such securities to obligations arising out of other accounts would arguably be in violation of the hypothecation rules and even though such use would be inconsistent with OCC's restricted lien on those securities. In the event of a clearing member liquidation prior to the approval of this rule change, OCC would observe the limitations of the hypothecation rules and the lien language as it presently exists in OCC's By-Laws notwithstanding that those limitations are not fully reflected in Rule 1104(a). Those limitations are fully consistent with OCC's risk management system in that OCC has never set margin or clearing fund requirements with the expectation that it would have excess collateral in one account that could be applied against obligations arising in other accounts. OCC determines its risk margin requirements on each clearing member account independently.

Nevertheless, if in liquidating any clearing member account a shortfall occurred, it would obviously be in the interest of OCC, its clearing members, and the integrity of the clearing system if OCC were able to apply the margin assets that it holds to the fullest extent practicable under applicable law. In addition, the intended restrictions on the use of proceeds of positions and securities in the securities customers' account as well as in market-maker accounts and other restricted lien accounts as OCC is now proposing to refer to them generically should be clearly stated. By making use of the newly defined terms general lien and restricted lien and by relying on the provisions of Article VI, Section 3 as proposed to be amended, only relatively minor amendments to the provisions of Rule 1104(a) are required to effectuate the dual purposes of the rule change. Other changes to Rule 1104 are intended for clarification only and are not substantive.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[12] OCC Rule 1104 provides that following the suspension of a clearing member OCC will create a liquidating settlement account for the purpose of making settlement payments for the clearing member's obligations to OCC. Under Rule 1104, all margin deposited by the suspended member in all of the member's accounts, as well as its contribution to OCC's clearing fund, will be converted to cash and will be deposited in the liquidating settlement account. To the extent such funds are insufficient for settlement and the clearing member is otherwise unable to

[9] The reference to groups of accounts is necessary because, for example, a clearing member may have multiple combined market makers' accounts that would be liquidated as if they were a single account. The same would be true if a clearing member had more than one securities customers' account. These account groupings are addressed in existing Interpretation .02 following Article VI, Section 3 of the By-Laws.

[10] No changes of substance are being made with respect to futures accounts subject to segregation requirements under the CEA.

[11] OCC is amending the definition of restricted letter of credit in Rule 101 in order to make it more generic. In current practice, restricted letters of credit are used not only for the securities customers' account but may also be used in a segregated futures account. Under OCC's Rules, he letter of credit must indicate on its face the purpose or purposes to which it may be applied.

[12] 15 U.S.C. 78q–1(b)(3)(F).

satisfy its obligations, OCC may have to use its clearing fund, which is made up from contributions from all clearing members, to make up the loss.

Under the current version of Article VI, Section 3, of OCC's By-Laws, OCC has a lien on cash and non-securities assets in a non-proprietary account for purposes of the obligations of such account only, thus limiting OCC's ability to use these assets in the liquidating settlement procedures provided for in Rule 1104. Although OCC is entitled under Rule 1108 to recover any amounts owed to it by the suspended Clearing member and OCC's members are entitled under Article VIII of the By-Laws to share in a recovery of charges against the clearing fund, the restriction on the use of the assets in non-proprietary accounts unnecessarily complicates the liquidating settlement process.

The rule change gives OCC a general lien over the cash and non-securities assets in non-proprietary accounts at OCC, other than securities customers' accounts and customer lien accounts, so that those assets may be used to meet any of the member's obligations to OCC for purposes of creating a liquidating settlement account under Rule 1104. Accordingly, by revising its By-Laws and Rules to give OCC broader access to collateral in the event of a clearing member liquidation while still complying with the Commission's hypothecation rules and customer protection rule, OCC has designed the proposed rule change to improve its ability to protect itself and its clearing members from the potential losses associated with a clearing member liquidation without affecting the protection of customers' securities under the Commission's rules. As a result, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2005–23) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14857 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5542]

Culturally Significant Objects Imported for Exhibition Determinations: "In the Beginning: Bibles Before the Year 1000"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "In the Beginning: Bibles Before the Year 1000," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Arthur M. Sackler Gallery, Washington, DC, from on or about October 21, 2006, until on or about January 7, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14903 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–05–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5540]

Culturally Significant Objects Imported for Exhibition Determinations: "Manet and the Execution of Maximilian"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Manet and the Execution of Maximilian," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about November 5, 2006, until on or about January 29, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 1, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14894 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5541]

Culturally Significant Objects Imported for Exhibition Determinations: "Prayers & Portraits: Unfolding the Netherlands Diptych"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Prayers & Portraits: Unfolding the Netherlands Diptych," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The National Gallery of Art, Washington, DC, from on or about November 12, 2006, until on or about February 4, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14902 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25744]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DESTINY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25744 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25744. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DESTINY is:

Intended Use: "Charter, harbor cruises, cruises along California coast and to Catalina Island, dinners at the dock."

Geographic Region: California coast. Mostly southern California.

Dated: August 29, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–14891 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25742]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WHISTLE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25742 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before October 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25742. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments

will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WHISTLE is:

Intended Use: "Carry up to five passengers as an office for marine forensic engineering consulting."

Geographic Region: Chesapeake Bay & Tributaries.

Dated: August 30, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–14890 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25743]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WINTERHAWK.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25743 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 10, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25743. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WINTERHAWK is:

Intended Use: "Excursion charter, (non-fishing)."

Geographic Region: Florida, Georgia, South Carolina, North Carolina, Virginia, District of Columbia, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine and their respective inland tributaries.

Dated: August 30, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–14892 Filed 9–7–06; 8:45 am]

BILLING CODE 4910–81–P

Federal Register

Friday,
September 8, 2006

Part II

Securities and Exchange Commission

17 CFR Parts 228, 229 et al.
Executive Compensation and Related Person Disclosure; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 232, 239, 240, 245, 249 and 274

[Release Nos. 33–8732A; 34–54302A; IC–27444A; File No. S7–03–06]

RIN 3235–AI80

Executive Compensation and Related Person Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the disclosure requirements for executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. These amendments apply to disclosure in proxy and information statements, periodic reports, current reports and other filings under the Securities Exchange Act of 1934 and to registration statements under the Exchange Act and the Securities Act of 1933. We are also adopting a requirement that disclosure under the amended items generally be provided in plain English. The amendments are intended to make proxy and information statements, reports and registration statements easier to understand. They are also intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors. In addition, they are intended to provide better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members. In Release No. 33–8735, published elsewhere in the proposed rules section of this issue of the **Federal Register**, we also request additional comments regarding the proposal to require compensation disclosure for three additional highly compensated employees.

DATES: *Effective Date:* November 7, 2006.

Comment Date: Comments regarding the request for comment in Section II.C.3.b. of this document should be received on or before October 23, 2006.

Compliance Dates: Companies must comply with these disclosure requirements in Forms 8–K for triggering events that occur on or after November 7, 2006 and in Forms 10–K and 10–KSB for fiscal years ending on or after December 15, 2006. Companies other than registered investment companies must comply with these disclosure requirements in Securities Act registration statements and Exchange Act registration statements (including pre-effective and post-effective amendments), and in any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006. Registered investment companies must comply with these disclosure requirements in initial registration statements and post-effective amendments that are annual updates to effective registration statements on Forms N–1A, N–2 (except those filed by business development companies) and N–3, and in any new proxy or information statements, filed with the Commission on or after December 15, 2006.

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/final.shtml*): or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–03–06 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number S7–03–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC, 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Carolyn Sherman, or Daniel Greenspan, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010 or, with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551–6784.

SUPPLEMENTARY INFORMATION: We are amending: Items 201,[1] 306,[2] 401,[3] 402,[4] 403[5] and 404[6] of Regulations S–K[7] and S–B,[8] Item 601[9] of Regulation S–K, Item 1107[10] of Regulation AB,[11] Item 304[12] of Regulation S–T,[13] and Rule 100[14] of Regulation BTR.[15] We are also adding new Item 407 to Regulations S–K and S–B. In addition, we are amending Rules 13a–11,[16] 14a–3,[17] 14a–6,[18] 14c–5,[19] 15d–11[20] and 16b–3[21] under the Securities Exchange Act of 1934.[22] We are adding Rules 13a–20 and 15d–20 under the Exchange Act. We are further amending Schedule 14A[23] under the Exchange Act, as well as Exchange Act Forms 8–K,[24] 10,[25] 10SB,[26] 10–Q,[27] 10–QSB,[28] 10–K,[29] 10–KSB[30] and 20–F.[31] Finally, we are amending Forms SB–2,[32] S–1,[33] S–3,[34] S–4[35] and S–11[36] under the Securities Act of 1933,[37] Forms N–

[1] 17 CFR 229.201 and 17 CFR 228.201.
[2] 17 CFR 229.306 and 17 CFR 228.306.
[3] 17 CFR 229.401 and 17 CFR 228.401.
[4] 17 CFR 229.402 and 17 CFR 228.402.
[5] 17 CFR 229.403 and 17 CFR 228.403.
[6] 17 CFR 229.404 and 17 CFR 228.404.
[7] 17 CFR 229.10 *et seq.*
[8] 17 CFR 228.10 *et seq.*
[9] 17 CFR 229.601.
[10] 17 CFR 229.1107.
[11] 17 CFR 229.1100 *et seq.*
[12] 17 CFR 232.304.
[13] 17 CFR 232.10 *et seq.*
[14] 17 CFR 245.100.
[15] 17 CFR 245.100 *et seq.*
[16] 17 CFR 240.13a–11.
[17] 17 CFR 240.14a–3.
[18] 17 CFR 240.14a–6.
[19] 17 CFR 240.14c–5.
[20] 17 CFR 240.15d–11.
[21] 17 CFR 240.16b–3.
[22] 15 U.S.C. 78a *et seq.*
[23] 17 CFR 240.14a–101.
[24] 17 CFR 249.308.
[25] 17 CFR 249.210.
[26] 17 CFR 249.210b.
[27] 17 CFR 249.308a.
[28] 17 CFR 249.308b.
[29] 17 CFR 249.310.
[30] 17 CFR 249.310b.
[31] 17 CFR 249.220f.
[32] 17 CFR 239.10.
[33] 17 CFR 239.11.
[34] 17 CFR 239.13.
[35] 17 CFR 239.25.
[36] 17 CFR 239.18.
[37] 15 U.S.C. 77a *et seq.*

1A,[38] N–2,[39] and N–3 [40] under the Securities Act and the Investment Company Act of 1940,[41] and Form N–CSR [42] under the Investment Company Act and the Exchange Act.

Table of Contents

[38] 17 CFR 239.15A and 274.11A.
[39] 17 CFR 239.14 and 274.11a–1.
[40] 17 CFR 239.17a and 274.11b.
[41] 15 U.S.C. 80a–1 *et seq.*
[42] 17 CFR 249.331 and 274.128.

I. Background and Overview

On January 27, 2006, we proposed revisions to our rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters, current reporting regarding compensation arrangements and beneficial ownership.[43] We received over 20,000 comment letters in response to our proposals. In general, commenters supported the proposals and their objectives. We are adopting the rules and amendments substantially as proposed, with certain modifications to address a number of points that commenters raised.

The amendments to the compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors. Closely related to executive officer and director compensation is the participation by executive officers, directors, significant shareholders and other related persons in financial transactions and relationships with the company. We are also adopting revisions to our disclosure rules regarding related party transactions and director independence and board committee functions.

Finally, some compensation arrangements must be disclosed under our rules relating to current reports on Form 8–K. Accordingly, we are reorganizing and more appropriately focusing our requirements on the type of compensation information that should be disclosed on a real-time basis.

Since the enactment of the Securities Act and the Exchange Act,[44] the

[43] *Executive Compensation and Related Party Disclosure*, Release No. 33–8655 (Jan. 27, 2006) [71 FR 6542] (the "Proposing Release").

[44] Initially, disclosure requirements regarding executive and director compensation were set forth in Schedule A to the Securities Act and Section 12(b) of the Exchange Act, which list the type of information to be included in Securities Act and Exchange Act registration statements. Item 14 of Schedule A called for disclosure of the "remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly,

Continued

Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful information about executive and director compensation and relationships with the company.[45] The Commission also has had to reconsider executive and director compensation disclosure requirements in light of changing trends in executive compensation. Most recently, in 1992, the Commission adopted amendments to the disclosure rules that eschewed a mostly narrative disclosure approach adopted in 1983 in favor of formatted tables that captured all compensation, while categorizing the various elements of compensation and promoting comparability from year to year and from company to company.[46]

We believe this tabular approach remains a sound basis for disclosure. However, especially in light of the complexity of and variations in compensation programs, the very formatted nature of those rules has resulted in too many cases in disclosure that does not inform investors adequately as to all elements of compensation. In those cases investors may lack material information that we believe they should receive.

We are thus today adopting an approach that builds on the strengths of the requirements adopted in 1992 rather than discarding them. However, today's amendments do represent a thorough rethinking of the rules in place prior to these amendments, combining a broader-based tabular presentation with improved narrative disclosure supplementing the tables. This approach will promote clarity and completeness of numerical information through an improved tabular presentation, continue to provide the ability to make comparisons using tables, and call for material qualitative information regarding the manner and context in which compensation is awarded and earned.

The amendments that we publish today require that all elements of compensation must be disclosed. We also have sought to structure the revised requirements sufficiently broadly so that they will continue to operate effectively as new forms of compensation are developed in the future.

Under the amendments, compensation disclosure will now begin with a narrative providing a general overview. Much like the overview that we have encouraged companies to provide with their Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A),[47] the new Compensation Discussion and Analysis calls for a discussion and analysis of the material factors underlying compensation policies and decisions reflected in the data presented in the tables. This overview addresses in one place these factors with respect to both the separate elements of executive compensation and executive compensation as a whole. We are adopting the overview substantially as proposed, but, in response to comments, we are requiring a separate report of the compensation committee similar to the report required of the audit committee,[48] which will be considered furnished and not filed.[49]

Following the Compensation Discussion and Analysis, we have organized detailed disclosure of executive compensation into three broad categories:

- Compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in an amended Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by a table providing back-up information for certain data in the Summary Compensation Table;
- Holdings of equity-related interests that relate to compensation or are potential sources of future gains, with a focus on compensation-related equity interests that were awarded in prior years and are "at risk," whether or not these interests are in-the-money, as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments; and
- Retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.

We are requiring improved tabular disclosure for each of the above three categories and appropriate narrative disclosure that provides material information necessary to an understanding of the information presented in the individual tables.[50] We have made some modifications from the proposal in response to comments.

In Release No. 33–8735, published elsewhere in the proposed rules section of this issue of the **Federal Register** and for which comments are due on or before October 23, 2006, we also solicit additional comments regarding the proposed disclosure requirement of the total compensation and job description of up to an additional three most highly compensated employees who are not

during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year." Section 12(b) of the Exchange Act as enacted required disclosure of "(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;" and "(E) remuneration to others than directors and officers exceeding $20,000 per annum."

[45] In 1938, the Commission promulgated its first executive and director compensation disclosure rules for proxy statements. Release No. 34–1823 (Aug. 11, 1938) [3 FR 1991]. At different times thereafter, the Commission has adopted rules mandating narrative, tabular, or combinations of narrative and tabular disclosure as the best method for presenting compensation disclosure in a manner that is clear and useful to investors. See, *e.g.*, Release No. 34–3347 (Dec. 18, 1942) [7 FR 10653] (introducing first tabular disclosure); Release No. 34–4775 (Dec. 11, 1952) [17 FR 11431] (introducing separate table for pensions and deferred remuneration); *Uniform and Integrated Reporting Requirements: Management Remuneration*, Release No. 33–6003 (Dec. 4, 1978) [43 FR 58151] (the "1978 Release") (expanding tabular disclosure to cover all forms of compensation); and *Disclosure of Executive Compensation*, Release No. 33–6486 (Sept. 23, 1983) [48 FR 44467] (the "1983 Release") (limiting tabular disclosure to cash remuneration).

[46] *Executive Compensation Disclosure*, Release No. 33–6962 (Oct. 16, 1992) [57 FR 48126] (the "1992 Release"); See also *Executive Compensation Disclosure; Securityholder Lists and Mailing Requests*, Release No. 33–7032 (Nov. 22, 1993) [58 FR 63010] (the "1993 Release"), at Section II.

[47] Item 303 of Regulation S–K [17 CFR 229.303]. See also *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75055], at Section III.A.

[48] The Audit Committee Report, required by Item 306 of Regulations S–B [17 CFR 228.306] and S–K [17 CFR 229.306] prior to these amendments, will now be required by Item 407(d) of Regulations S–B and S–K.

[49] The Compensation Committee Report that we adopt today is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C [17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*], other than as specified, or to the liabilities of Section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent a company specifically requests that the report be treated as filed or as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act, other than by incorporating by reference the report from a proxy or information statement into the Form 10–K. Instructions 1 and 2 to Item 407(e)(5).

[50] This narrative disclosure, together with the Compensation Discussion and Analysis noted above, will replace the narrative discussion that was required in the Board Compensation Report on Executive Compensation prior to these amendments. The narrative disclosure, along with the rest of the amended executive officer and director compensation disclosure, other than the new Compensation Committee Report, will be company disclosure filed with the Commission.

executive officers or directors but who earn more than the named executive officers. In particular, we have specific requests for comment as to whether the proposal should be modified to apply only to large accelerated filers who would disclose the total compensation for the most recent fiscal year and a description of the job position for each of their three most highly compensated employees whose total compensation is greater than any of the named executive officers, whether or not such persons are executive officers. Under this approach, employees who have no responsibility for significant policy decisions within either the company, a significant subsidiary or a principal business unit, division, or function, would be excluded from the determination of the three most highly compensated employees and no disclosure regarding them would be required.

Finally, we are adopting a director compensation table that is similar to the amended Summary Compensation Table.[51]

We also highlight in the release that the principles-based disclosure rules we are adopting today, including but not limited to the Compensation Discussion and Analysis section, may require disclosure of various aspects of a company's use of options in compensating its executives and directors, including any programs, plans or practices a company may have with regard to the timing or dating of option grants.

We are also modifying, as proposed, some of the Form 8–K requirements regarding compensation. Form 8–K requires disclosure within four business days of the entry into, amendment of, and termination of, material definitive agreements that are entered into outside of the ordinary course of business. Under our definition of material contracts in Item 601 of Regulation S–K for the purposes of determining what exhibits are required to be filed, many agreements regarding executive compensation are deemed to be material agreements entered into outside the ordinary course. When, in 2004, for purposes of consistency, we looked to this definition for use in the Form 8–K requirements, we incorporated all of these executive compensation agreements into the Form 8–K disclosure requirements. Therefore, many agreements regarding executive compensation, including some not related to named executive officers, have been required to be disclosed on Form 8–K within four business days of the applicable triggering event. Consistent with our intent that Form 8–K capture only events that are unquestionably or presumptively material to investors, we are today amending the Form 8–K requirements substantially as proposed.

We believe that executive and director compensation is closely related to financial transactions and relationships involving companies and their directors, executive officers and significant shareholders and respective immediate family members. Disclosure requirements regarding these matters historically have been interconnected, given that relationships among these parties and the company can include transactions that involve compensation or analogous features. Such disclosure also represents material information in evaluating the overall relationship with a company's executive officers and directors. Further, this disclosure provides material information regarding the independence of directors. The related party transaction disclosure requirements were adopted piecemeal over the years and were combined into one disclosure requirement beginning in 1982.[52] In light of many developments since then, including the increasing focus on corporate governance and director independence, we believe it is necessary to revise our requirements. Today's amendments update, clarify and somewhat expand the related party transaction disclosure requirements. The amendments fold into the disclosure requirements for related party transactions what had been a separate disclosure requirement regarding indebtedness of management and directors.[53] Further, we are adopting a requirement that calls for a narrative explanation of the independence status of directors under a company's director independence policies. We intend this requirement to be consistent with recent significant changes to the listing standards of the nation's principal securities trading markets.[54] We also are consolidating this and other corporate governance disclosure requirements regarding director independence and board committees, including new disclosure requirements about the compensation committee, into a single expanded disclosure item.[55]

In order to ensure that these amended requirements result in disclosure that is clear, concise and understandable for investors, we are adding Rules 13a–20 and 15d–20 under the Exchange Act to require that most of the disclosure provided in response to the amended items be presented in plain English. This extends the plain English requirements currently applicable to portions of registration statements under the Securities Act to the disclosure required under the items that we have amended, which impose requirements for Exchange Act reports and proxy or information statements incorporated by reference into those reports.

Finally, we are amending our beneficial ownership disclosure requirements as proposed to require disclosure of shares pledged by named executive officers, directors and director nominees, as well as directors' qualifying shares.[56]

II. Executive and Director Compensation Disclosure

Executive and director compensation disclosure has been required since 1933, and the Commission has had disclosure rules in this area applicable to proxy statements since 1938. In 1992, the Commission proposed and adopted substantially revised rules that embody our current requirements.[57] In doing so, the Commission moved away from narrative disclosure and back to using tables that permit comparability from year to year and from company to company. As we noted in the Proposing Release, although the reasoning behind this approach remains fundamentally sound, significant changes are appropriate. Much of the concern with the tables adopted in 1992 had also been their strength: they were highly formatted and rigid.[58] Thus, information not specifically called for in the tables had sometimes not been provided. For example, the highly formatted and specific approach had led some to

[51] We had proposed similar amendments, which we did not act on, regarding director compensation in 1995. *Streamlining and Consolidation of Executive and Director Compensation Disclosure*, Release No. 33–7184 (Aug. 6, 1995) [60 FR 35633] (the "1995 Release"), at Section I.B.

[52] *Disclosure of Certain Relationships and Transactions Involving Management*, Release No. 33–6441 (Dec. 2, 1982) [47 FR 55661] (the "1982 Release").

[53] Prior to these amendments, related party transactions were disclosed under Item 404(a) of Regulations S–K and S–B, while indebtedness was separately required to be disclosed under Item 404(c) of Regulation S–K.

[54] See, *e.g., NASD and NYSE Rulemaking: Relating to Corporate Governance*, Release No. 34–48745 (Nov. 4, 2003) [68 FR 64154] (the "NASD and NYSE Listing Standards Release"). This new requirement will replace the disclosure requirement about director relationships that could affect independence specified in Item 404(b) of Regulation S–K prior to these amendments.

[55] New Item 407 of Regulations S–K and S–B.

[56] Item 403(b) of Regulations S–K and S–B.

[57] 1992 Release.

[58] See, *e.g.*, Council of Institutional Investors' Discussion Paper on Executive Pay Disclosure, *Executive Compensation Disclosure: How it Works Now, How It Can Be Improved*, at 11 (available at *www.cii.org/site_files/pdfs/CII%20pay%20primer%20edited.pdf*).

suggest that items that did not fit squarely within a "box" specified by the rules need not have been disclosed.[59] As another example, because the tables did not call for a single figure for total compensation, that information had generally not been provided prior to today's amendments, although there had been considerable commentary indicating that a single total figure is high on the list of information that some investors wish to have. To preserve the strengths of the former approach and build on them, we are taking several steps in adopting amendments to Item 402,[60] substantially as we proposed:

- First, we are retaining the tabular approach to provide clarity and comparability while improving the tabular disclosure requirements;
- Second, we are confirming that all elements of compensation must be included in the tables;
- Third, we are providing a format for the amended Summary Compensation Table that requires disclosure of a single figure for total compensation; and
- Finally, we are requiring narrative disclosure comprising both a general discussion and analysis of compensation and specific material information regarding tabular items where necessary to an understanding of the tabular disclosure.

A. Options Disclosure

1. Background

Many companies use stock options to compensate their employees, including executives. In a simple stock option, a company may grant an employee the right to purchase a specified number of shares of the company's stock at a specific price, called the exercise price and usually set as the market price of the company's stock on the grant date. While some options require no future service from the employee, most include vesting provisions, such that the employee does not earn the option unless he remains employed by the company for a specified period of service. Often a company will grant a specific number of options that will then vest proportionately in staggered increments over a set time period. For example, if the grant vests at a rate of 20% per year for five years, the option for the last 20% is earned by the employee's provision of five years of services. Most options become exercisable upon vesting and remain exercisable until their stated expiration. Generally, upon termination of the employment relationship, however, an employee loses unvested options, and has a limited term (*e.g.*, 90 days) to exercise vested options.[61]

Options have most often been issued "at-the-money"—*i.e.*, with an exercise price equal to the market price of the underlying stock at the date of grant—but may also be issued either "in-the-money"—*i.e.*, with an exercise price below the market price of the underlying stock at the date of grant—or "out-of-the-money"—*i.e.*, with an exercise price above the market price of the underlying stock at the date of grant. An option holder benefits only when the company's stock price is above the exercise price when the employee exercises the option. Hence, setting a lower exercise price increases the value of the option.

As some commentators have observed, using options for compensation purposes may have advantages. These commentators point out that, unlike salary and bonus compensation, stock option compensation does not require the payment of cash by the company, and therefore can be particularly attractive to companies for which cash is a scarce resource. Stock option compensation may also provide an incentive for employees to work to increase the company's stock price. Additionally, some companies may be able to use stock option compensation to help retain employees, because an employee with unvested in-the-money options forfeits their potential value if he leaves the company's employ.

At the same time, other commentators stress that option compensation is not without costs and disadvantages. Options granted to employees, if ultimately exercised with the resulting issuance of the underlying stock, give rise to a dilution of the interests in the company held by existing stockholders. Options that are not in-the-money may not provide a retention benefit, and some managers believe that options that fall out-of-the-money (or are "underwater") not only fail to motivate employees but, in fact, can result in poor employee morale and resultant turnover, especially at companies where option compensation is an important component of total compensation. In addition, options with shorter vesting periods or longer term options approaching their vesting dates may provide incentives to employees to focus on increasing the company's stock price in the short term rather than working toward achieving longer term business goals and objectives that would enable the company to achieve and sustain future success.

The Commission does not seek to encourage or discourage the use of stock options or any other particular form of executive compensation. The federal securities laws, however, do require full and fair disclosure of compensation information to the extent material or required by Commission rule.

2. Required Option Disclosures

The Commission acknowledged the importance to investors of proper disclosure of executives' option compensation throughout the Proposing Release. The existing body of rules regarding disclosure of executive stock option grants, however, has not previously contained a line-item requirement with respect to information regarding programs, plans or practices concerning the selection of stock option grant dates or exercise prices.[62] The disclosure we proposed in January, along with related disclosure we also adopt today, should provide investors with more information about option compensation.[63] We have summarized

[59] For examples, see, *e.g.*, The Corporate Counsel (Sept.–Oct. 2005) at 6–7; The Corporate Counsel (Sept.–Oct. 2004) at 7; but see Alan L. Beller, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, *Remarks Before Conference of the NASPP, The Corporate Counsel and the Corporate Executive* (Oct. 20, 2004), available at *www.sec.gov/news/speech/spch102004alb.htm*.

[60] The discussion that follows focuses on amendments to Item 402 of Regulation S–K, with Section II.D.1. explaining the different amendments to Item 402 of Regulation S–B. References throughout the following discussion are to Items of Regulation S–K, unless otherwise indicated.

[61] More complex stock options can include provisions that alter the terms of the instrument based on whether performance or other targets are met.

[62] Our existing rules for companies' disclosure do prohibit material misrepresentations of option grant dates, as well as any resulting material misstatements of affected financial statements. Companies are also required under our existing rules to disclose any material information that may be necessary to make their other disclosures, in the light of the circumstances under which they are made, not misleading. See, *e.g.*, Rule 12b–20 under the Exchange Act [17 CFR 240.12b–20].

[63] We note that Exchange Act Rule 16a–3 [17 CFR 240.16a–3] setsforth the general reporting requirements under Exchange Act Section 16(a). Prior to August 2002, a number of transactions between an issuer and its officers or directors—such as the granting of options—were required to be disclosed following the end of the fiscal year in which the transaction took place although individuals could disclose those transactions earlier if they chose to. In implementing Section 403(a) of the Sarbanes-Oxley Act of 2002, in August 2002, the Commission required immediate disclosure of these transactions for the first time. As a result, since August 2002, grants, awards and other acquisitions of equity-based securities from the issuer, including those pursuant to employee benefit plans (which were previously reportable on an annual basis on Form 5) have been required to be reported by officers and directors on Form 4 within two business days. *Ownership Reports and Trading by Officers, Directors and Principal Security Holders*, Release No. 34–46421 (Aug. 27, 2002) [56 FR 56461] at Section II.B.

below the various provisions of the rules that we adopt today that relate to options disclosure.[64]

a. Tabular Disclosures

The following disclosures are required in the tables we adopt today. These provisions are discussed in more detail later in the section relating to each particular table.

- As proposed and adopted, grants of stock options will be disclosed in the Summary Compensation Table at their fair value on the date of grant, as determined under FAS 123R. By basing the executive compensation disclosure on the full grant date fair value computed in accordance with FAS 123R, companies will give shareholders an accurate picture of the value of options at the time they are actually granted to the highest-paid executive officers.[65]
- A separate table including disclosure of equity awards, the Grants of Plan-Based Awards Table, requires disclosure of the grant date as determined pursuant to FAS 123R.[66] The grant date is generally considered the day the decision is made to award the option as long as recipients of the award are notified promptly. Even if the option's exercise price is set based on trading prices as of an earlier date or dates, the grant date does not change.
- If the exercise price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column would have to be added to this table showing that market price on the date of the grant.[67]
- If the grant date is different from the date the compensation committee or full board of directors takes action or is deemed to take action to grant an option, a separate, adjoining column would have to be added to this table showing the date the compensation committee or full board of directors took action or was deemed to take action to grant the option.[68]

Further, if the exercise or base price of an option grant is not the closing market price per share on the grant date, we require a description of the methodology for determining the exercise or base price.[69]

[64] We also note that under our rules regarding disclosure of director compensation, the concerns and considerations for disclosure of option timing or dating practices in the executive compensation realm would also apply when the recipients of the stock option grants are directors of the company.

[65] Item 402(c)(2)(vi).

[66] Item 402(d)(2)(ii) and Item 402(a)(6)(iv).

[67] Item 402(d)(2)(vii).

[68] Item 402(d)(2)(ii).

[69] Instruction 3 to Item 402(d).

b. Compensation Discussion and Analysis

Companies will also be required to address matters relating to executives' option compensation in the new Compensation Discussion and Analysis section, particularly as they relate to the timing and pricing of stock option grants. Without being an exhaustive list, several of the examples provided in Item 402(b)(2) illustrate how these types of issues and questions might be covered in a company's disclosure. For example, Item 402(b)(2)(iv) shows that how the determination is made as to when awards are granted could be required disclosure. This example was included in part to note that material information to be disclosed under Compensation Discussion and Analysis may include the reasons a company selects particular grant dates for awards, such as for stock options. Similarly, other examples we provide in Item 402(b)(2) illustrate how the material information to be disclosed under Compensation Discussion and Analysis might need to include the methods a company uses to select the terms of awards, such as the exercise prices of stock options.

i. Timing of Option Grants

We understand that some companies grant options in coordination with the release of material non-public information. If the company had since the beginning of the last fiscal year, or intends to have during the current fiscal year, a program, plan or practice to select option grant dates for executive officers in coordination with the release of material non-public information, the company should disclose that in the Compensation Discussion and Analysis section. For example, a company may grant awards of stock options while it knows of material non-public information that is likely to result in an increase in its stock price, such as immediately prior to a significant positive earnings or product development announcement. Such timing could occur in at least two ways:

- The company grants options just prior to the release of material non-public information that is likely to result in an increase in its stock price (whether the date of that release of material non-public information is a regular date or otherwise pre-announced, or not); or
- The company chooses to delay the release of material non-public information that is likely to result in an increase in its stock price until after a stock option grant date.

Although the facts would be slightly different, a company also may coordinate its grant of stock options with the release of *negative* material non-public information. Again, such timing could occur in at least two ways:

- The company delays granting options until after the release of material non-public information that is likely to result in a decrease in its stock price; or
- The company chooses to release material non-public information that is likely to result in a decrease in its stock price prior to an upcoming stock option grant.

The Commission does not express a view as to whether or not a company may or may not have valid and sufficient reasons for such timing of option grants, consistent with a company's own business purposes. Some commentators have expressed the view that following these practices may enable a company to receive more benefit from the incentive or retention effect of options because recipients may value options granted in this manner more highly or because doing so provides an immediate incentive for employee retention because an employee who leaves the company forfeits the potential value of unvested, in-the-money options. Other commentators believe that timing option grants in connection with the release of material non-public information may unfairly benefit executives and employees.

Regardless of the reasons a company or its board may have, the Commission believes that in many circumstances the existence of a program, plan or practice to time the grant of stock options to executives in coordination with material non-public information would be material to investors and thus should be fully disclosed in keeping with the rules we adopt today. Consistent with principles-based disclosure, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.[70] If the company has such a program, plan or practice, the company should disclose that the board of directors or compensation committee may grant options at times when the board or committee is in possession of material non-public information. Companies might also need to consider disclosure about how the board or compensation committee takes such information into

[70] Relevant material information might include disclosure in response to the examples in Item 402(b)(2) in the Compensation Discussion and Analysis section, discussed below.

account when determining whether and in what amount to make those grants.

Although it is not an exhaustive list, there are some elements and questions about option timing to which we believe a company should pay particular attention when drafting the appropriate corresponding disclosure.

- Does a company have any program, plan or practice to time option grants to its executives in coordination with the release of material non-public information?
- How does any program, plan or practice to time option grants to executives fit in the context of the company's program, plan or practice, if any, with regard to option grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice? How did the board or compensation committee take such information into account when determining whether and in what amount to make those grants? Did the compensation committee delegate any aspect of the actual administration of a program, plan or practice to any other persons?
- What was the role of executive officers in the company's program, plan or practice of option timing?
- Does the company set the grant date of its stock option grants to new executives in coordination with the release of material non-public information?
- Does a company plan to time, or has it timed, its release of material non-public information for the purpose of affecting the value of executive compensation?

Disclosure would also be required where a company has not previously disclosed a program, plan or practice of timing option grants, but has adopted such a program, plan or practice or has made one or more decisions since the beginning of the past fiscal year to time option grants.

ii. Determination of Exercise Price

Separate from these timing issues, some companies may have a program, plan or practice of awarding options and setting the exercise price based on the stock's price on a date other than the actual grant date. Such a program, plan or practice would also require disclosure, including, as appropriate, in the tables described in II.A.2.a above and in the Compensation Discussion and Analysis section. Again, as with the timing matters discussed above, companies should consider their own facts and circumstances and include all relevant material information in their corresponding disclosures.

Similar to such a practice of setting the exercise price based on a date other than the actual grant date, some companies have provisions in their option plans or have followed practices for determining the exercise price by using formulas based on average prices (or lowest prices) of the company's stock in a period preceding, surrounding or following the grant date. In some cases these provisions may increase the likelihood that recipients will be granted in-the-money options. As these provisions or practices relate to a material term of a stock option grant, they should be discussed in the Compensation Discussion and Analysis section.

B. Compensation Discussion and Analysis

We are adopting a new Compensation Discussion and Analysis section.[71] As we proposed, this section will be an overview providing narrative disclosure that puts into context the compensation disclosure provided elsewhere.[72] Commenters generally supported the new Compensation Discussion and Analysis section.[73] This overview will explain material elements of the particular company's compensation for named executive officers by answering the following questions:

- What are the objectives of the company's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the company choose to pay each element?
- How does the company determine the amount (and, where applicable, the formula) for each element?
- How do each element and the company's decisions regarding that element fit into the company's overall compensation objectives and affect decisions regarding other elements?

As proposed, the second question also asked what the compensation program is designed *not* to reward. Commenters stated that compensation committees often may not consider this objective in developing compensation programs, expressing concern that the question could generate potentially limitless disclosure that would not add meaning to disclosure of what the compensation program *is* designed to award.[74] In response to this concern, we have not included this question in the rule as adopted.

1. Intent and Operation of the Compensation Discussion and Analysis

The purpose of the Compensation Discussion and Analysis disclosure is to provide material information about the compensation objectives and policies for named executive officers without resorting to boilerplate disclosure. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it.

[71] Item 402(b). In addition to the narrative Compensation Discussion and Analysis, we are amending the rules so that, to the extent material, additional narrative disclosure will be provided following certain tables to supplement the disclosure in the table. See, *e.g.*, Section II.C.3.a., discussing the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table. We are also requiring disclosure of compensation committee procedures and processes as well as information regarding compensation committee interlocks and insider participation in compensation decisions as part of new Item 407 of Regulation S–K. See Section V.D., below.

[72] See Jeffrey N. Gordon, *Executive Compensation: What's the Problem, What's the Remedy? The Case for Compensation Discussion and Analysis*, 30 J. Corp. L. 695 (2005) (arguing that the Commission should require proxy disclosure that includes a "Compensation Discussion and Analysis" section that collects and summarizes all the compensation elements for senior executives, providing a "bottom line assessment" of the different compensation elements and an explanation as to why the board thinks such compensation is warranted).

[73] See, *e.g.*, letters from British Columbia Investment Management Corporation ("BCIMC"); Leo J. Burns ("L. Burns"); CFA Centre for Financial Market Integrity, dated April 13, 2006 ("CFA Centre 1"); Chamber of Commerce of the United States of America ("Chamber of Commerce"); Board of Fire and Police Pension Commissioners of the City of Los Angeles ("F&P Pension Board"); F&C Asset Management; Foley & Lardner LLP ("Foley"); Hermes Investment Management Limited; Governance for Owners USA, Inc. ("Governance for Owners"); International Association of Machinists and Aerospace Workers ("IAM"); Board of Trustees of the International Brotherhood of Electrical Workers Pension Benefit Fund ("IBEW PBF"); International Brotherhood of Teamsters ("Teamsters"); Remuneration Committee of the International Corporate Governance Network; Investment Company Institute ("ICI"); Institutional Shareholder Services ("ISS"); jointly, California Public Employees' Retirement System, California State Teachers' Retirement System, Co-operative Insurance Society—UK, F&C Asset Management—UK, Illinois State Board of Investment, London Pensions Fund Authority—UK, New York State Common Retirement Fund, New York City Pension Funds, Ontario Teachers' Pension Plan, PGGM Investments—Netherlands, Public Sector and Commonwealth Super (PSS/CSS)—Australia, RAILPEN Investments—UK, State Board of Administration (SBA) of Florida, Stichting Pensioenfonds ABP—Netherlands, UniSuper Limited—Australia, and Universities Superannuation Scheme—UK ("Institutional Investors Group"); The Pension Boards—United. Church of Christ ("PB–UCC"); State of Wisconsin Investment Board; and T. Rowe Price Associates, Inc.

[74] See, *e.g.*, letters from American Bar Association, Committee on Federal Regulation of Securities ("ABA"); Committee on Securities Regulation of the New York City Bar ("NYCBA"); and WorldatWork ("WorldatWork").

As described in the Proposing Release and as adopted, the Compensation Discussion and Analysis requirement is principles-based, in that it identifies the disclosure concept and provides several illustrative examples. Some commenters suggested that a principles-based approach would be better served without examples, on the theory that "laundry lists" would lead to boilerplate.[75] Other commenters expressed the opposite view—that more specific description of required disclosure topics would more effectively elicit meaningful disclosure.[76]

As we explained in the Proposing Release, overall we designed the proposals to state the requirements sufficiently broadly to continue operating effectively as future forms of compensation develop, without suggesting that items that do not fit squarely within a "box" specified by the rules need not be disclosed. We believe that the adopted principles-based Compensation Discussion and Analysis, utilizing a disclosure concept along with illustrative examples, strikes an appropriate balance that will effectively elicit meaningful disclosure, even as new compensation vehicles develop over time.

We wish to emphasize, however, that the application of a particular example must be tailored to the company and that the examples are non-exclusive. We believe using illustrative examples helps to identify the types of disclosure that may be applicable. A company must assess the materiality to investors of the information that is identified by the example in light of the particular situation of the company. We also note that in some cases an example may not be material to a particular company, and therefore no disclosure would be required. Because the scope of the Compensation Discussion and Analysis is intended to be comprehensive, a company must address the compensation policies that it applies, even if not included among the examples. The Compensation Discussion and Analysis should reflect the individual circumstances of a company and should avoid boilerplate disclosure.

We have adopted, substantially as proposed, the following examples of the issues that would potentially be appropriate for the company to address in given cases in the Compensation Discussion and Analysis:

- Policies for allocating between long-term and currently paid out compensation;
- Policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;
- For long-term compensation, the basis for allocating compensation to each different form of award;
- How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;
- What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;
- How specific elements of compensation are structured and implemented to reflect these items of the company's performance and the executive's individual performance;
- The factors considered in decisions to increase or decrease compensation materially;
- How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (*e.g.*, how gains from prior option or stock awards are considered in setting retirement benefits);
- The impact of accounting and tax treatments of a particular form of compensation;
- The company's equity or other security ownership requirements or guidelines and any company policies regarding hedging the economic risk of such ownership;
- Whether the company engaged in any benchmarking of total compensation or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and
- The role of executive officers in the compensation process.

At the suggestion of a commenter,[77] we have expanded the example addressing how specific forms of compensation are structured to reflect company performance to also address implementation. We have made a similar change with regard to the example regarding the executive's individual performance.[78] As adopted, this example includes not only whether discretion can be exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), as proposed, but also whether such discretion has been exercised. By doing this, we move to the Compensation Discussion and Analysis overview an example of a material factor that had been proposed for the narrative disclosure that follows the Summary Compensation Table,[79] and expand its scope so that it is no longer limited to non-equity incentive plans. Because of the policy significance of decisions to waive or modify performance goals, we believe that they are more appropriately discussed in the Compensation Discussion and Analysis.

As discussed in Section II.A. above, a company's policies, programs and practices regarding the award of stock options and other equity-based instruments to compensate executives may require disclosure and discussion in the Compensation Discussion and Analysis. As with all disclosure in the Compensation Discussion and Analysis, a company must evaluate the specific facts and circumstances of its grants of options and equity-based instruments and provide such disclosure if it supplies material information about the company's compensation objectives and policies for named executive officers.

Further in response to comment,[80] we have revised the example addressing how the determination is made as to when awards are granted so that it is not limited to equity-based compensation, as was proposed, but we clarify in the rule as adopted that it would include equity-based compensation, such as stock options.[81] Regarding the example noting the impact of accounting and tax treatments of a particular form of compensation, some commenters urged that companies be required to continue to disclose their Internal Revenue Code Section 162(m) policy.[82] The adoption of this example should not be construed to eliminate this discussion. Rather, this example indicates more broadly that *any* tax or accounting treatment, including but not limited to Section 162(m), that is material to the company's compensation policy or decisions with respect to a named

[75] See, *e.g.*, letter from Curt Kollar ("C. Kollar").

[76] See, *e.g.*, letters from CFA Centre 1 and Hewitt Associates LLC ("Hewitt").

[77] See letter from ABA.

[78] We have also reordered this example, so it is clearer that the items of company performance referenced are the ones noted in the immediately preceding example.

[79] This example had been proposed as Item 402(f)(1)(iv).

[80] See letter from ABA.

[81] This example is discussed in more detail above in Section II.A., the discussion of stock option disclosure.

[82] See, *e.g.*, letters from Buck Consultants; Frederic W. Cook & Co., Inc., dated March 9, 2006 ("Frederic W. Cook & Co."); Thomas Rogers; and WorldatWork. The Commission has construed the Board Compensation Committee Report on Executive Compensation (which had been required to be furnished by Item 402(k) prior to these amendments) to require discussion of this policy. 1993 Release at Section III.

executive officer is covered by Compensation Discussion and Analysis. Tax consequences to the named executive officers, as well as tax consequences to the company, may fall within this example.

In addition, we have followed commenters' recommendations to add the following specific examples addressing additional factors:

- Company policies and decisions regarding the adjustment or recovery of awards or payments if the relevant company performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;[83] and
- The basis for selecting particular events as triggering payment with respect to post-termination agreements (*e.g.*, the rationale for providing a single trigger for payment in the event of a change-in-control).[84]

Commenters also requested clarification as to whether Compensation Discussion and Analysis is limited to compensation for the last fiscal year, like the former Board Compensation Committee Report on Executive Compensation that was required prior to these amendments.[85] While the Compensation Discussion and Analysis must cover this subject, the Compensation Discussion and Analysis may also require discussion of post-termination compensation arrangements, on-going compensation arrangements, and policies that the company will apply on a going-forward basis.[86] Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

The Compensation Discussion and Analysis should be sufficiently precise to identify material differences in compensation policies and decisions for individual named executive officers where appropriate. Where policies or decisions are materially similar, officers can be grouped together. Where, however, the policy or decisions for a named executive officer are materially different, for example in the case of a principal executive officer, his or her compensation should be discussed separately.

2. Instructions to Compensation Discussion and Analysis

We are adopting instructions to make clear that the Compensation Discussion and Analysis should focus on the material principles underlying the company's executive compensation policies and decisions, and the most important factors relevant to analysis of those policies and decisions, without using boilerplate language or repeating the more detailed information set forth in the tables and related narrative disclosures that follow. The instructions also provide that the Compensation Discussion and Analysis should concern the information contained in the tables and otherwise disclosed.[87] Because this section is intended to provide meaningful analysis, it may specifically refer to the tabular or other disclosures where helpful to make the discussion more robust. A commenter raised a concern that the instruction not to repeat information set forth in the other disclosures might somehow limit the disclosure made in Compensation Discussion and Analysis.[88] We have revisited this instruction, which is intended to encourage analysis and to forestall mere repetition of the information in the tables, to provide that repetition and boilerplate language should be avoided. The instruction does not prohibit or discourage discussion of that specific information.

We are adopting an instruction to make clear that, as was the case with the Board Compensation Committee Report on Executive Compensation required prior to the adoption of these amendments, companies are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.[89] Some commenters objected that this instruction would impair the quality of information disclosed by making it difficult to assess the link between pay and company performance, and suggested that competitive harm would be mitigated if disclosure were required on an after-the-fact basis, after the performance related to the award is measured.[90] Different commenters stated that performance targets often are based on confidential, competitively sensitive business plans, and that requiring disclosure could encourage the use of more generic targets that could hinder a company's goal of pay-for-performance.[91] Other commenters observed that companies rarely use a performance metric for a single year or plan cycle, but select measures because of their relevance to the company's business strategy over several years, so that even disclosure on an after-the-fact basis could reveal proprietary business information that would be useful to competitors.[92] Having considered these comments, we remain persuaded that this disclosure, even on an after-the-fact basis could pose significant risk of competitive harm and we are therefore not requiring it in those cases in which the factors or criteria considered involve confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm to the company.

As noted in the Proposing Release, in applying this instruction, we intend the standard for companies to use in making a determination that this information

[83] See, *e.g.*, letters from Amalgamated Bank Long-View Funds ("Amalgamated"); CFA Centre 1; and Council of Institutional Investors, dated March 29, 2006 ("CII"). Section 304 of the Sarbanes-Oxley Act of 2002 [codified at 15 U.S.C. 7243] provides that if a company is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the principal executive officer and principal financial officer of the company shall reimburse the company for any bonus or other incentive-based or equity-based compensation received by that person from the company during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement, and any profits realized from the sale of securities of the company during that 12-month period. This example would not necessarily be limited to policies covering only situations contemplated by Section 304.

[84] See letter from Anonymous, dated April 10, 2006.

[85] See, *e.g.*, letters from Buck Consultants; Frederic W. Cook & Co.; and Mercer Human Resource Consulting, Inc., dated April 10, 2006 ("Mercer").

[86] Forward looking information in the Compensation Discussion and Analysis will fall within the safe harbors for disclosure of such information. See, *e.g.*, Securities Act Section 27A [15 U.S.C. 77z–2] and Exchange Act Section 21E [15 U.S.C. 78u–5].

[87] Instruction 2 to Item 402(b).

[88] See letter from ABA.

[89] Instruction 4 to Item 402(b). Prior to these amendments, Instruction 2 to Item 402(k) had provided a similar exclusion for this type of information.

[90] See, *e.g.*, letters from American Federation of Labor and Congress of Industrial Organizations, dated April 5, 2006 ("AFL-CIO"); CII; Governance for Owners; IAM; and The Honorable Barney Frank, United States Representative (MA).

[91] See, *e.g.*, letter from Sullivan & Cromwell LLP ("Sullivan").

[92] See, *e.g.*, letter from Mercer.

does not have to be disclosed to be the same one that would apply when companies request confidential treatment of confidential trade secrets or confidential commercial or financial information that otherwise is required to be disclosed in registration statements, periodic reports and other documents filed with us.[93] Under this approach, to the extent a performance target has otherwise been disclosed publicly, non-disclosure pursuant to this instruction would not be permitted. To make these standards clearer and respond to commenters' concerns that companies may exploit the instruction to exclude information in inappropriate circumstances, we are revising this instruction as adopted to clearly apply the same standard as for confidential treatment requests. Companies will not be required, however, to submit confidential treatment requests in order to rely on the instruction.[94] To mitigate commenters' concerns that omission of specific performance targets would impair the quality of disclosure, the instruction requires additional disclosure regarding the significance of the undisclosed target. Specifically, if the company uses target levels for specific quantitative or qualitative performance-related factors, or other factors or criteria that it does not disclose in reliance on the instruction, the company must discuss how difficult it will be for the executive or how likely it will be for the company to achieve the undisclosed target levels or other factors. In addition, as discussed below, the Compensation Discussion and Analysis will be considered soliciting material and will be filed with the Commission. This disclosure will be subject to review by the Commission and its staff. Therefore, if a company uses target levels that otherwise would need to be disclosed but does not disclose them in reliance on the instruction, the company may be required to demonstrate to the Commission or its staff that the particular factors or criteria involve confidential trade secrets or confidential commercial or financial information and why disclosure would result in competitive harm. If the Commission or its staff ultimately determines that a company has not met these standards, then the company will be required to disclose publicly the factors or criteria used. In response to a commenter's concern,[95] we have also added an instruction to clarify that disclosure of a target level that applies a non-GAAP financial measure will not be subject to the general rules regarding disclosure of non-GAAP financial measures but the company must disclose how the number is calculated from the audited financial statements.[96]

One commenter stated that the Compensation Discussion and Analysis of a new public company should be permitted to be a prospective-only discussion.[97] While we agree the most significant disclosure in that situation may be future plans, we do not believe a prospective-only discussion is appropriate. Instead, companies may emphasize the new plans or policies.

3. "Filed" Status of Compensation Discussion and Analysis and the "Furnished" Compensation Committee Report

We proposed that the Compensation Discussion and Analysis would be considered a part of the proxy statement and any other filing in which it was included. Unlike the Board Compensation Committee Report on Executive Compensation that was required prior to these amendments, we proposed that the Compensation Discussion and Analysis would be soliciting material and would be filed with the Commission. Therefore, it would be subject to Regulation 14A or 14C and to the liabilities of Section 18 of the Exchange Act.[98] In addition, to the extent that the Compensation Discussion and Analysis and any of the other disclosure regarding executive officer and director compensation or other matters are included or incorporated by reference into a periodic report, the disclosure would be covered by the certifications that principal executive officers and principal financial officers are required to make under the Sarbanes-Oxley Act of 2002.[99] Likewise, a company's disclosure controls and procedures[100] apply to the preparation of the company's proxy statement and Form 10–K, including the Compensation Discussion and Analysis.

We noted in the Proposing Release that in adopting the rules that have applied since 1992, the Commission took into account comments that the Board Compensation Committee Report on Executive Compensation should be furnished rather than filed to allow for more open and robust discussion in the reports.[101] The Board Compensation Committee Reports on Executive Compensation that were provided prior to today's amendments in general did not suggest that this treatment resulted in such discussion, nor the more transparent disclosure that the comments suggested would result.[102] Further, we noted that we believe that it is appropriate for companies to take responsibility for disclosure involving board matters as with other disclosure.

Some commenters supported the proposal to have the Compensation Discussion and Analysis filed, noting among other things that filing should lead to increased accuracy and better disclosure.[103] Other commenters objected to this treatment, claiming that certification by principal executive officers and principal financial officers with regard to the disclosure included in the annual report on Form 10–K, including particularly the Compensation Discussion and Analysis, would inappropriately insert these officers into the compensation

[93] See Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b–2 [17 CFR 240.24b–2], Exemption 4 of the Freedom of Information Act [5 U.S.C. 552(b)(4)], and Rule 80(b)(4) promulgated under the Freedom of Information Act [17 CFR 200.80(b)(4)].

[94] While the instruction adopted today, like the instruction that it replaces, does not require a company to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b–2 with regard to the exclusion of the information from the disclosure provided in response to this item, the standards specified in Securities Act Rule 406, Exchange Act Rule 24b–2, Exemption 4 of the Freedom of Information Act and Rule 80(b)(4) promulgated under the Freedom of Information Act still apply and are subject to review and comment by the staff of the Commission.

[95] See letter from ABA.

[96] Instruction 5 to Item 402(b). The non-GAAP financial measure provisions are specified in Regulation G [17 CFR 244.100–102], Item 10(e) of Regulation S–K [17 CFR 229.10] and Item 10(h) of Regulation S–B [17 CFR 228.10].

[97] See letter from ABA.

[98] 15 U.S.C. 78r.

[99] Exchange Act Rules 13a–14 [17 CFR 240.13a–14] and 15d–14 [17 CFR 240.15d–14]. See also *Certification of Disclosure in Companies' Quarterly and Annual Reports*, Release No. 34–46427 (Aug. 29, 2002) [67 FR 57275], at n. 35 (the "Certification Release") (stating that "the certification in the annual report on Form 10–K or 10–KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed").

[100] Exchange Act Rules 13a–15 [17 CFR 240.13a–15] and 15d–15 [17 CFR 240.15d–15].

[101] 1992 Release, at Section II.H.

[102] See also Martin D. Mobley, *Compensation Committee Reports Post-Sarbanes-Oxley: Unimproved Disclosure for Executive Compensation Policies and Practices*, 2005 Colum. Bus. L. Rev. 111 (2005).

[103] See, *e.g.*, letters from AFL–CIO; American Federation of State, County and Municipal Employees; California Public Employees' Retirement System ("CalPERS"); Paul Hodgson, Senior Research Associate, Executive and Board Compensation, the Corporate Library ("Corporate Library"); Connecticut Retirement Plans and Trust Funds, dated April 10, 2006 ("CRPTF"); Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund ("Teamsters PA/MD"); Teamsters Local 671 Health Services and Insurance Plan ("Teamsters Local 671"); Walden Asset Management ("Walden"); and Western PA Teamsters & Employers Welfare Fund ("Western PA Teamsters Fund").

committee's deliberative process, potentially calling into question the committee's independence.[104] Further, many commenters expressed the view that the Compensation Discussion and Analysis should, in effect, be the report of the compensation committee, submitted under the names of its members, for which they should be accountable.[105]

Some of these objections may reflect a misconception of the purpose of the Compensation Discussion and Analysis. Although the Compensation Discussion and Analysis discusses company compensation policies and decisions, the Compensation Discussion and Analysis does not address the deliberations of the compensation committee, and is not a report of that committee. Consequently, in certifying the Compensation Discussion and Analysis, principal executive officers and principal financial officers will not need to certify as to the compensation committee deliberations.

However, in response to concerns of commenters that compensation committees should continue to be focused on the executive compensation disclosure process, we are adopting a Compensation Committee Report similar to the Audit Committee Report.[106] Drawing on commenters' suggestions for a new Compensation Committee Report,[107] the rules we adopt today require the compensation committee to state whether:

- The compensation committee has reviewed and discussed the Compensation Discussion and Analysis with management; and
- Based on the review and discussions, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the company's annual report on Form 10–K and, as applicable, the company's proxy or information statement.

Unlike the Audit Committee Report, the Compensation Committee Report will be required to be included or incorporated by reference into the company's annual report on Form 10–K, so that it is presented along with the Compensation Discussion and Analysis when that disclosure is provided in the Form 10–K or incorporated by reference from a proxy or information statement.[108] Like the Audit Committee Report, the Compensation Committee Report will only be required one time during any fiscal year.[109] The name of each member of the company's compensation committee (or, in the absence of a compensation committee, the persons performing equivalent functions or the entire board of directors) must appear below the disclosure.[110] This report will be "furnished" rather than "filed." The principal executive officer and principal financial officer will be able to look to the Compensation Committee Report in providing their certifications required under Exchange Act Rules 13a–14 and 15d–14.[111]

4. Retention of the Performance Graph

In light of the Compensation Discussion and Analysis requirement, we proposed to eliminate both the Board Compensation Committee Report on Executive Compensation and the Performance Graph.[112] The report and the graph were intended to be related and to show the relationship, if any, between compensation and corporate performance, as reflected by stock price. The rules we adopt today eliminate the Board Compensation Committee Report on Executive Compensation, as we proposed, in favor of the more comprehensive Compensation Discussion and Analysis and the new Compensation Committee Report, as described immediately above.[113]

Given the widespread availability of stock performance information about companies, industries and indexes through business-related Web sites or similar sources, we proposed to eliminate the requirement for the Performance Graph in the belief that it was outdated, particularly since the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company's policies might reach is intended to allow broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Many commenters objected to eliminating the Performance Graph, however, stating that it provides an easily accessible visual comparison of a company's performance relative to its peers and the market, and provides a standardized source for this type of information.[114] In light of the significance of this disclosure to a broad spectrum of commenters, we have decided to retain the Performance Graph in the amendments we adopt today.

However, we remain of the view that the Performance Graph should not be presented as part of executive compensation disclosure. In particular, as noted above, the disclosure in the Compensation Discussion and Analysis regarding the elements of corporate performance that a given company's policies consider is intended to encourage broader discussion than just that of the relationship of executive compensation to the performance of the company as reflected by stock price. Presenting the Performance Graph as compensation disclosure may weaken this objective. Accordingly, we have decided to retain the requirements for the Performance Graph, but have moved them to the disclosure item entitled "Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters."[115] As

[104] See, *e.g.*, letters from The Corporate & Securities Law Committee and the Employment & Labor Law Committee of the Association of Corporate Counsel ("ACC"); Compass Bancshares, Inc. ("Compass Bancshares"); National Association of Manufacturers ("NAM"); Peabody Energy Corporation ("Peabody Energy"); and WorldatWork.

[105] See, *e.g.*, letters from Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated March 1, 2006 ("J. Brill 1"); CFA Centre 1; CRPTF; Frederic W. Cook & Co.; and Hewitt.

[106] We are moving the audit committee report previously required by Item 306 of Regulations S–K and S–B to Item 407(d) under the amendments adopted today. See Section V.D., below.

[107] See, *e.g.*, letters from J. Brill 1; California State Teachers' Retirement System ("CalSTRS"); CFA Centre 1; and Professor William J. Heisler.

[108] The audit committee report is only required in a company proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). See Instruction 3 to Item 407(d).

[109] Instruction 3 to Item 407(e)(5). The audit committee instruction is specified in Instruction 2 to Item 407(d).

[110] Item 407(e)(5)(ii).

[111] We note that one commenter suggested that the Compensation Discussion and Analysis should not be required of companies that have only registered the offer and sale of debt securities. See letter from Financial Security Assurance Holdings Ltd. The Compensation Discussion and Analysis is intended to put into perspective for investors the numbers and narrative that follow it. This section will provide a broader discussion than just that of the relationship of compensation to the performance of the company as reflected by stock price. Therefore, we believe it is appropriate for all companies that are not small business issuers or foreign private issuers filing on forms specified for their use to include the information.

[112] Prior to these amendments, the Board Compensation Committee Report on Executive Compensation had been required by Item 402(k) and the Performance Graph had been required by Item 402(l).

[113] Section II.B.3.

[114] See, *e.g.*, letters from CalSTRS; CFA Centre 1; CII; IUE–CWA Pension Fund and 401(k) Plan ("IUE–CWA"); John W. Hamm; NYCBA; Standard Life Investments Limited ("Standard Life"); and Vivient Consulting LLC.

[115] New Item 201(e) of Regulation S–K [17 CFR 229.201(e)] will require the Performance Graph. Consistent with our belief that the Performance Graph should not be linked to the compensation disclosure, we have not retained the portion of the language that was included in Instruction 4 to Item 402(l) prior to these amendments, which conditioned that other performance measures in addition to total return may be included in the graph only so long as the compensation committee (or persons performing equivalent functions or the entire board if there is no such committee) provided

retained, the Performance Graph will continue to be "furnished" rather than "filed." The Performance Graph will be required only in the company's annual report to security holders that accompanies or precedes a proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), and will not be deemed to be soliciting material under the proxy rules or incorporated by reference into any filing except to the extent that the company specifically incorporates it.[116]

C. Compensation Tables

To enhance the benefits of the tabular approach to eliciting compensation disclosure,[117] we proposed to reorganize and streamline the tables to provide a clearer and more logical picture of total compensation and its elements for named executive officers. We are adopting reorganized compensation tables and related narrative disclosure that cover three broad categories:

1. Compensation with respect to the last fiscal year (and the two preceding fiscal years), as reflected in a revised Summary Compensation Table that presents compensation paid currently or deferred (including options, restricted stock and similar grants) and compensation consisting of current earnings or awards that are part of a plan, and as supplemented by one table providing back-up information for certain data in the Summary Compensation Table; [118]

2. Holdings of equity-based interests that relate to compensation or are potential sources of future compensation, focusing on compensation-related equity-based interests that were awarded in prior years [119] and are "at risk," as well as recent realization on these interests, such as through vesting of restricted stock or the exercise of options and similar instruments; [120] and

3. Retirement and other post-employment compensation, including retirement and deferred compensation plans, other retirement benefits and other post-employment benefits, such as those payable in the event of a change in control.[121]

Reorganizing the tables along these themes should help investors understand how compensation components relate to each other. At the same time, we are retaining the ability for investors to use the tables to compare compensation from year to year and from company to company.

As we noted in the Proposing Release, by more clearly organizing the compensation tables to explain how the elements relate to each other, we may in some situations be requiring disclosure of both amounts earned (or potentially earned) and amounts subsequently paid out. This approach raises the possible perception of "double counting" some elements of compensation in multiple tables. However, a particular item of compensation only appears once in the Summary Compensation Table. In order to explain the item of compensation, it may also appear in one or more of the other tables. We believe the possible perception of double disclosure is outweighed by the clearer and more complete picture the disclosure in the additional tables will provide to investors. We strongly encourage companies to use the narrative following the tables (and where appropriate the Compensation Discussion and Analysis) to explain how disclosures relate to each other in their particular circumstances.

Commenters stated their general support for the format and presentation of the proposed tables.[122] We are adopting the tables substantially as proposed with some revisions, as noted below, in response to comments.

1. Compensation to Named Executive Officers in the Last Three Completed Fiscal Years—The Summary Compensation Table and Related Disclosure

Under today's amendments, the Summary Compensation Table continues to serve as the principal disclosure vehicle regarding executive compensation. This table, as amended, shows the named executive officers' compensation for each of the last three years, whether or not actually paid out. Consistent with the requirements prior to today's amendments, the amended Summary Compensation Table continues to require disclosure of compensation for each of the company's last three completed fiscal years.[123]

As we proposed, the amendments add disclosure of a figure representing total compensation, as reflected in other columns of the Summary Compensation Table, and simplify the presentation from that of the table prior to these amendments. As described in greater detail below, the amendments also provide for a supplemental table disclosing additional information about grants of plan-based awards. Narrative disclosure will follow the two tables, providing disclosure of material information necessary to an understanding of the information disclosed in the tables.

---

a description of the link between the measure and the level of compensation in the Board Compensation Committee Report on Executive Compensation. As a result, companies may include other performance measures, such as return on average common shareholders' equity, so long as the meaning of any such measures is clear from the Performance Graph and any related legend or other disclosure.

[116] Instructions 7 and 8 to Item 201(e). A "small business issuer" as defined in Regulation S–B, is not required to provide the Performance Graph. Instruction 6 to Item 201(e). Because Nasdaq has registered as a national securities exchange under Section 6 of the Exchange Act [15 U.S.C. 78f], the former separate reference to "Nasdaq market" is not retained. See Release No. 34–53128 (Jan. 13, 2006) ordering that the application of The NASDAQ Stock Market LLC for registration as a national securities exchange be granted. We also adopt a conforming revision to Rules 304(d) and (e) of Regulation S–T [17 CFR 232.304(d) and (e)], and we make technical revisions to those rules to correctly reference Item 22(b)(7)(ii) of Form N–1A and to eliminate the references to "prospectuses."

[117] The tabular disclosure and related narrative disclosure under amended Item 402 applies, as it did prior to today's amendments, to named executive officers, with amended Item 402(k) applying to directors, as described in Section II.C.9. below. As discussed below in Section II.C.6.a., we are adopting certain changes to the definition of named executive officer.

[118] The table supplementing the Summary Compensation Table is the Grants of Plan-Based Awards Table, discussed below in Section II.C.2., which combines into a single table the disclosure of the proposed Grants of Performance-Based Awards Table and the proposed Grants of All Other Equity Awards Table. The accompanying narrative disclosure requirement is discussed below in Section II.C.3.a.

[119] Under the disclosure rules as adopted, these interests will be disclosed as current compensation for those prior years.

[120] Information regarding holdings of such equity-based interests that relate to compensation will be disclosed in the Outstanding Equity Awards at Fiscal Year-End Table, discussed below in Section II.C.4.a. Information regarding realization on holdings of equity-based interests will be required in the Option Exercises and Stock Vested Table discussed below in Section II.C.4.b.

[121] Disclosure regarding retirement and post-employment compensation is required in the Pension Benefits Table, discussed below in Section II.C.5.a., the Nonqualified Deferred Compensation Table, discussed below in Section II.C.5.b., and the narrative disclosure requirement for other potential post-employment payments discussed below in Section II.C.5.c.

[122] See, *e.g.*, letters from CFA Centre 1; jointly, Jennifer Clowes, Lindsey Erskine, Kendra Freeck and Kapri Malesich; F&P Pension Board; IAM; IBEW PBF; Plumbers & Pipefitters National Pension Fund; and Standard Life.

[123] Prior to today's amendments, an instruction to Item 402(b) permitted the exclusion of information for fiscal years prior to the last completed fiscal year if the company was not a reporting company pursuant to Exchange Act Section 13(a) or 15(d) at any time during that year, unless the company previously was required to provide information for any such year in response to a Commission filing requirement. This instruction has been retained and redesignated as Instruction 1 to Item 402(c) in the amended rule.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO [124]									
PFO [125]									
A									
B									
C									

a. Total Compensation Column

We are modifying the Summary Compensation Table to provide a clearer picture of total compensation. As we proposed, we are requiring that all compensation be disclosed in dollars and that a total of all compensation be provided.[126] The new "Total" column aggregates the total dollar value of each form of compensation quantified in the other columns (revised columns (c) through (i)). This column responds to concerns that investors, analysts and other users of Item 402 disclosure have not been able to compute aggregate amounts of compensation using the disclosure in the table as specified prior to these amendments in a manner that was accurate or comparable across years or companies. Many commenters expressed their support for the proposal to include a Total column.[127]

Other commenters expressed concerns that, as proposed, the total number was an amalgam of dissimilar types of compensation.[128] These concerns centered on the mix of compensation elements reported in the Summary Compensation Table being measured at different times and having different valuation methods, so that a Total column in effect would combine "apples" with "oranges."[129] To address this issue, some commenters suggested dividing the Total column into two separate columns reporting Total Earned Compensation and Total Contingent Compensation.[130] Others recommended two separate Summary Compensation Tables—one for compensation that had been earned or realized and another for compensation that remained contingent or an opportunity.[131]

As we noted in the Proposing Release, the Summary Compensation Table is designed to disclose all compensation. Each element of compensation is only disclosed once in the Summary Compensation Table, although it may also be disclosed in some of the other tables. We realize that the timing of when particular items of compensation are disclosed in the Summary Compensation Table varies depending on the form of the compensation.[132] Given the various forms and complexities of compensation and the different periods they may be designed to relate to,[133] it is unavoidable that the timing of disclosure may vary from element to element in this table.[134]

[124] "PEO" refers to principal executive officer. See Section II.C.6.a. below for a description of the proposed named executive officers for whom compensation disclosure is required.

[125] "PFO" refers to principal financial officer.

[126] Instruction 2 to Item 402(c) (requiring all compensation values in the Summary Compensation Table to be reported in dollars and rounded to the nearest dollar). Prior to today's amendments, some stock-based compensation was disclosed in per share increments rather than in dollar amounts. Instruction 2 to Item 402(c) further requires, where compensation was paid or received in a different currency, footnote disclosure identifying that currency and describing the rate and methodology used for conversion to dollars.

[127] See, *e.g.*, letters from CFA Centre 1; CII; Frederic W. Cook & Co.; ISS; Standard Life; and Walden. In addition, over 20,000 form letters from individuals specifically supported this proposal. See Letter Type A, available at *www.sec.gov/rules/proposed/s70306.shtml*.

[128] See, *e.g.*, letters from Fenwick & West LLP ("Fenwick"); Chamber of Commerce; and Hodak Value Advisors, LLC ("Hodak Value Advisors").

[129] See, *e.g.*, letters from Caterpillar Inc. and Corporate Library.

[130] See, *e.g.*, letters from Business Roundtable ("BRT") and Mercer.

[131] See, *e.g.*, letters from Eli Lilly and Company ("Eli Lilly"); Hewitt; Society of Corporate Secretaries & Governance Professionals ("SCSGP"); Towers Perrin, dated April 10, 2006 ("Towers Perrin"); and Watson Wyatt Worldwide ("Watson Wyatt").

[132] Compensation is generally calculated in a manner that reflects the cost of the compensation to the company and its shareholders.

[133] See, *e.g.*, letter from ABA (noting that option grants made early in the year may be viewed by the compensation committee primarily as an award for the prior year's performance or as an incentive for future performance).

[134] The approach as to the timing of disclosure that we proposed and that we adopt today is the same approach that has been used in the Summary Compensation Table since it was first proposed in 1992. See *Executive Compensation Disclosure*, Release No. 33–6940 (June 23, 1992) [57 FR 29582] (noting that the Summary Compensation Table will "provide shareholders a concise, comprehensive overview of compensation awarded, earned or paid in the reporting period").

We note that some commenters were particularly concerned that non-equity incentive plan awards are reported when earned, while equity incentive plan awards are reported based on grant date value when awarded.[135] No single accepted standard for measuring non-equity incentive plan awards at grant date currently exists. Some commenters nonetheless suggested that we require grant date fair value estimates of non-equity incentive plan awards in the Summary Compensation Table.[136] We do not believe it is appropriate at this time for us to develop such a standard expressly for compensation disclosure purposes. Nevertheless, we believe that the Summary Compensation Table that we adopt today, including a total of all of the various elements presented, provides meaningful disclosure to investors and allows for comparability between companies and within a company.

However, in response to comments, we have created a separate column for the annual change in actuarial value of defined benefit plans and earnings on nonqualified deferred compensation.[137] As proposed, these compensation elements would have been included in the aggregate amount reported in the All Other Compensation column. We believe that presenting these items in a separate column will permit investors and other users of the Summary Compensation Table to readily identify elements included in the Total column that may relate principally to longevity of service. These items will not be used to determine the officers included in the table.[138]

We proposed that the new column disclosing total compensation would appear as the first column providing compensation information.[139] Some commenters suggested moving this column to the right of the table, so that it would follow—rather than precede—the relevant component numbers.[140] In response to these comments, we have moved the Total column to the final column in the table.

b. Salary and Bonus Columns

The first columns providing compensation information that we are requiring are the salary and bonus columns (columns (c) and (d), respectively), which are retained substantially in their previous form. However, we are adopting some changes, as proposed, that will give an investor a clearer picture of the total amount earned.

As we proposed, compensation that is earned, but for which payment will be deferred, must be included in the salary, bonus or other column, as appropriate. A new instruction, applicable to the entire Summary Compensation Table, provides that if receipt of any amount of compensation is currently payable but has been deferred for any reason, the amount so deferred must be included in the appropriate column.[141] This treatment is no longer limited to salary and bonus, as it was prior to these amendments, and under the amended rules this treatment applies regardless of the reason for the deferral.[142]

We also proposed that the amount so deferred must be disclosed in a footnote to the applicable column. As described below, the amount deferred will also generally be reflected as a contribution in the deferred compensation presentation.[143] The proposed footnote disclosure was intended to clarify the extent to which amounts disclosed in the Nonqualified Deferred Compensation Table described below represent compensation already reported, rather than additional compensation. Because commenters thought it could lead to potential double counting, we have not adopted this proposed footnote requirement.[144]

As proposed, we have eliminated the delay that existed under the former rules where salary or bonus for the most recent fiscal year is determined following compliance with Item 402 disclosure. Under our new rules, where salary or bonus cannot be calculated as of the most recent practicable date, a current report under Item 5.02 of Form 8–K will be triggered by a payment, decision or other occurrence as a result of which either of such amounts become calculable in whole or part.[145] The Form 8–K will include disclosure of the salary or bonus amount and a new total compensation figure including that salary or bonus amount.

c. Plan-Based Awards

As we proposed, the next three columns—Stock Awards, Option Awards and Non-Equity Incentive Plan Compensation—cover plan-based awards.

i. Stock Awards and Option Awards Columns

As proposed and adopted, the Stock Awards column (column (e)) discloses stock-related awards that derive their value from the company's equity securities or permit settlement by issuance of the company's equity securities and, as we have clarified, are thus within the scope of FAS 123R for financial reporting, such as restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or other similar instruments that do not have option-like features.[146] Valuation is based on the

[135] See, *e.g.*, letters from ACC; Amalgamated; BDO Seidman, LLP ("BDO Seidman"); CII; IUE–CWA; and Mercer.

[136] See, *e.g.*, letters from CII; IUE–CWA; and CRPTF. Information about the amounts that could be earned under non-equity incentive plans is required to be disclosed in the Grants of Plan-Based Awards Table when such awards are granted.

[137] See Section II.C.1.d.i. below, which describes a modification of the proposed Summary Compensation Table disclosure of nonqualified deferred compensation earnings to present only the above-market or preferential portion in this table.

[138] See Section II.C.6.b. below describing how in response to commenters this column is excluded from total compensation for the purpose of identifying named executive officers.

[139] Columns (a) and (b) specify the executive officer and the year in question.

[140] See, *e.g.*, letters from Buck Consultants; Frederic W. Cook & Co.; and SCSGP.

[141] Instruction 4 to Item 402(c).

[142] Prior to the amendments, this requirement was triggered only if the officer elected the deferral. We are amending this requirement as we proposed to cover all deferrals, no matter who has initiated the deferrals.

[143] See Section II.C.5.b., describing the Nonqualified Deferred Compensation Table. Disclosure of these amounts as contributions will now be required for nonqualified deferred compensation plans. This disclosure will not be required for qualified plans. Nonqualified deferred compensation plans and arrangements provide for the deferral of compensation that does not satisfy the minimum coverage, nondiscrimination and other rules that "qualify" broad-based plans for favorable tax treatment under the Internal Revenue Code.

[144] See, *e.g.*, letter from WorldatWork. As described in Section II.C.5.b. below, however, we have adopted the corresponding footnote proposed for the Nonqualified Deferred Compensation Table.

[145] New Item 5.02(f) of Form 8–K and Instruction 1 to Item 402(c)(2)(iii) and (iv). Prior to these amendments, in the event that such amounts were not determinable at the most recent practicable date, they were generally reported in the annual report on Form 10–K or proxy statement for the following fiscal year. We believe providing the information more quickly is appropriate and are therefore adopting the use of a current report on Form 8–K. Instruction 1 to Item 402(c)(2) (iii) and (iv) requires that the company disclose in a footnote that the salary or bonus is not calculable through the latest practicable date and the date that the salary or bonus is expected to be determined. We proposed to include this requirement in an instruction to proposed paragraph (e) of Item 5.02 of Form 8–K. We are adopting it as a separate paragraph of Item 5.02 in order to make it clearer that it is a separate triggering event.

[146] Generally speaking, a restricted stock award is an award of stock subject to vesting conditions, such as performance-based conditions or conditions based on continued employment for a specified period of time. This type of award is referred to as "nonvested equity shares" in FAS 123R. Phantom stock, phantom stock units, common stock equivalent units and other similar awards are typically awards where an executive obtains a right to receive payment in the future of an amount based on the value of a hypothetical, or notional, amount of shares of common equity (or in some cases stock based on that value). To the extent that the terms of phantom stock, phantom stock units, common stock equivalents or other similar awards include option-like features, the awards will be required to

Continued

grant date fair value of the award determined pursuant to FAS 123R for financial reporting purposes. Stock awards granted pursuant to an equity incentive plan are also included in this column to ensure consistent reporting of stock awards and to ensure their inclusion in the revised Summary Compensation Table.[147]

Awards of options, stock appreciation rights, and similar equity-based compensation instruments that have option-like features that, as we have clarified, are within the scope of FAS 123R, must be disclosed in the Option Awards column (column (f)) in a manner similar to the treatment of stock and other equity-based awards under the amendments.[148] Instead of the disclosure of the number of securities underlying the awards as was the case prior to today's amendments, this column requires disclosure of the grant date fair value of the award as determined pursuant to FAS 123R. In order to calculate a total dollar amount of compensation, the value rather than the number of securities underlying an award must be used. The FAS 123R valuation must be used whether the award itself is in the form of stock, options or similar instruments or the award is settled in cash but the amount of payment is tied to performance of the company's stock.[149]

Under FAS 123R, the compensation cost is initially measured based on the grant date fair value of an award,[150] and generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). Some commenters suggested that rather than requiring disclosure of the grant date fair value of equity awards, we should require a company to disclose just the portion of the award expensed in the company's financial statements.[151] These commenters expressed concerns that disclosing the full grant date fair value would be inconsistent with the company's financial statements, would overstate compensation earned related to service rendered for the year, and would be inconsistent with the presentation of non-equity incentive plan compensation. Other commenters expressed support for requiring companies to report the full grant date fair value in the year of the award because it would provide a more complete representation of compensation.[152]

We are adopting these columns substantially as proposed.[153] Under our amendments, the compensation cost calculated as the grant date fair value will be shown as compensation in the year in which the grant is made.[154] As we stated in the Proposing Release, we believe that this approach is more consistent with the purpose of executive compensation disclosure. We are adopting an approach that subscribes to the measurement method of FAS 123R based on grant date fair value, but also provides for immediate disclosure of compensation. This timing of disclosure of option awards remains the same as it has been since 1992. The only change is that the awards are now disclosed in dollars rather than numbers of units or shares. Disclosing these awards as they are expensed for financial statement reporting purposes would not mirror the timing of disclosure of non-equity incentive plan compensation. While we have imported a financial statement reporting principle to enable disclosure of compensation costs, executive compensation disclosure must continue to inform investors of current actions regarding plan awards—a function that would not be fulfilled applying financial reporting recognition timing. If a company does not believe that the full grant date fair value reflects compensation earned, awarded or paid during a fiscal year, it can provide appropriate explanatory disclosure in the accompanying narrative section. Furthermore, disclosing grant date fair value will give investors a clearer picture of the value of any in-the-money awards. As we proposed, the number of shares underlying an award and other details regarding the award must be disclosed in a separate table covering grants of plan-based awards supplementing the Summary Compensation Table.[155] This supplemental table, which combines the disclosure that would have been required by the proposed Grants of Performance-Based Awards Table and Grants of All Other Equity Awards Table, discloses equity awards granted pursuant to incentive plans separately from other equity awards.

We are adopting as proposed an instruction that requires a footnote referencing the discussion of the relevant assumptions in the notes to the company's financial statements or the discussion of relevant assumptions in the MD&A.[156] The same instruction also

be included in the Option Awards column. Prior to these amendments, restricted stock awards were valued in the Summary Compensation Table by multiplying the closing market price of the company's unrestricted stock on the date of grant by the number of shares awarded.

[147] Prior to these amendments, these performance-based stock awards could be reported at the company's election as incentive plan awards under what was then specified in Instruction 1 to Item 402(b)(2)(iv). Our amendments today eliminate this alternative.

[148] A stock appreciation right usually gives the executive the right to receive the value of the increase in the price of a specified number of shares over a specified period of time. These awards may be settled in cash or in shares.

[149] As proposed, we are eliminating the requirement that had been specified in Options/SAR Grants in Last Fiscal Year Table under Item 402(c)(2)(vi) to report the potential realizable value of each option grant under 5% or 10% increases in value or the present value of each grant (computed under any option pricing model). These alternative disclosures are no longer necessary insofar as the grant date fair value of equity-based awards is included in the Summary Compensation Table.

[150] Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost. Awards with cash-based settlement, repurchase features, or other features that do not result in an employee bearing the risks and rewards normally associated with share ownership for a specified period of time would be classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award, and absent modification, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in financial statement reporting are then re-measured at each reporting date through the settlement date under FAS 123R. These re-measurements would not be the basis for executive compensation disclosure under our amended rules, unless the award has been modified, as described later in this release.

[151] See, *e.g.*, letters from the SEC Regulations Committee of the American Institute of Certified Public Accountants ("AICPA"); Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Chamber of Commerce; Computer Sciences Corporation ("Computer Sciences"); Deloitte & Touche LLP; Ernst & Young LLP ("E&Y"); Fenwick; Foley; HR Policy Association ("HRPA"); American Bar Association, Joint Committee on Employee Benefits ("ABA–JCEB"); and KPMG LLP ("KPMG").

[152] See, *e.g.*, letters from CalPERS; CFA Centre 1; CRPTF; L. Burns; Governance for Owners: Laborers International Union of North America; Nancy Lucke Ludgus ("N. Ludgus"); Institutional Investors Group; State Board of Administration (SBA) of Florida ("SBAF"); Teamsters Local 671; Teamsters PA/MD; United Church Foundation, Inc. ("UCF"); Washington State Investment Board ("WSIB"); and Western PA Teamsters Fund.

[153] Item 402(c)(2)(v) and (vi).

[154] FAS 123R requires a company to aggregate individuals receiving awards into relatively homogenous groups with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term, for example executives and non-executives. The rules we adopt today are not intended to change the method used to value employee stock options for purposes of FAS 123R or to affect the judgments as to reasonable groupings for purposes of determining the expected term assumption required by FAS 123R. Under the rules we adopt today, where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 would be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of Item 402(k)).

[155] See Section II.C.2., discussing the Grants of Plan-Based Awards Table required by Item 402(d).

[156] Instruction 1 to Item 402(c)(2)(v) and (vi).

provides that the referenced sections will be deemed to be part of the disclosure provided pursuant to Item 402. The referenced sections containing this disclosure are required in the company's annual report to shareholders that must precede or accompany the company's proxy statement.[157] In the case of Internet disclosure of proxy materials, companies could provide hyperlinks from the proxy statement to the referenced sections contained in the annual report.[158] While some commenters recommended requiring these valuation assumptions to be presented in the proxy statement,[159] we believe that investors will be able to easily access this information without requiring it to be repeated from other documents.

We proposed that previously awarded options or freestanding stock appreciation awards that the company repriced or otherwise materially modified during the last fiscal year be disclosed in the Summary Compensation Table based on the total fair value of the award as so modified. Under FAS 123R, only the incremental fair value, computed as of the repricing or modification date, is recognized for such an award. Several commenters recommended conforming Summary Compensation Table reporting to the incremental fair value recognition approach of FAS 123R, objecting that the proposed total fair value approach would inappropriately double count the fair value of many modified awards.[160] As adopted, the new rules reflect this recommendation.[161] Grants of reload or restorative options, however, are reportable based on total grant date fair value because they are new awards that do not replace previously cancelled awards.[162]

We proposed that all earnings, such as dividends, be included in the Stock Awards and Option Awards columns when paid. Several commenters noted that the value of the right to receive dividends is factored into the grant date fair value computed under FAS 123R.[163] If the stock award or option award entitles the holder to receive dividends, then such "dividend protection" is included in the grant date fair value computed under FAS 123R. We are persuaded by the commenters that subsequent disclosure of the value of dividends in these circumstances, as they are received, would repeat in the same table compensation that was previously disclosed. Therefore, we have revised the requirement. However, we note that if the stock award or option award does not entitle the holder to receive dividends, then "dividend protection" is not included in the grant date fair value computed under FAS 123R. Accordingly, the value of any dividends received would not have been previously disclosed in the Summary Compensation Table as part of the grant date fair value of the award. In order to appropriately capture the compensation in these latter circumstances, we are adopting a requirement to disclose any earnings on stock awards or option awards that are not included in the grant date fair value computation for those awards in the All Other Compensation column of the Summary Compensation Table when the dividends or other earnings are paid.[164] In addition, the material terms of any equity award (including whether dividends will be paid, the applicable dividend rate and whether that rate is preferential) may be factors to be discussed in the related narrative section.[165]

We had proposed a definition of "non-stock incentive plan" that some commenters stated would result in confusing and potentially anomalous treatment of some awards.[166] To clarify the reporting treatment of different types of awards, we have:

- Adopted a separate definition of "equity incentive plan" as "an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of FAS 123R";[167] and
- Defined "non-equity incentive plan" as "an incentive plan or portion of an incentive plan that is not an equity incentive plan."[168]

ii. Non-Equity Incentive Plan Compensation Column

The Non-Equity Incentive Plan Compensation column (column (g)) will report, as proposed, the dollar value of all amounts earned during the fiscal year pursuant to non-equity incentive plans.[169] This column includes all other incentive plan awards not included in the stock awards and option awards columns.[170] Compensation awarded under an incentive plan that is not within the scope of FAS 123R will be disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria under the plan are satisfied and the compensation earned, whether or

---

[157] See Exchange Act Rule 14a–3 [17 CFR 240.14a–3].

[158] In addition, in December 2005, we proposed rules that would allow companies and other persons to use the Internet to satisfy proxy material delivery requirements. *Internet Availability of Proxy Materials*, Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597].

[159] See, *e.g.*, letters from Buck Consultants; CII; Frederic W. Cook & Co.; and IUE–CWA.

[160] See, *e.g.*, letters from AICPA; Cleary Gottlieb Steen & Hamilton LLP ("Cleary"); Compass Bancshares; Cravath, Swaine & Moore LLP ("Cravath"); Hewitt; KPMG; Leggett & Platt, Incorporated ("Leggett & Platt"); SCSGP; and Sullivan.

[161] Instruction 2 to Item 402(c)(2)(v) and (vi).

[162] Generally speaking, reload or restorative options are grants of new options that are granted automatically when an executive exercises the old option. Reload or restorative options are treated as new grants under FAS 123R.

[163] See, *e.g.*, letters from Cleary; Emerson Electric Co. ("Emerson"); Foley; Hewitt; SCSGP; and Towers Perrin.

[164] Item 402(c)(2)(ix)(G).

[165] Item 402(e)(1)(iii), discussed in Section II.C.3.a. below.

[166] See, *e.g.*, letter from ABA.

[167] Item 402(a)(6)(iii). An equity incentive plan includes plans that have a performance or market condition. As defined in Appendix E of FAS 123R, a performance condition is "a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for purposes of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee." An award also would be considered to have a performance condition if it is subject to a market condition, which is "a condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under a share-based payment arrangement that relates to the achievement of (a) a specified price of the issuer's shares or a specified amount of intrinsic value indexed solely to the issuer's shares or (b) a specified price of the issuer's shares in terms of a similar (or index of similar) equity security (securities)." An award that vests on an accelerated basis upon the occurrence of a change in control is not considered an award under an equity incentive plan if (a) the award contains no other performance or market conditions and (b) the award would otherwise vest based on the completion of a specified employee service period.

[168] Item 402(a)(6)(iii). See also discussion of the definition of "incentive plan" at Section II.C.1.f. below.

[169] Item 402(c)(2)(vii). An incentive plan generally provides for compensation intended to serve as an incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the company or an affiliate, the company's stock price, or any other performance measure. See Item 402(a)(6)(iii) for the definition of "incentive plan."

[170] Awards disclosed in this column, column (g), are not covered by FAS 123R for financial reporting purposes because they do not involve share-based payment arrangements. Awards that involve share-based payment arrangements should be disclosed in the Stock Awards or Option Awards columns, as appropriate.

not payment is actually made to the named executive officer in that year.

The grant of an award under a non-equity incentive plan will be disclosed in the supplemental Grants of Plan-Based Awards Table in the year of grant, which may be some year prior to the year in which compensation under the non-equity incentive plan is reported in the Summary Compensation Table.[171] As noted above, several commenters recommended Summary Compensation Table reporting of non-equity incentive plan awards on a grant date fair value basis, consistent with the reporting of equity incentive plans.[172] However, because there is not one clearly required or accepted standard for measuring the value at grant date of these non-equity incentive plan awards that reflects the applicable performance contingencies, as there is for equity-based awards with FAS 123R, we are not including such a value in the Summary Compensation Table. Instead, we continue the disclosure approach of reflecting these items of compensation when earned.[173]

Once the disclosure has been provided in the Summary Compensation Table when the specified performance criteria have been satisfied and the compensation earned, and the grant of the award has been disclosed in the Grants of Plan-Based Awards Table, no further disclosure will be specifically required when payment is actually made to the named executive officer. Some commenters objected to Summary Compensation Table reporting of awards for which the relevant performance condition has been satisfied that remain subject to forfeiture conditions (such as conditions requiring continued service or conditions that provide for forfeiture based on future company performance).[174] We continue to believe that satisfaction of the relevant performance condition (including an interim performance condition in a long term plan) is the event that is material to investors for Summary Compensation Table reporting purposes. We encourage companies to use the related narrative section to disclose material features that are not reflected in the tabular disclosure including, for example, subsequent forfeitures of amounts reported in the table with respect to previous fiscal years.[175]

As proposed and adopted, earnings on outstanding non-equity incentive plan awards are also included in the Non-Equity Incentive Plan Compensation column and identified and quantified in a footnote to the table.[176]

d. Change in Pension Value and Nonqualified Deferred Compensation Earnings Column

As we proposed, we are expanding the Summary Compensation Table to include information regarding the aggregate increase in actuarial value to the named executive officer of all defined benefit and actuarial plans (including supplemental plans) accrued during the year and earnings on nonqualified deferred compensation. However, as mentioned above, we have decided to present this information in a separate column rather than include it in the All Other Compensation column as proposed.[177] Footnote identification and quantification of the full amount of each element is required.[178] Any amount attributable to the defined benefit and actuarial plans that is a negative number should be disclosed by footnote, but should not be reflected in the amount reported in the column.[179]

i. Earnings on Deferred Compensation

We proposed to require disclosure of all earnings on compensation that is deferred on a basis that is not tax-qualified, including non-tax qualified defined contribution retirement plans.[180] Prior to our amendments, these earnings were required to be disclosed only to the extent of any portion that was "above-market or preferential." This limitation generated criticism that the rule prior to today's amendments permitted companies to avoid disclosure of substantial compensation.

Some commenters supported this proposal.[181] However, many commenters asserted that the Summary Compensation Table should continue to require disclosure only of earnings at above-market or preferential rates.[182] Commenters stated that differences in earnings on nonqualified deferred compensation among executives may result entirely from the executives' investment acumen and decisions as to amounts to defer. Commenters further claimed that deferred amounts invested at market rates are conceptually no different from amounts invested directly by an executive. Absent providing an above-market return, contributing additional amounts or guaranteeing investment returns, commenters asserted that the company has no role in the annual growth of the account.

We are persuaded that Summary Compensation Table disclosure of nonqualified deferred compensation earnings should continue to be limited to the above-market or preferential portion.[183] As under the rule prior to these amendments, the above-market or preferential portion is determined for interest by reference to 120% of the applicable federal long-term rate and for dividends by reference to the dividend rate on the company's common stock.[184] Footnote or narrative disclosure of the company's criteria for determining any portion considered to be above-market may be provided. The above-market or preferential earnings in this column would always be positive, as it would not be possible for above-market or preferential losses to occur.

However, we do not overlook the fact that the company is obligated to pay the executive the entire amount of the nonqualified deferred compensation account, which represents a claim on company assets and is part of a plan that provides the executive with tax

---

[171] See Section II.C.2., discussing the Grants of Plan-Based Awards Table.

[172] See, *e.g.*, letters from Amalgamated; Anonymous Compensation Consultant; BDO Seidman; CII; CRPTF; Mercer; and Teamsters Local 671. See discussion at Section II.C.1.a. above.

[173] Prior to these amendments, Items 402(b)(2)(iv)(C) and 402(e) required disclosure of long-term incentive plan payouts when earned.

[174] See, *e.g.*, letters from Mercer; Watson Wyatt; and Richard E. Wood.

[175] Commenters' issues concerning the scope of awards reportable in this column, in particular as compared to compensation reportable in the bonus column, are discussed in Section II.C.1.f. below.

[176] Item 402(c)(2)(vii). These earnings were reportable prior to today's amendments in the Other Annual Compensation or All Other Compensation columns of the Summary Compensation Table under Items 402(b)(2)(iii)(C)(3) and 402(b)(2)(v)(C), respectively.

[177] See the discussion of the Total column in Section II.C.1.a. above and the discussion of determination of named executive officers in Section II.C.6. below.

[178] Instruction 3 to Item 402(c)(2)(viii). In contrast, as proposed to be disclosed in the All Other Compensation Column, separate identification and quantification of each element would have been required only if the element exceeded $10,000, although the amounts would have been included in that column without regard to size.

[179] Instruction 3 to Item 402(c)(2)(viii).

[180] Nonqualified defined contribution and other nonqualified deferred compensation plans are plans providing for deferral of compensation that do not satisfy the minimum coverage, nondiscrimination and other rules that "qualify" broad-based plans for favorable tax treatment under the Internal Revenue Code. A typical 401(k) plan, by contrast, is a *qualified* deferred compensation plan.

[181] See, *e.g.*, letters from CFA Centre 1 and jointly, Lucian A. Bebchuk, Jesse M. Fried and Robert J. Jackson, Jr. ("Professor Bebchuk, *et al.*").

[182] See, *e.g.*, letters from American Academy of Actuaries' Pension Committee ("Academy of Actuaries"); BRT; Frederic W. Cook & Co.; Computer Sciences; Kimball International, Inc.; NAM; and Sullivan.

[183] Item 402(c)(2)(viii)(B).

[184] Instruction 2 to Item 402(c)(2)(viii), which is based on the language which had appeared in Instructions 3 and 4 to Item 402(b)(2)(iii)(C) prior to these amendments.

benefits.[185] To reflect this obligation, we have decided to require disclosure of all earnings on nonqualified deferred compensation in the separate Nonqualified Deferred Compensation Table, as we proposed.[186] The disclosure required by that table discloses the rate at which the company's obligation grows on an annual basis.

Further, the method of calculating earnings on deferred compensation plans is an example of a factor that may be material and therefore described in the narrative disclosure to the Summary Compensation Table and the Grants of Plan-Based Awards Table.[187]

ii. Increase in Pension Value

We proposed to require Summary Compensation Table disclosure of the aggregate increase in actuarial value to the executive officer of defined benefit and actuarial plans (including supplemental plans) accrued during the year.

In contrast to defined contribution plans, for which the Summary Compensation Table requires disclosure of company contributions, the rules prior to our amendments did not require disclosure of the annual change in value of defined benefit plans, such as pension plans, in which the named executive officers participated.[188] The annual increase in actuarial value of these plans may be a significant element of compensation that is earned on an annual basis, thus we proposed to include it in the computation of total compensation.

Such disclosure is necessary to permit the Summary Compensation Table to reflect total compensation for the year. Such disclosure also permits a full understanding of the company's compensation obligations to named executive officers, given that defined benefit plans guarantee what can be a lifetime stream of payments and allocate risk of investment performance to the company and its shareholders. In addition commentators have noted that the absence of such a disclosure requirement creates an incentive to shift compensation to pensions, results in the understatement of non-performance-based compensation, and distorts pay comparisons between executives and between companies.

We are adopting the requirement substantially as proposed.[189] As proposed and adopted, an instruction specifies that this disclosure applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding defined contribution plans.[190] The retirement section, discussed below, provides more information regarding these covered plans.[191]

Some commenters raised issues regarding computation of the amount to be disclosed.[192] In response to these comments, we have revised the language of the requirement as adopted to clarify that the disclosure applies to the change, from the pension plan measurement date used for the company's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for the company's audited financial statements for the covered fiscal year, in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans). The disclosure therefore includes both:

- The increase in value due to an additional year of service, compensation increases, and plan amendments (if any); and
- The increase (or decrease) in value attributable to interest.

As discussed below, this disclosure relates to the disclosure provided in the Pension Benefits Table [193] and promotes company-to-company comparability. In computing the amount to be disclosed, the company must use the assumptions it uses for financial reporting purposes under generally accepted accounting principles.[194]

Other commenters objected to this item's potential to "distort" the Total column and the determination of named executive officers.[195] As described above, we continue to believe that inclusion of this element in the table is necessary to permit the Summary Compensation Table to reflect total compensation. However, we have addressed commenters' concerns by segregating this item and above-market or preferential earnings on nonqualified deferred compensation from the All Other Compensation column, presenting their sum in a separate column so that it will be deducted from the total for purposes of determining the named executive officers.[196]

e. All Other Compensation Column

The next column in the Summary Compensation Table discloses all other compensation not required to be included in any other column.[197] This approach allows the capture of all compensation in the Summary Compensation Table and also allows a total compensation calculation. We confirm that disclosure of all compensation is clearly required under the rules.[198]

As proposed, we are clarifying the disclosure required in the All Other Compensation column (revised column (i)) in two principal respects:

- Consistent with the requirement that the Summary Compensation Table

[185] Nonqualified defined contribution and other nonqualified deferred compensation plans are generally unfunded, and their taxation is governed by Section 409A of the Internal Revenue Code [26 U.S.C. 409A].

[186] This separate table is discussed in Section II.C.5.b. below.

[187] See Section II.C.3.a. below.

[188] A typical defined contribution plan is a retirement plan in which the company and/or the executive makes contributions of a specified amount, and the amount that is paid out to the executive depends on the return on investments from the contributed amounts. A typical defined benefit plan is a retirement plan in which the company pays the executive specified amounts at retirement which are not tied to investment performance of the contributions that fund the plan.

[189] Item 402(c)(2)(viii)(A).

[190] Instruction 1 to Item 402(c)(2)(viii). Defined benefit plans include, for example, cash balance plans in which the retiree's benefit may be determined by the amount represented in an account rather than based on a formula referencing salary while still employed.

[191] See Section II.C.5.a., discussing the Pension Benefits Table.

[192] See, e.g., letters from Academy of Actuaries; Frederick W. Cook & Co.; ABA–JCEB; and Mercer.

[193] Item 402(h), discussed in Section III.C.5.a. below.

[194] Instruction 1 to Item 402(c)(2)(viii) and Instruction 2 to Item (h)(2). Regarding such key assumptions as interest rate, form of benefit, number of years of service, level of compensation used to determine the benefit and mortality tables, a company must use the same assumptions as it applies pursuant to Financial Accounting Standards Board Statement of Financial Accounting Standards No. 87, *Employers' Accounting for Pensions* (FAS 87) both for this Summary Compensation Table column and the separate Pension Benefits Table.

[195] See, *e.g.*, letters from Eli Lilly and SCSGP.

[196] See Section II.C.6. below.

[197] Item 402(c)(2)(ix).

[198] The only exception, as discussed below, is for perquisites and personal benefits if they aggregate less than $10,00 for a named executive officer. The 1992 Release, at Section II.A.4., also noted "the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries." See also Item 402(a)(2) as stated prior to these amendments. Further, as described above, Summary Compensation Table disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion of earnings. As was previously the case before these amendments, companies may omit information regarding group life, health, hospitalization and medical reimbursement plans that do not discriminate in scope, terms or operation in favor of executive officers or directors of the company and that are available generally to all salaried employees. See Item 402(a)(6)(ii).

disclose *all* compensation, we state explicitly that compensation not properly reportable in the other columns reporting specified forms of compensation must be reported in this column; and

- To simplify the Summary Compensation Table and eliminate confusing distinctions between items currently reported as "Annual" and "Long Term" compensation, we have moved into this column all items formerly reportable as "Other Annual Compensation." [199]

We also are requiring that each item of compensation included in the All Other Compensation column that exceeds $10,000 be separately identified and quantified in a footnote. We believe that the $10,000 threshold balances our desire to avoid disclosure of clearly *de minimis* matters against the interests of investors in the nature of items comprising compensation. Each item of compensation less than that amount will be included in the column (other than aggregate perquisites and other personal benefits less than $10,000 as discussed below), but is not required to be identified by type and amount.[200] Items to be disclosed in the All Other Compensation column include, but are not limited to, the items discussed below.

i. Perquisites and Other Personal Benefits

Perquisites and other personal benefits are included in the All Other Compensation column. As we proposed, we are adopting changes to the disclosure of perquisites and other personal benefits to improve disclosure and facilitate computing a total amount of compensation. Our amendments require the disclosure of perquisites and other personal benefits unless the aggregate amount of such compensation is less than $10,000. Some commenters thought this threshold was too high; [201] while other commenters thought it was too low.[202] While we realize that this threshold may result in the total amount of compensation reportable in the Summary Compensation Table being slightly less than a complete total amount of compensation, we believe $10,000 is a reasonable balance between investors' need for disclosure of total compensation and the burden on a company to track every benefit, no matter how small. Prior to today's amendments, the rule permitted omission of perquisites and other personal benefits if the aggregate amount of such compensation was the lesser of either $50,000 or 10% of the total of annual salary and bonus, allowing omission of too much information that investors may consider material.

The amendments we adopt today require, as proposed, footnote disclosure that identifies perquisites and other personal benefits. Prior to these amendments, the rule required identification and quantification only of perquisites and other personal benefits that were 25% of the total amount for each named executive officer.[203] We have modified this requirement so that, unless the aggregate value of perquisites and personal benefits is less than $10,000, any perquisite or other personal benefit must be identified and, if it is valued at the greater of $25,000 or ten percent of total perquisites and other personal benefits, its value must be disclosed.[204] Consistent with our objective to streamline the Summary Compensation Table, the revised threshold is intended to avoid requiring separate quantification of perquisites having *de minimis* value. Where perquisites are subject to identification, they must be described in a manner that identifies the particular nature of the benefit received. For example, it is not sufficient to characterize generally as "travel and entertainment" different company-financed benefits, such as clothing, jewelry, artwork, theater tickets and housekeeping services.

As was formerly the case, tax "gross-ups" or other reimbursement of taxes owed with respect to any compensation, including but not limited to perquisites and other personal benefits, must be separately quantified and identified in the tax reimbursement category described below, even if the associated perquisites or other personal benefits are eligible for exclusion or would not require identification or footnote quantification under the rule.

In the Proposing Release, we provided interpretive guidance about factors to be considered in determining whether an item is a perquisite or other personal benefit. One commenter suggested that the Commission engage in a separate rulemaking to adopt a definition of perquisites in Regulation S–K.[205] As we noted in the Proposing Release, for decades questions have arisen as to what is a perquisite or other personal benefit required to be disclosed. We continue to believe that it is not appropriate for Item 402 to define perquisites or personal benefits, given that different forms of these items continue to develop, and thus a definition would become outdated. As stated in the Proposing Release, we are concerned that sole reliance on a bright line definition in our rules might provide an incentive to characterize perquisites or personal benefits in ways that would attempt to circumvent the bright lines. Many commenters sought additional or modified interpretive guidance, including guidance with respect to an item that is integrally and directly related to the performance of the executive's duties but has a personal benefit aspect as well.[206] Accordingly, we are providing additional explanation regarding how to apply this guidance. The amendments we adopt today require perquisites and personal benefits to be disclosed for both named executive officers and directors.[207] Further, the disclosure requirements we adopt regarding potential payments upon termination or change-in-control include disclosure of perquisites.[208] Accordingly, this discussion also applies in the context of each of these disclosure requirements.

Among the factors to be considered in determining whether an item is a perquisite or other personal benefit are the following:

- An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties.
- Otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.

We believe the way to approach this is by initially evaluating the first prong of the analysis. If an item is integrally and directly related to the performance of the executive's duties, that is the end of the analysis—the item is not a perquisite or personal benefit and no

[199] Prior to today's amendments, Item 402(b)(2)(iii)(c) had required the separate column entitled "Other Annual Compensation."

[200] See Section II.C.1.e.i. regarding separate standards for identification of perquisites and other personal benefits.

[201] See, *e.g.*, letters from Association of BellTel Retirees ("ABTR"); AFL–CIO; Amalgamated; Association of US West Retirees ("AUSWR"); Corporate Library; ISS; UCF; and Walden.

[202] See *e.g.*, letters from Buck Consultants; Chamber of Commerce; Compass Bancshares; Computer Sciences; Eli Lilly; Emerson; Hodak Value Advisors; C. Kollar; NAM; and SCSGP.

[203] The requirement had been set forth in Instruction 1 to Item 402(b)(2)(iii)(C) prior to these amendments.

[204] Instruction 4 to Item 402(c)(2)(ix).

[205] See letter from Chamber of Commerce.

[206] See, *e.g.*, letter from SCSGP.

[207] For directors, the disclosure will be required in the Director Compensation Table discussed below in Section II.C.9.

[208] Item 402(j), discussed in Section II.C.5.c. below.

compensation disclosure is required. Moreover, if an item is integrally and directly related to the performance of an executive's duties under this analysis, there is no requirement to disclose any incremental cost over a less expensive alternative. For example, with respect to business travel, it is not necessary to disclose the cost differential between renting a mid-sized car over a compact car.

Because of the integral and direct connection to job performance, the elements of the second part of the analysis (*e.g.*, whether there is also a personal benefit or whether the item is generally available to other employees) are irrelevant. An example of such an item could be a "Blackberry" or a laptop computer if the company believes it is an integral part of the executive's duties to be accessible by e-mail to the executive's colleagues and clients when out of the office. Just as these devices represent advances over earlier technology (such as voicemail), we expect that as new technology facilitates the extent to which work is conducted outside the office, additional devices may be developed that will fall into this category.

The concept of a benefit that is "integrally and directly related" to job performance is a narrow one. The analysis draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit. Some commenters objected that "integrally and directly related" is too narrow a standard, suggesting that other business reasons for providing an item should not be disregarded in determining whether an item is a perquisite.[209] We do not adopt this suggested approach. As we stated in the Proposing Release, the fact that the company has determined that an expense is an "ordinary" or "necessary" business expense for tax or other purposes or that an expense is for the benefit or convenience of the company is not responsive to the inquiry as to whether the expense provides a perquisite or other personal benefit for disclosure purposes. Whether the company should pay for an expense or it is deductible for tax purposes relates principally to questions of state law regarding use of corporate assets and of tax law; our disclosure requirements are triggered by different and broader concepts.

As we noted in the Proposing Release, business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job. Therefore, for example, a company's decision to provide an item of personal benefit for security purposes does not affect its characterization as a perquisite or personal benefit. A company policy that for security purposes an executive (or an executive and his or her family) must use company aircraft or other company means of travel for personal travel, or must use company or company-provided property for vacations, does not affect the conclusion that the item provided is a perquisite or personal benefit.

If an item is not integrally and directly related to the performance of the executive's duties, the second step of the analysis comes into play. Does the item confer a direct or indirect benefit that has a personal aspect (without regard to whether it may be provided for some business reason or for the convenience of the company)? If so, is it generally available on a non-discriminatory basis to all employees? For example, a company's provision of helicopter service for an executive to commute to work from home is not integrally and directly related to job performance (although it would benefit the company by getting the executive to work faster), clearly bestows a benefit that has a personal aspect, and is not generally available to all employees on a non-discriminatory basis. As we have noted, business purpose or convenience does not affect the characterization of an item as a perquisite or personal benefit where it is not integrally and directly related to the performance by the executive of his or her job.

A company may reasonably conclude that an item is generally available to all employees on a non-discriminatory basis if it is available to those employees to whom it lawfully may be provided. For this purpose, a company may recognize jurisdictionally based legal restrictions (such as for foreign employees) or the employees' "accredited investor"[210] status. In contrast, merely providing a benefit consistent with its availability to employees in the same job category or at the same pay scale does not establish that it is generally available on a non-discriminatory basis to all employees.

Applying the concepts that we outline above, examples of items requiring disclosure as perquisites or personal benefits under Item 402 include, but are not limited to: club memberships not used exclusively for business entertainment purposes, personal financial or tax advice, personal travel using vehicles owned or leased by the company, personal travel otherwise financed by the company, personal use of other property owned or leased by the company, housing and other living expenses (including but not limited to relocation assistance and payments for the executive or director to stay at his or her personal residence), security provided at a personal residence or during personal travel, commuting expenses (whether or not for the company's convenience or benefit), and discounts on the company's products or services not generally available to employees on a non-discriminatory basis.

Beyond the examples provided, we assume that companies and their advisors, who are more familiar with the detailed facts of a particular situation and who are responsible for providing materially accurate and complete disclosure satisfying our requirements, can apply the two-step analysis to assess whether particular arrangements require disclosure as perquisites or personal benefits. In light of the importance of the subject to many investors, all participants should approach the subject of perquisites and personal benefits thoughtfully.[211]

The amendments we adopt today, as proposed, call for aggregate incremental cost to the company as the proper measure of value of perquisites and other personal benefits.[212] Some commenters instead recommended valuing perquisites based on current market values.[213] Consistent with our

[209] See, *e.g.*, letters from NACCO Industries, Inc. ("NACCO Industries") and NAM.

[210] "Accredited investor" is defined in Securities Act Rule 501(a)[17 CFR 230.501(a)] for purposes of Regulation D [17 CFR 230.501–508].

[211] The Commission has taken action in circumstances where perquisites were not properly disclosed. See *SEC* v. *Greg A. Gadel and Daniel J. Skrypek*, Litigation Release No. 19720 (June 7, 2006) and *In the Matter of Tyson Foods, Inc. and Donald Tyson*, Litigation Release No. 19208 (Apr. 28, 2005).

[212] Instruction 4 to Item 402(c)(2)(is).

[213] See *e.g.*, letters from ABTR; AUSWR; CH; Computer Sciences; Pearl Meyer & Partners; and Institutional Investors Group. As we stated in the Proposing Release, the amount attributed to perquisites and other personal benefits for federal income tax purposes is not the incremental cost for purposes of our disclosure rules unless, independently of the tax characterization, it constitutes such incremental cost. Therefore, for example, the cost of aircraft travel attributed to an executive for federal income tax purposes is not generally the incremental cost of such a perquisite or personal benefit for purposes of our disclosure rules. See IRS Regulation § 1.61–21(g) [26 CFR

Continued

approach of disclosing a company's compensation costs, we remain of the view that perquisites should be valued based on aggregate incremental cost.

Finally, commenters observed that investors cannot fully understand disclosed perquisite amounts without disclosure of the methodology used to compute them.[214] We agree that this disclosure will improve investors' ability to compare the cost of perquisites from company to company. The rule as adopted requires footnote disclosure of the methodology for computing the aggregate incremental cost for the perquisites.[215]

ii. Additional All Other Compensation Column Items

We are adopting as proposed a requirement that items to be disclosed in the All Other Compensation column include, but are not limited to, the following items:[216]

- Amounts paid or accrued pursuant to a plan or arrangement in connection with any termination (or constructive termination) of employment or a change in control;[217]
- Annual company contributions or other allocations to vested and unvested defined contribution plans;[218]
- The dollar value of any insurance premiums paid by the company with respect to life insurance for the benefit of a named executive officer;[219]
- "Gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;[220] and
- For any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of salary or bonus) at a discount from the market price of such security at the date of purchase, unless that discount is available generally either to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R.[221]

An additional requirement to include the dollar value of any dividends or other earnings paid on stock or option awards when the dividends or earnings were not factored into the grant date fair value has been adopted for this column as discussed above.[222]

In response to commenters' concerns about double counting pension benefits,[223] we have not retained the aspect of proposed Instruction 2 to this column that would have required disclosure of pension benefits paid to the named executive officer during the period covered by the table.[224] As adopted, an instruction provides that benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation unless accelerated pursuant to a change in control.[225] Similarly, distributions of nonqualified deferred compensation are not reportable as All Other Compensation.

f. Captions and Table Layout

Before today's amendments, a portion of the table was labeled as "annual compensation" and another portion as "long term compensation." These captions created distinctions that may have been confusing to both users and preparers of the Summary Compensation Table. As proposed, the amendments we adopt today do not separately identify some columns as "annual" and other columns as "long term" compensation. Consistent with this change, as described above, we are merging the current Other Annual Compensation column into the new All Other Compensation column, and include current earnings information regarding non-equity incentive plan compensation in the column for that form of award.

In eliminating this distinction, we also revise the former definition of "long term incentive plan" to eliminate any distinction between a "long term" plan and one that may provide for periods shorter than one year. Like the captions, the former approach created distinctions that may have been confusing to users and preparers. As proposed and adopted, the amendments define an "incentive plan" as any plan providing compensation intended to serve as incentive for performance to occur over a specified period.[226] The related definition of "incentive plan award" as an award provided under an incentive plan is also adopted as proposed.[227]

Noting that companies formerly reported as "bonuses" awards that would be short-term incentive plan awards under this definition, commenters requested guidance as to what distinguishes items reportable as non-equity incentive plan compensation from those reportable as bonuses under the amended rules.[228] An award would be considered "intended to serve as an incentive for performance to occur over a specified period" if the outcome with respect to the relevant performance target is substantially uncertain at the time the performance target is established and the target is communicated to the executive. Compensation pursuant to such a non-equity award would be reported in the Summary Compensation Table as non-equity incentive plan compensation and the grant of the award would be reported as a non-equity incentive plan award in the Grants of Plan-Based Awards Table.[229] In contrast, a cash

---

1.61–21(g)] regarding Internal Revenue Service guidelines for imputing taxable personal income to an employee who travels for personal reasons on corporate aircraft. These complex regulations are known as the Standard Industry Fare Level or SIFL rules.

[214] See, *e.g.*, letter from Mercer.

[215] Instruction 4 to Item 402(c)(2)(ix).

[216] All of these items were required to be disclosed either under All Other Compensation or under Other Annual Compensation prior to these amendments.

[217] Unlike the text of Item 402(b)(2)(v)(A) prior to these amendments, Item 402(c)(2)(ix)(D) as amended does not refer to amounts payable under post-employment benefits. Instruction 5 to Item 402(c)(2)(ix) provides that an accrued amount is an amount for which payment has become due, such as a severance payment currently owed by the company to an executive officer. These items, as well as amounts that are payable in the future, are also the subject of disclosure as post-termination compenstaion, as described in Section II.C.5.c. below. For any compensation as a result of a business combination, other than pursuant-to a plan or arrangement in connection with any termination of employment or change-in-control, such as a retention bonus, acceleration of option or stock vesting period, or performance-based compensation intended to serve as an incentive for named executive officers to acquire other companies or enter into a merger agreement, disclosure will now be requlired in the appropriate Summary Compensation Table column and in the other tables or narrative disclosure where the particular element of compensation is required to be disclosed.

[218] Item 402(c)(2)(ix)(E).

[219] Item 402(c)(2)(ix)(F). Because the amendments call for disclosure of the dollar value of any life insurance premiums, rather than only premiums with respect to term life insurance (as was required prior to these amendments), the requirement that had been previously specified in Item 402(b)(2)(v)(E)(*1*) and (*2*) to disclose the value of any remaining premiums with respect to circumstances where the named executive officer has an interest in the policy's cash surrender value is not retained in the amended rule.

[220] Item 402(c)(2)(ix)(B).

[221] Item 402(c)(2)(ix)(C). This requirement as adopted has been revised from the proposal to clarify that no amount of compensation is required to be disclosed if there is no compensation cost computed for the discounted securities purchase in accordance with FAS 123R. For example, under FAS 123R, if the discount is five percent or less, all qualified employees can participate in the offer and there are no option features, then there is no compensation cost to recognize for financial reporting purposes and thus no compensation is reported for this item in the All Other Compensation column.

[222] Item 402(c)(2)(ix)(G).

[223] See, *e.g.*, letter from Cravath.

[224] We have moved this disclosure requirement to the Pension Benefits Table, described in Section II.C.5.a. below.

[225] Instruction 2 to Item 402(c)(2)(ix).

[226] Item 402(a)(6)(iii).

[227] *Id.*

[228] See, *e.g.*, letters from Hewitt; Mercer; NACCO Industries; and SCSGP.

[229] This table is described in Section II.C.2. immediately below. Further, no longer reporting compensation pursuant to these awards as "bonus" in the Summary Compensation Table does not affect the determination of named executive officers because, as described in Section II.C.6.b. below, that

award based on satisfaction of a performance target that was not pre-established and communicated, or the outcome of which is not substantially uncertain, would be reportable in the Summary Compensation Table as a bonus.

2. Supplemental Grants of Plan-Based Awards Table

Following the Summary Compensation Table, we proposed two supplemental tables to explain information in the Summary Compensation Table. The proposed tables were derived from two tables required under the rules prior to these amendments.

The first table we proposed to supplement the Summary Compensation Table would have included information regarding non-stock grants of incentive plan awards, stock-based incentive plan awards and awards of options, restricted stock and similar instruments under plans that are performance-based (and thus provide the opportunity for future compensation if conditions are satisfied).[230] The second table we proposed to supplement the Summary Compensation Table would have shown the equity-based compensation awards granted in the last fiscal year that are not performance-based, such as stock, options or similar instruments where the payout or future value is tied to the company's stock price, and not to other performance criteria.[231]

Because much of the information for each proposed table is consistent, we have followed the recommendation of a commenter to simplify the disclosure format by combining the proposed disclosure in a single table.[232]

GRANTS OF PLAN-BASED AWARDS

Name	Grant date	Estimated future payouts under non-equity incentive plan awards			Estimated future payouts under equity incentive plan awards			All other stock awards: Number of shares of stock or units (#)	All other option awards: Number of securities underlying options (#)	Exercise or base price of option awards ($/Sh)
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

Disclosure in this table complements Summary Compensation Table disclosure of grant date fair value of stock awards and option awards by disclosing the number of shares of stock or units comprising or underlying the award. This supplemental table shows the terms of grants made during the current year, including estimated future payouts for both equity incentive plans and non-equity incentive plans, with separate disclosure for each grant.[233]

To simplify the presentation further, we have eliminated some of the proposed columns. Because the narrative section identifies the material terms of an award reported in this table as an example of a material factor to be described,[234] and thus will cover the same information, we have eliminated the proposed columns reporting vesting date, or performance or other period until vesting or payout. As a commenter noted, vesting information typically cannot be reported easily in a single line in a table.[235] Similarly, because the modifications we are making to the Outstanding Equity Awards at Fiscal Year-End Table require that table to report the expiration dates of options and similar awards,[236] we are eliminating the proposed expiration date column. Finally, the proposed column reporting the dollar amount of consideration paid for the award, if any, is not adopted, reflecting comments that this column would be used only rarely.[237] Instead, in those rare instances where consideration is paid for an award, this disclosure will be provided in a footnote to the appropriate column.[238]

As proposed, the Grants of All Other Equity Awards Table would have permitted aggregation of option grants with the same exercise or base price. We have not adopted such an instruction for this table, based on our belief that grant-by-grant disclosure is the most appropriate approach, particularly given our particular disclosure concerns regarding option grants. For incentive plan awards, threshold, target and maximum payout information should be provided, but if the award provides only for a single estimated payout, that amount should be reported as the target.[239] Where there is a tandem grant of two instruments, only one of which is granted under an incentive plan, only

determination is not limited to consideration of salary and bonus.

[230] Proposed Item 402(d).

[231] Proposed Item 402(e), containing much of the information that was required prior to these amendments by the Option/SAR Grants Table (formerly specified in Item 402(c)).

[232] See letter from Hewitt.

[233] Instruction 1 to Item 402(d).

[234] Item 402(c)(1)(iii), described in Section II.C.3.a. immediately below.

[235] See letter from ABA.

[236] See Section II.C.4.a. below.

[237] Proposed Item 402(d)(2)(v). See, e.g., letters from Frederic W. Cook & Co. and SCSGP.

[238] Instruction 5 to Item 402(d).

[239] Instruction 2 to Item 402(d).

the instrument that is not granted under an incentive plan is reported in the table, with the tandem feature noted.[240] Because the rules as adopted require Summary Compensation Table disclosure of the incremental fair value, computed in accordance with FAS 123R, of options, stock appreciation rights and similar option-like instruments granted in connection with a repricing transaction, rather than the total fair value as we had proposed, grants of these instruments are not reported in this table.[241] Disclosure should be provided in the Compensation Discussion and Analysis and the narrative disclosures for the Summary Compensation Table and Grants of Plan-Based Awards, as appropriate, regarding awards granted in connection with repricing transactions.

As proposed and adopted, if the per-share exercise or base price of options, stock appreciation rights and similar option-like instruments is less than the market price of the underlying security on the grant date, a separate column must be added showing market price on the grant date.[242] Some commenters objected to our proposal to calculate grant date market price for this purpose using the closing price per share of the underlying security on that date. These commenters stated that plans requiring awards to be granted with an exercise price equal to the underlying security's grant date fair market value may define "fair market value" based on a formula related to the average market price on the grant date or a range of days either before or after the grant date.[243] Our proposed departure from the rule prior to these amendments, which permitted use of such formulas even for securities traded on an established market,[244] was considered, and along with the requirement to disclose the grant date, reflects the significance of issues in awards of option grants.[245] Moreover, commenters expressed concern regarding the manipulation of option grant dates to achieve below-market exercise prices.[246] The rule as adopted uses the measure for grant date market price of the underlying security that we proposed, modified to specify that the grant date closing market price per share is the last sale price on the principal United States market for the security on the specified date.[247] Moreover, if the exercise or base price is not the grant date closing market price per share, we require a description of the methodology for determining the exercise or base price either by footnote to the table or in the accompanying narrative section.[248] Further reflecting the significance of grant date issues in awards of option grants and in response to comments,[249] we are also providing that if the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant equity-based awards is different from the date of grant, a column must be added to disclose the date of action.[250] For these purposes, the "date of grant" or "grant date" is the grant date determined for financial statement reporting purposes pursuant to FAS 123R.[251] Finally, in combining the proposed tables, we have adopted an instruction specifying that if a non-equity incentive plan award is denominated in units or other rights, then a separate, adjoining column would be required to disclose the units or other rights awarded.[252]

3. Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

a. Narrative Description of Additional Material Factors

As we proposed, we are requiring narrative disclosure following the Summary Compensation Table and the Grants of Plan-Based Awards Table in order to give context to the tabular disclosure. A company will be required to provide a narrative description of any additional material factors necessary to an understanding of the information disclosed in the tables.[253] Unlike the Compensation Discussion and Analysis, which focuses on broader topics regarding the objectives and implementation of executive compensation policies, the narrative disclosures following the Summary Compensation Table and other tables focus on and provide specific context to the quantitative disclosure in the tables. For example, narrative disclosure following a table might explain material aspects of a plan that are not evident from the quantitative tabular disclosure and are not addressed in the Compensation Discussion and Analysis.

The material factors that require disclosure will vary depending on the facts and circumstances. As one example, such material factors might include descriptions of the material terms in the named executive officers' employment agreements as those descriptions might provide material information necessary to an understanding of the tabular disclosure. The narrative disclosure covers written or unwritten agreements or arrangements.[254] Requiring this disclosure in proximity to the Summary Compensation Table is intended to make the tabular disclosure more meaningful. Mere filing of employment agreements (or summaries of oral agreements) may not be adequate to disclose material factors depending on the circumstances. As stated in the Proposing Release, provisions regarding post-termination compensation need to be addressed in the narrative section only to the extent disclosure of such compensation is required in the Summary Compensation Table; otherwise these provisions will be disclosable as post-termination compensation.[255]

The factors that could be material include each repricing or other material modification of any outstanding option or other equity-based award during the last fiscal year. This disclosure addresses not only option repricings, but also other significant changes to the terms of equity-based awards.[256] As proposed, we are eliminating the former ten-year option repricing table.[257] In its place, the narrative disclosure following the Summary Compensation Table will describe, to the extent material and necessary to an understanding of the tabular disclosure, repricing, extension of exercise periods, change of vesting or forfeiture conditions, change or

[240] Instruction 4 to Item 402(d).

[241] See discussion at Section II.C.1.c.i. above.

[242] Item 402(d)(2)(vii).

[243] See, *e.g.*, letters from Cravath; Eli Lilly; and Sidley Austin LLP ("Sidley Austin").

[244] This requirement had been set forth in Instruction 6 to Item 402(c) prior to today's amendments.

[245] See the discussion of options disclosure in Section II.A., above.

[246] See, *e.g.*, letter from CFA Centre for Financial Market Integrity, dated May 30, 2006 ("CFA Centre 2").

[247] Because the concept of closing market price is used in a number of provisions of Item 402, we are adopting a definition of the term closing market price in Item 402(a)(6)(v). A foreign company complying with this requirement may instead look to the principal foreign market in which the underlying securities trade.

[248] Instruction 3 to Item 402(d).

[249] See, *e.g.*, letter from CFA Centre 2.

[250] Item 402(d)(2)(ii).

[251] Item 402(a)(6)(iv).

[252] Instruction 6 to Item 402(d).

[253] Item 402(e)(1). The standard of materiality that applies in Item 402(e) is that of *Basic* v. *Levinson*, 485 U.S. 224 (1988) and *TSC Industries* v. *Northway*, 426 U.S. 438 (1976).

[254] Item 402(e)(1)(i).

[255] Item 402(j), described in Section II.C.5.c.

[256] Item 402(e)(1)(ii).

[257] The ten-year option repricing table had been required by Item 402(i) prior to its elimination with these amendments. We believe that the narrative disclosure requirement will provide investors with material information regarding repricings and modifications and eliminate the arguably dated information contained in the former ten-year option repricing table.

elimination of applicable performance criteria, change of the bases upon which returns are determined, or any other material modification.[258]

Narrative text accompanying the tables will also describe, to the extent material and necessary to an understanding of the tabular disclosure, award terms relating to disclosure provided in the Grants of Plan-Based Awards Table. This could include, for example, a general description of the formula or criteria to be applied in determining the amounts payable, the vesting schedule, a description of the performance-based conditions and any other material conditions applicable to the award, whether dividends or other amounts would be paid, the applicable rate and whether that rate is preferential.[259] As noted above and consistent with current disclosure requirements, however, companies will not be required to disclose any factor, criteria, or performance-related or other condition to payout or vesting of a particular award that involves confidential trade secrets or confidential commercial or financial information, disclosure of which would result in competitive harm to the company.[260]

We proposed that this example also include material assumptions underlying the determination of the amount of increase in the actuarial value of defined benefit and actuarial plans. However, in light of the modifications we are adopting, we have concluded that the better place to discuss these assumptions is in the narrative section accompanying the Pension Benefits Table.[261]

Further, in response to commenters' concerns regarding the computation of total compensation and the expanded basis for determining the most highly compensated officers,[262] we specify as an additional example an explanation of the level of salary and bonus in proportion to total compensation.[263]

b. Request for Additional Comment on Compensation Disclosure for up to Three Additional Employees

As part of this narrative disclosure requirement, we had proposed an additional item that would have required disclosure for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers.[264] We received extensive comment on this proposal. Some commenters supported the proposal or suggested that it should go further.[265] Many commenters expressed concern that the benefits of this disclosure to investors would be negligible, yet compliance might require the outlay of considerable company resources.[266] Some commenters expressed concern that the proposed disclosure would raise privacy issues or negatively impact competition for employees.[267] While we continue to consider whether to adopt such a requirement as part of the executive compensation disclosure rules, in Release No. 33–8735 we are requesting additional comment as to whether potential modifications would address the concerns that commenters have raised.

We note in particular that some commenters questioned the materiality of the information that would have been required by the proposal, given that the covered employees would not be in policy-making positions as executive officers.[268] After considering the issues raised by these commenters, we remain concerned about disclosure with respect to employees, particularly within very large companies, whether or not they are executive officers, whose total compensation for the last completed fiscal year was greater than that of one or more of the named executive officers. If any of these employees exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division, or function of the company, then investors seeking a fuller understanding of a company's compensation program may believe that disclosure of these employees' total compensation is important information.[269] Knowing the compensation, and job positions within the organization, of these highly compensated policy-makers whose total compensation for the last fiscal year was greater than that of a named executive officer, should assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors.

Our intention is to provide investors with information regarding the most highly compensated employees who exert significant policy influence by having responsibility for significant policy decisions. Responsibility for significant policy decisions could consist of, for example, the exercise of strategic, technical, editorial, creative, managerial, or similar responsibilities. Examples of employees who might not be executive officers but who might have responsibility for significant policy decisions could include the director of the news division of a major network; the principal creative leader of the entertainment function of a media conglomerate; or the head of a principal business unit developing a significant technological innovation. By contrast, we are convinced by commenters that a

[258] As described in Section II.C.1.c.i. above, the tabular disclosure will report the incremental fair value of the modification for financial reporting purposes. However, narrative disclosure will not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or stock appreciation right exercise or base price, an antidilution provision, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or stock appreciation rights. Instruction 1 to Item 402(e).

[259] Item 402(e)(1)(iii), which combines some information that had been required by Instruction 2 to Item 402(b)(2)(iv) with information that had been required by Instruction 1 to Item 402(e) as they were stated in the rule before these amendments.

[260] We have adopted Instruction 2 to Item 402(e)(1), which specifically applies to the narrative disclosure of Item 402(e)(1) the same standard applicable to Compensation Discussion and Analysis for determining whether disclosure would result in competitive harm for the company. See Section II.B.2., above, for a discussion of this standard.

[261] See Section II.C.5.a. below.

[262] See Section II.C.1.a. above and Section II.C.6.b. below.

[263] Item 402(e)(1)(iv).

[264] Proposed Item 402(f)(2).

[265] See, *e.g.*, letters from Corporate Library; The Greenlining Institute; Institutional Investor Group; and SBAF.

[266] See, *e.g.*, letters from ABA; Chamber of Commerce; Eli Lilly; Leggett & Platt; N. Ludgus; and Mercer.

[267] See, *e.g.*, letters from ABA-JCEB; BRT; jointly, CBS Corporation, The Walt Disney Company, NBC Universal, News Corporation, and Viacom, Inc. ("Entertainment Industry Group"); Committee on Corporate Finance of Financial Executives International ("FEI"); Chamber of Commerce; Cleary; CNET Networks, Inc. ("CNET Networks"); Compass Bancshares; Compensia; Cravath; DreamWorks Animation SKG ("DreamWorks"); Eli Lilly; Emerson; Fenwick; The Financial Services Roundtable ("FSR"); Professor Joseph A. Grundfest, dated April 10, 2006 ("Grundfest"); ICI; Intel Corporation ("Intel"); Kellogg Company ("Kellogg"); Kennedy & Baris, LLP ("Kennedy"); Mercer; Peabody Energy; Pearl Meyer & Partners; Securities Industry Association ("SIA"); Sullivan; SCSGP; and WorldatWork.

[268] See, *e.g.*, letters from CalSTRS; Cleary; CNET Networks; Compass Bancshares; DreamWorks; Entertainment Industry Group; Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"); FSR; Hewitt; ICI; Intel; Kellogg; Kennedy; Leggett & Platt; Peabody Energy; Pearl Meyer & Partners; SCSGP; SIA; Stradling Yocca Carlson & Rauth ("Stradling Yocca"); Top Five Data Services, Inc. ("Top Five Data"); Towers Perrin; and Walden.

[269] The Commission expressed similar concerns in 1978, when it stated "a key employee or director of a subsidiary might be the highest-paid person in the entire corporate structure and have managerial responsibility for major aspects of the registrant's overall operations." 1978 Release. See n. 327 for a discussion of the term "executive officer." In light of some of the comments that we received, we have clarified that the definition of "executive officer" includes all individuals in a registrant policy-making role. See, *e.g.*, letters from SCSGP and Cravath.

salesperson, entertainment personality, actor, singer, or professional athlete who is highly compensated but who does not have responsibility for significant policy decisions would not be the type of employee about whom we would seek disclosure. Nor, as a general matter, would investment professionals (such as a trader, or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or other clients) be deemed to have responsibility for significant policy decisions at the company, at a significant subsidiary or at a principal business unit, division or function simply as a result of performing the duties associated with those positions. On the other hand, an investment professional, such as a trader or portfolio manager, who does have broader duties within a firm (such as, for example, oversight of all equity funds for an investment adviser) may be considered to have responsibility for significant policy decisions.

We continue to consider whether it is appropriate to require some level of narrative disclosure so that shareholders will have information about these most highly compensated employees. This consideration includes the appropriate level of information about these employees and their compensation in light of their roles.

As to issues regarding privacy and competition for employees, to the extent that commenters objected that the disclosure could result in a competitor stealing a company's top "talent," [270] we have tried to address these concerns by focusing the disclosure on persons who exert significant policy influence within the company or significant parts of the company.

Request for Comment

We request additional comment on the proposal to require compensation disclosure for up to three additional employees. In addition to general comment, we encourage commenters to address the following specific questions:

- Would the rule more appropriately require disclosure of the employees described above if it were structured in the following or similar manner:

For each of the company's three most highly compensated employees, whether or not they were executive officers during the last completed fiscal year, whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers, disclose each such employee's total compensation for that year and describe the employee's job position, without naming the employee; *provided, however,* that employees with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company are not included when determining who are each of the three most highly compensated employees for the purposes of this requirement, and therefore no disclosure is required under this requirement for any employee with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company?

- Would it be appropriate to determine the highest paid employees in the same manner that named executive officers are determined, by calculating total compensation but excluding pension plan benefits and above-market or preferential earnings on nonqualified deferred compensation plans, and by comparing that amount to the same amount earned by the named executive officers (excluding the amount required to be disclosed for those named executive officers pursuant to paragraph (c)(2)(viii) of Item 402)? If so, should the total amount disclosed include these amounts as it does for named executive officers? Should the pension benefit and above-market earnings be separately disclosed in a footnote so investors can calculate the amounts used in determining highest paid employees?
- Would modifying the proposed rule to apply only to large accelerated filers [271] properly focus this disclosure obligation on companies that are more likely to have these additional highly compensated employees? Would that modification address concerns that the proposed rule would impose disproportionate compliance burdens by limiting the disclosure obligation to companies that are presumptively better able to track the covered employees? Would a different limitation as to applicability be appropriate?
- Is information regarding highly compensated employees, including those who are not executive officers, material to investors? In answering this question, commenters are encouraged to address the following additional questions:
  - Would modifications limiting the disclosure to employees who make significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company appropriately focus the disclosure on employees for whom compensation information is material to investors?
  - Would the approach that we are considering provide investors with material information about how policy-making responsibilities are allocated within a company? Are the examples describing responsibility for significant policy decisions too broad or too narrow?
  - Would the proposed rule, with the modifications described above, provide investors with material information necessary to understand the company's compensation policies and structure? How should we address those concerns?
  - What is typically the role of the compensation committee in determining or approving the compensation of the additional employees if they are not executive officers? If the compensation committee does not oversee their compensation, is the additional employee compensation information material to investors? What types of decisions would investors make based on this information?
- Would the proposed rule, with the modifications described above, raise privacy issues or negatively impact competition for employees in a manner that would outweigh the materiality of the disclosure to investors?
- Should we require that the three additional employees be named? If not, what additional information should be required? Should more information be required regarding the employee's compensation or job position?
- Should we define "responsibility for significant policy decisions"? Should we use another test to describe those employees who exert a significant policy influence on the company? Do the examples provided above help identify and delimit the number of employees whose compensation would be subject to disclosure under this provision? What would help companies identify these employees?
- What additional work and costs are involved in collecting the information necessary to identify the three additional employees? What are the types of costs, and in what amounts? In what way can the proposal be further modified to mitigate the costs?

[270] See, *e.g.*, letter from Entertainment Industry Group. In addition, we note our intention is not to suggest that these additional employees, whether or not they are executive officers, are individuals whose compensation is required to be reported under the Exchange Act "by reason of such employee being among the 4 highest compensated officers for the taxable year," as stated in Internal Revenue Code Section 162(m)(3)(B) [26 U.S.C. 162(m)(3)(B)]. See letter from Cleary (expressing concern that the additional individuals not fall within the purview of Section 162(m) of the Internal Revenue Code).

[271] The term large accelerated filer is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

• In connection with the original proposal, we solicited comment on all aspects of the proposal, including this one. No commenter supplied cost estimates. We are now considering whether to limit this provision to only large accelerated filers. For some large accelerated filers, the number of employees potentially subject to this requirement may already be known or easy to identify. Other, more complex companies may need to establish systems to identify such employees. Every large accelerated filer would need to evaluate whether any employees exerted significant policy influence at the company, at a significant subsidiary or at a principal business unit, division or function and would have to track their compensation in order to comply with the proposed requirement. These monitoring costs may be new to some companies. We believe the cost of actually disclosing the compensation would be incremental and minimal. The monitoring and information collection costs are likely to be greatest in the first year and significantly less in later years. We also assume that costs would largely be borne internally, although some companies may seek the advice of outside counsel in determining which employees meet the standard for disclosure. In that event, for purposes of seeking comment, we estimate that 1,700 [272] companies will on average retain outside counsel for 8 hours in the first year and 2 hours in each of two succeeding years, at $400 per hour, for a total estimated average annual cost of approximately $3 million. Assuming all large accelerated filers spend 60 hours in the first year and 10 hours in each of the two succeeding years, with an average internal cost of $175 per hour, the total average annual burden of collecting and monitoring employee compensation would be approximately 45,000 hours, or approximately $8 million. The total average annual cost is therefore estimated to be $11 million. We invite comment on this estimate and its assumptions.

4. Exercises and Holdings of Previously Awarded Equity

The next section of the revised executive compensation disclosure provides investors with an understanding of the compensation in the form of equity that has previously been awarded and remains outstanding, and is unexercised or unvested. As proposed, this section also discloses amounts realized on this type of compensation during the most recent fiscal year when, for example, a named executive officer exercises an option or his or her stock award vests. We are adopting substantially as proposed two tables: one table shows the amounts of awards outstanding at fiscal year-end, and the other shows the exercise or vesting of equity awards during the fiscal year.[273] In response to comment, we are requiring additional information regarding out-of-the-money awards.

a. Outstanding Equity Awards at Fiscal Year-End Table

As we noted in the Proposing Release, outstanding awards that have been granted but the ultimate outcomes of which have not yet been realized in effect represent potential amounts that the named executive officer might or might not realize, depending on the outcome for the measure or measures (for example, stock price or performance benchmarks) to which the award relates. We are adopting a table that will disclose information regarding outstanding awards, for example, under stock option (or stock appreciation rights) plans, restricted stock plans, incentive plans and similar plans and disclose the market-based values of the rights, shares or units in question as of the company's most recent fiscal year end.[274]

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option awards					Stock awards			
Name	Number of securities underlying unexercised options (#) Exercisable	Number of securities underlying unexercised options (#) Unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested ($)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									

[272] We estimate there are approximately 1,700 companies that are large accelerated filers. See *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Reporting Periodic Reports*, Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626], at Section V.A.2.

[273] Some of this information had been required in the Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Value Table, which was required under Item 402(d) prior to adoption of these amendments.

[274] Item 402(f). Under the rules prior to today's amendments, such disclosure was provided only for holdings of outstanding stock options and stock appreciation rights.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END—Continued

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) Exercisable	Number of securities underlying unexercised options (#) Unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested ($)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
B									
C									

As proposed, the table included a column reporting aggregate dollar amounts of in-the-money unexercised options.[275] Some commenters believed that this table should not include information on out-of-the-money options because they believed that these awards have no value to executives at the point they are out-of-the-money.[276] Several other commenters recommended disclosure of the number and key terms of out-of-the-money instruments, so investors can understand the potential compensation opportunity of these awards if the market price of the underlying shares increases.[277] We proposed to require expiration date information in footnote disclosure. We note that some commenters expressed concern that disclosure of expiration and vesting dates of the instruments would be lengthy.[278] However, because we agree with other commenters that information regarding out-of-the-money options is material to investors, we have revised the columns applicable to unexercised options, stock appreciation rights and similar instruments with option-like features to require disclosure of:

- The number of securities underlying unexercised instruments that are exercisable;
- The number of securities underlying unexercised instruments that are unexercisable;
- The exercise or base price; and
- The expiration date.

After evaluating the comments received, we believe disclosure of individual exercise prices and expiration dates is required to provide a full understanding of the potential compensation opportunity. In particular, with respect to out-of-the-money awards, this allows investors to see the amount the stock price must rise and the amount of time remaining for it to happen. Consequently, this disclosure is required for each instrument, rather than on the aggregate basis that was proposed.[279]

As suggested by another commenter, we also modify the table to clarify that these columns apply to options and similar awards that have been transferred other than for value.[280] The proposal reflected interpretations of the former rule that the transfer of an option or similar award by an executive does not negate the award's status as compensation that should be reported.[281] Because an award that a named executive officer transferred for value is not an award for which the outcome remains to be realized, the rules adopted today instead require disclosure in the Option Exercises and Stock Vested Table of the amounts realized upon transfer for value.[282]

In view of our approach in the Grants of Plan-Based Awards Table as adopted and the purposes of this table in showing all outstanding equity awards, we are adopting a column (column (d)) for reporting the number of securities underlying unexercised options awarded under equity incentive plans.[283] We have also revised the format of the table to more clearly delineate between the information regarding option awards and the information regarding stock awards.

The remaining disclosure, relating to numbers and market values of nonvested stock and equity incentive plan awards, is adopted on an aggregate basis, substantially as proposed. One commenter expressed the view that the table should not include unearned performance-based awards because it would be difficult to disclose a meaningful value before the performance conditions are satisfied.[284] Another commenter requested clarification of valuation of awards that are performance-based and nonvested, specifically whether value should be based on actual performance to date or

[275] Proposed Item 402(g)(2)(iii).

[276] See, *e.g.*, letters from Frederic W. Cook & Co.; N. Ludgus; and SCSGP.

[277] See, *e.g.*, letters from Amalgamated; Brian Foley & Company, Inc. ("Brian Foley & Co."); Buck Consultants; CII; Hodak Value Advisors; IUE–CWA; and SBAF.

[278] See, *e.g.*, letters from Leggett & Platt; SCSGP; and Sidley Austin.

[279] Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments must be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date. Instruction 4 to Item 402(f)(2). We have not adopted the proposed requirements to disclose whether an option that expired after fiscal year-end had been exercised, in response to comment that this would unnecessarily deviate from the standard of reporting last fiscal year information. See letter from ABA.

[280] Instruction 1 to Item 402(f)(2). See letter from ABA.

[281] See *Registration of Securities on Form S–8*, Release No. 33–7646 (Feb. 25, 1999) [64 FR 11103], at Section III.D.

[282] Item 402(g), described in Section II.C.4.b. immediately below.

[283] Item 402(f)(2)(iv).

[284] See letter from Sullivan.

on achieving target performance goals.[285] As adopted, an instruction provides that the number of shares reported in the appropriate columns for equity incentive plan awards (columns (d) and (i)) or the payout value reported in column (j) is based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.[286] We have also adopted an instruction clarifying that stock or options under equity incentive plans are reported in columns (d) or (i) and (j), as appropriate, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, if stock remains unvested or the option unexercised, the stock or options are reported in columns (b) or (c), or (g) and (h), as appropriate.[287]

b. Option Exercises and Stock Vested Table

We are adopting substantially as proposed a table that will show the amounts received upon exercise of options or similar instruments or the vesting of stock or similar instruments during the most recent fiscal year. This table will allow investors to have a picture of the amounts that a named executive officer realizes on equity compensation through its final stage.[288]

OPTION EXERCISES AND STOCK VESTED

Name	Option awards		Stock awards	
	Number of shares acquired on exercise (#)	Value realized on exercise ($)	Number of shares acquired on vesting (#)	Value realized on vesting ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

We proposed that this table include the grant date fair value of these instruments that would have been disclosed in the Summary Compensation Table for the year in which they were awarded. We proposed this column to eliminate the possible impact of double disclosure by showing amounts previously disclosed. We have adopted the table without the grant date fair value column in response to commenters' concerns that this column would confuse investors and increase the potential for double counting.[289] As described in the preceding section, in response to comment that transfers of awards for value also are realization events, amounts realized upon such transfers must be included in columns (c) and (e) of this table.[290] Finally, we have reformatted the columns to make the presentation of stock and option awards consistent with the presentation in other tables.

5. Post-Employment Compensation

As we proposed, we are making significant revisions to the disclosure requirements regarding post-employment compensation to provide a clearer picture of this potential future compensation. As we noted in the Proposing Release, executive retirement packages and other post-termination compensation may represent a significant commitment of corporate resources and a significant portion of overall compensation. First, we are replacing the former pension plan table, alternative plan disclosure and some of the other narrative descriptions with a table regarding defined benefit pension plans and enhanced narrative disclosure. We have revised the table from the table proposed. Second, we are adding a table and narrative disclosure that will disclose information regarding nonqualified defined contribution plans and other deferred compensation. We have adopted this table substantially as proposed. Finally, we are adopting revised requirements substantially as proposed regarding disclosure of compensation arrangements triggered upon termination and on changes in control.

a. Pension Benefits Table

We proposed significant revisions to the rules disclosing retirement benefits to require disclosure of the estimate of retirement benefits to be payable at normal retirement age and, if available, early retirement. Disclosure under the rules prior to today's amendments frequently did not provide investors

[285] See, *e.g.*, letter from Hewitt.

[286] Instruction 3 to Item 402(f).

[287] Instruction 5 to Item 402(f).

[288] This table is similar to a portion of the Aggregate Options/SAR Exercises in Last Fiscal Year and FY-End Options/SAR Values Table that was required prior to these amendments, except unlike that table it also includes the vesting of restricted stock and similar instruments. Commentators have noted a need for comparable disclosure of restricted stock vesting.

[289] See, *e.g.*, letters from Foley; SCSGP; and Stradling Yocca.

[290] Item 402(g)(2)(iii) and (v).

useful information regarding specific potential pension benefits relating to a particular named executive officer.[291] In particular, it may have been difficult to understand which amounts related to any particular named executive officer, obscuring the value of a significant component of compensation.

We therefore proposed a new table that would have required disclosure of the estimated retirement benefits payable at normal retirement age and, if available, early retirement, under defined benefit plans. Under the proposal, benefits would have been quantified based on the form of benefit currently elected by the named executive officer, such as joint and survivor annuity or single life annuity.

Some commenters objected that the proposed revisions would result in disclosure that would not be comparable and could be manipulated.[292] In particular, the calculation of benefits would depend on such factors as the form of benefit payment, the named executive officer's marital status, and the actuarial assumptions applied, which would vary from company to company and plan to plan. Explanations of the complicated methodologies involved could hinder transparency.

Some commenters suggested that the Commission prescribe standard assumptions for calculating annual benefits for disclosure purposes, such as a single life annuity and retirement at age 65, in order to facilitate comparability.[293] Other commenters suggested disclosure of the present value of the current accrued benefit computed as of the end of the company's last completed fiscal year,[294] achieving comparability by reporting the economic value of the benefit that the executive has accumulated through the plan.

Because the latter approach achieves comparability and transparency by disclosing a benefit that already has accrued, we view it as preferable to an approach that would "normalize" disclosure based on hypothetical annual benefit assumptions prescribed by the Commission that might bear no relationship to the assumptions that the company actually applies with respect to the plan. Furthermore, this approach will make clearer the relationship of this table to the Summary Compensation Table disclosure of increase in pension value. This approach will also lessen the burden on companies, since they are required to calculate the present value for the Summary Compensation Table. Accordingly, the table we adopt today requires disclosure of the actuarial present value of the named executive officer's accumulated benefit under the plan and the number of years of service credited to the named executive officer under the plan reported in the table, each computed as of the same pension plan measurement date for financial statement reporting purposes with respect to the audited financial statements for the company's last completed fiscal year.[295] This disclosure applies without regard to the particular form(s) of benefit payment available under the plan.

Whether or not the plan allows for a lump-sum payment, presentation of the present value of the accrued plan benefit provides investors an understanding of the cost of promised future benefits in present value terms.[296] Companies must use the same assumptions, such as interest rate assumptions, that they use to derive the amounts disclosed in conformity with generally accepted accounting principles, but would assume that retirement age is normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age.[297] The estimates are to be based on current compensation, and as such, future levels of compensation need not be estimated for purposes of the calculation. The valuation method and all material assumptions applied will be described in the narrative section accompanying this table.[298] A separate row will be provided for each plan in which a named executive officer participates.[299] For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, a company will apply the applicable Internal Revenue Code limitations in effect as of the pension plan measurement date.[300] At the suggestion of a commenter, we have simplified the name of the table.[301]

PENSION BENEFITS

Name	Plan name	Number of years credited service (#)	Present value of accumulated benefit ($)	Payments during last fiscal year ($)
(a)	(b)	(c)	(d)	(e)
PEO				

[291] The rules prior to today's amendments provided that, for defined benefit or actuarial plans, disclosure was required under Item 402(f) by way of a general table showing estimated annual benefits under the plan payable upon retirement (including amounts attributable to supplementary or excess pension award plans) for specified compensation levels and years of service. This table did not provide disclosure for any specific named executive officer. This requirement applied to plans under which benefits were determined primarily by final compensation (or average final compensation) and years of service, and included narrative disclosure. If named executive officers were subject to other plans under which benefits were not determined primarily by final compensation (or average final compensation), narrative disclosure had been required prior to these amendments of the benefit formula and estimated annual benefits payable to the officers upon retirement at normal retirement age.

[292] See, *e.g.*, letters from BRT; Chadbourne & Parke LLP ("Chadbourne"); Cleary; and ABA–ICEB.

[293] See, *e.g.*, letters from ABA and NACCO Industries.

[294] See, *e.g.*, letters from Buck Consultants; Frederic W. Cook & Co.; Professor Bebchuk, *et al.*, and SBAF.

[295] Item 402(h)(2)(iv). If the number of years of credited service for a plan differs from the named executive officer's number of actual years of service with the company, footnote quantification of the difference and any resulting benefit augmentation is required. Instruction 4 to Item 402(h)(2).

[296] Further, basing pension plan disclosure on the accumulated benefit is consistent with nonqualified deferred compensation plan disclosure, which, as described in Section II.C.5.b, immediately below, reports an aggregate account balance.

[297] Instruction 2 to Item 402(h)(2). Of course, the benefits included in the plan document or the executive's contract itself is not an assumption.

[298] Item 402(h)(3) and Instruction 2 to Item 402(h)(2). This requirement could be satisfied by reference to a discussion of those assumptions in the company's financial statements, footnotes to the financial statements, or Management's Discussion and Analysis. The sections so referenced would be deemed a part of the disclosure provided by this Item.

[299] Instruction 1 to Item 402(h)(2).

[300] Instruction 3 to Item 402(h).

[301] See letter from ABA.

PENSION BENEFITS—Continued

Name	Plan name	Number of years credited service (#)	Present value of accumulated benefit ($)	Payments during last fiscal year ($)
(a)	(b)	(c)	(d)	(e)
PFO				
A				
B				
C				

We have moved the disclosure proposed to be included in the Summary Compensation Table of pension benefits paid to a named executive officer during the last completed fiscal year to the Pension Benefits Table so that pension benefits are disclosed only once in the Summary Compensation Table.[302] We remain of the view that disclosure of these payments would be material to investors, particularly where the named executive officer receives them while still employed by the company.[303]

The table will be followed by a narrative description of material factors necessary to an understanding of each plan disclosed in the table. Examples of such factors may include, in given cases, among other things:

- The material terms and conditions of benefits available under the plan, including the plan's retirement benefit formula and eligibility standards, and early retirement arrangements;[304]
- The specific elements of compensation, such as salary and various forms of bonus, included in applying the benefit formula, identifying each such element;
- Regarding participation in multiple plans, the different purposes for each plan; and
- Company policies with regard to such matters as granting extra years of credited service.

b. Nonqualified Deferred Compensation Table

In order to provide a more complete picture of potential post-employment compensation, we are adopting substantially as proposed a new table to disclose contributions, earnings and balances under each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified. These plans may be a significant element of retirement and post-termination compensation. Prior to these amendments, the rules had elicited disclosure of the compensation when earned and only the above-market or preferential earnings on nonqualified deferred compensation.[305] The full value of those earnings and the accounts on which they are payable was not subject to disclosure, nor were investors informed regarding the rate at which these amounts, and the corresponding cost to the company, grow.[306]

As noted above, we are requiring disclosure in the Summary Compensation Table only of the above-market or preferential portion of earnings on compensation that is deferred on a basis that is not tax-qualified. To provide investors with disclosure of the full amount of nonqualified deferred compensation accounts that the company is obligated to pay named executive officers, including the full amount of earnings for the last fiscal year, we are also requiring new tabular and narrative disclosure of nonqualified deferred compensation, as we proposed.[307]

NONQUALIFIED DEFERRED COMPENSATION

Name	Executive contributions in last FY ($)	Registrant contributions in last FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/ distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					

[302] Item 402(h)(2)(v). See also Instruction 1 to Item 402(c)(2)(viii). We have included these amounts in this table rather than the Summary Compensation Table since the increase in the value of the pension benefit would have been previously disclosed in the Summary Compensation Table.

[303] Item 402(a)(5) as amended provides that a column may be omitted if there is no compensation required to be reported in that column in any fiscal year covered by that table.

[304] For this purpose, "normal retirement age" means the normal retirement age defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. "Early retirement age" means early retirement age as defined in the plan, or otherwise available to the executive under the plan. Item 402(h)(3)(i) and (ii).

[305] See Section II.C.1.d.i. above.

[306] See Lucian A. Bebchuk and Jesse M. Fried, *Stealth Compensation via Retirement Benefits*, 1 Berkeley Bus. L.J. 291, 314–316 (2004).

[307] Item 402(i).

NONQUALIFIED DEFERRED COMPENSATION—Continued

Name	Executive contributions in last FY ($)	Registrant contributions in last FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/ distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
A					
B					
C					

One commenter noted that the title proposed—Nonqualified Defined Contribution and Other Deferred Compensation Plans—suggested that tax qualified plans that provide for deferral of compensation, such as Section 401(k) plans, would be covered.[308] We have adopted the commenter's recommendation to modify the title to clarify that the table covers only deferred compensation that is not tax-qualified, and we have also shortened the title consistent with our amendments regarding the Pension Benefits Table.

As proposed and adopted, an instruction requires footnote quantification of the extent to which amounts in the contributions and earnings columns are reported as compensation in the year in question and other amounts reported in the table in the aggregate balance column were reported previously in the Summary Compensation Table for prior years.[309] This footnote provides information so that investors can avoid "double counting" of deferred amounts by clarifying the extent to which amounts payable as deferred compensation represent compensation previously reported, rather than additional currently earned compensation.[310]

The table will be followed by a narrative description of material factors necessary to an understanding of the disclosure in the table.[311] Examples of such factors may include, in given cases, among other things:

- The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;
- The measures of calculating interest or other plan earnings (including whether such measure(s) are selected by the named executive officer or the company and the frequency and manner in which such selections may be changed), quantifying interest rates and other earnings measures applicable during the company's last fiscal year; and
- material terms with respect to payouts, withdrawals and other distributions.

Where plan earnings are calculated by reference to actual earnings of mutual funds or other securities, such as company stock, it is sufficient to identify the reference security and quantify its return. This disclosure may be aggregated to the extent the same measure applies to more than one named executive officer.

c. Other Potential Post-Employment Payments

We are adopting the significant revisions that we proposed to our requirements to describe termination or change in control provisions. The Commission has long recognized that "termination provisions are distinct from other plans in both intent and scope and, moreover, are of particular interest to shareholders."[312] Prior to today's amendments, disclosure did not in many cases capture material information regarding these plans and potential payments under them. We therefore proposed and are adopting disclosure of specific aspects of written or unwritten arrangements that provide for payments at, following, or in connection with the resignation, severance, retirement or other termination (including constructive termination) of a named executive officer, a change in his or her responsibilities,[313] or a change in control of the company.

Our amendments call for narrative disclosure of the following information regarding termination and change in control provisions:[314]

- the specific circumstances that would trigger payment(s) or the provision of other benefits (references to benefits include perquisites and health care benefits);
- the estimated payments and benefits that would be provided in each covered circumstance, and whether they would or could be lump sum or annual, disclosing the duration and by whom they would be provided;[315]
- how the appropriate payment and benefit levels are determined under the various circumstances that would trigger payments or provision of benefits;[316]
- any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality covenants; and

[308] See letter from Foley.

[309] Instruction to Item 402(i)(2).

[310] As described in Section II.C.1.b. above, the rules as adopted do not include the corresponding footnote that was proposed for the Summary Compensation Table.

[311] Item 402(i)(3).

[312] 1983 Release, at Section III.E.

[313] We confirm that this aspect of the disclosure requirement is not limited to a change in responsibilities in connection with a change in control.

[314] Item 402(j).

[315] We have eliminated the $100,000 disclosure threshold that was specified in the rule prior to today's amendments. For post-termination perquisites, however, the same disclosure and itemization thresholds used for the amended Summary Compensation Table apply. See Section II.C.1.e.i. above. We have modified Item 402(j)(2) from the proposal in response to comments to clarify that the required description covers both annual and lump sum payments. See letter from ABA.

[316] We have modified Item 402(j)(3) from the proposal to clarify the scope of the required disclosure. The proposal would have required the company to describe and explain the specific factors used to determine the appropriate payment and benefit levels under the various triggering circumstances. A commenter suggested that the proposed language was overly broad and ambiguous and could result in mere repetition of the pension payout formula and actuarial assumptions. See letter from ABA.

• any other material factors regarding each such contract, agreement, plan or arrangement.[317]

The item contemplates disclosure of the duration of non-compete and similar agreements, and provisions regarding waiver of breach of these agreements, and disclosure of tax gross-up payments.

A company will be required to provide quantitative disclosure under these requirements even where uncertainties exist as to amounts payable under these plans and arrangements. We clarify that in the event uncertainties exist as to the provision of payments and benefits or the amounts involved, the company is required to make a reasonable estimate (or a reasonable estimated range of amounts), and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure will be considered forward-looking information as appropriate that falls within the safe harbors for disclosure of such information.[318]

We have modified the requirement somewhat in response to comments that compliance with the proposal would involve multiple complex calculations and projections based on circumstantial and variable assumptions.[319] We adopt commenters' suggestions that the quantitative disclosure required be calculated applying the assumptions that:

• the triggering event took place on the last business day of the company's last completed fiscal year; and

• the price per share of the company's securities is the closing market price as of that date.[320]

We have also revised the rule to provide that if a triggering event has occurred for a named executive officer who was not serving as a named executive officer at the end of the last completed fiscal year, disclosure under this provision is required for that named executive officer only with respect to the actual triggering event that occurred.[321] These modifications will both facilitate company compliance and provide investors with disclosure that is more meaningful. We further clarify that health care benefits are included in this requirement, and quantifiable based on the assumptions used for financial reporting purposes under generally accepted accounting principles.[322]

We further clarify in response to comments that to the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed in the Pension Benefits Table or the Nonqualified Deferred Compensation Table and the narrative disclosure related to those tables, reference may be made to that disclosure.[323] However, to the extent that the form or amount of any such payment or benefit would be increased, or its vesting or other provisions accelerated upon any triggering event, such increase or acceleration must be specifically disclosed in this section.[324] In addition, we have added an instruction that companies need not disclose payments or benefits under this requirement to the extent such payments or benefits do not discriminate in scope, terms or operation, in favor of a company's executive officers and are available generally to all salaried employees.[325]

6. Officers Covered

a. Named Executive Officers

As proposed, we are amending the disclosure rules so that the principal executive officer, the principal financial officer[326] and the three most highly compensated executive officers other than the principal executive officer and principal financial officer comprise the named executive officers.[327] In addition, as was the case prior to these amendments, up to two additional individuals for whom disclosure would have been required but for the fact that they were no longer serving as executive officers at the end of the last completed fiscal year shall be included.

As we noted in the Proposing Release, we believe that compensation of the principal financial officer is important to shareholders because, along with the principal executive officer, the principal financial officer provides the certifications required with the company's periodic reports and has important responsibility for the fair presentation of the company's financial statements and other financial information.[328] Like the principal executive officer, disclosure about the principal financial officer will be required even if he or she was no longer serving in that capacity at the end of the last completed fiscal year.[329] As was the case for the chief executive officer prior to today's amendments, all persons who served as the company's principal executive officer or principal financial officer during the last completed fiscal year are named executive officers.

We are not requiring compensation disclosure for all of the officers listed in Items 5.02(b) and (c) of Form 8–K.[330] Those Form 8–K Items were adopted to provide current disclosure in the event of an appointment, resignation, retirement or termination of the specified officers, based on the principle that changes in employment status of these particular officers are unquestionably or presumptively material. At the time when a decision is made regarding the employment status of a particular officer, it will not always be clear who will be the named executive officers for the current year.

[317] This would include, for example, disclosure of whether an executive simultaneously receives both severance and retirement benefits, a practice commonly known as a "double dip." See letter from WorldatWork.

[318] See, *e.g.*, Securities Act Section 27A and Exchange Act Section 21E.

[319] See, *e.g.*, letters from Cleary; Foley; HRPA; and Top Five Data

[320] Instruction 1 to Item 402(j). See, *e.g.*, letters from Emerson; Foley; and Frederic W. Cook & Co.

[321] Instruction 4 to Item 402(j). See letter from ABA.

[322] Item 402(j)(1) and Instruction 2 to Item 402(j). These would be the assumptions applied under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 106, *Employer's Accounting for Postretirement Benefits Other Than Pensions* (FAS 106). See, *e.g.*, letters from Peabody Energy and WorldatWork.

[323] See letter from Academy of Actuaries.

[324] Instruction 3 to Item 402(j).

[325] Instruction 5 to Item 402(j).

[326] We are adopting the nomenclature used in Item 5.02 of Form 8–K, which refers to "principal executive officer" and "principal financial officer."

[327] Item 402(a)(3). As defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–7 [17 CFR 240.3b–7], "the term 'executive officer,' when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant." Therefore, as was formerly the case, a named executive officer may be an executive officer of a subsidiary or an employee of a subsidiary who performs such policy-making functions for the registrant. We have clarified this point in the provision describing the determination of named executive officer. Instruction 2 to Item 402(a)(3).

[328] Exchange Act Rules 13a–14 and 15d–14.

[329] Paragraphs (a)(3)(i) and (a)(3)(ii) of Item 402 provide that all individuals who served as a principal executive officer and principal financial officer or in similar capacities during the last completed fiscal year must be considered named executive officers. Item 402(a)(4) specifies that if the principal executive officer or principal financial officer served in that capacity for only part of a fiscal year, information must be provided as to all of the individual's compensation for the full fiscal year. Item 402(a)(4) also specifies that if a named executive officer (other than the principal executive officer or principal financial officer) served as an executive officer of the company (whether or not in the same position) during any part of the fiscal year, then information is required as to all compensation of that individual for the full fiscal year.

[330] These are the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person performing similar functions. As described in Section III.A. below, the rules we adopt today also amend Item 5.02 of Form 8–K.

Given these factors, it is reasonable for the two groups not to be identical.

b. Identification of Most Highly Compensated Executive Officers; Dollar Threshold for Disclosure

In the rule prior to today's amendments, the determination of the most highly compensated executive officers was based solely on total annual salary and bonus for the last fiscal year, subject to a $100,000 disclosure threshold. We proposed to revise the dollar threshold for disclosure of named executive officers other than the principal executive officer and the principal financial officer to $100,000 of total compensation for the last fiscal year. Given the proliferation of various forms of compensation other than salary and bonus, we believe that total compensation would more accurately identify those officers who are, in fact, the most highly compensated.

Several commenters objected to using total compensation to identify named executive officers.[331] In particular, commenters stated that this measure would minimize the importance of the compensation committee's compensation decisions for the most recent year and include significant elements beyond the committee's control, such as the increase in pension value and earnings on nonqualified deferred compensation. Some commenters recommended continuing to rely solely on salary and bonus, stating that these measures more accurately reflect the executives who are most highly valued in the company and permit greater year-to-year consistency.[332] Other commenters expressed concern that including episodic option awards would result in more frequent changes to the named executive officer roster.[333]

We are persuaded that it is appropriate to exclude from the named executive officer determination compensation elements that principally reflect executives' decisions to defer compensation and wealth accumulation in pension plans, or are unduly influenced by age or years of service. However, as we stated in the Proposing Release, basing identification of named executive officers solely on the compensation reportable in the salary and bonus categories may provide an incentive to re-characterize compensation. Further, limiting the determination to salary and bonus is not consistent with our decision to eliminate the distinction between "annual" and "long-term" compensation in the Summary Compensation Table.[334] We realize that this may result in more frequent changes to the officers designated as named executive officers, but believe that it will provide a clearer picture of compensation at a company. Accordingly, we require the most highly compensated executive officers to be determined based on total compensation, reduced by the sum of the increase in pension values and nonqualified deferred compensation above-market or preferential earnings reported in column (h) of the Summary Compensation.[335]

Prior to these amendments, companies were permitted to exclude an executive officer (other than the chief executive officer) due to either an unusually large amount of cash compensation that was not part of a recurring arrangement and was unlikely to continue, or cash compensation relating to overseas assignments attributed predominantly to such assignments.[336] Because payments attributed to overseas assignments have the potential to skew the application of Item 402 disclosure away from executives whose compensation otherwise properly would be disclosed, we are retaining this basis for exclusion, as we proposed. However, we believe that other compensation that is "not recurring and unlikely to continue" should be considered compensation for disclosure purposes. There has been inconsistent interpretation of the "not recurring and unlikely to continue" standard, and it is susceptible to manipulation. We therefore are eliminating this basis for exclusion, as we proposed.[337]

7. Interplay of Items 402 and 404

We are amending Item 402 so that it requires disclosure of all transactions between the company and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer as proposed. Also as proposed, amended Item 402 will no longer exclude from its disclosure requirements information about compensatory transaction that had been disclosed under the related person transaction disclosure requirements of Item 404.[338] Further, instructions to amended Item 404 clarify what compensatory transactions with executive officers and directors need not be disclosed under Item 404.[339]

As noted in the Proposing Release, the result of these amendments may be that in some cases compensation information will be required to be disclosed under Item 402, while the related person transaction giving rise to that compensation is also disclosed under Item 404. We believe that the possibility of additional disclosure in the context of each of these respective items is preferable to the possibility that compensation is not properly and fully disclosed under Item 402.

8. Other Changes

Before today's amendments, a company was permitted to omit from Item 402 disclosure of "information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees."[340] Because relocation plans, even when available generally to all salaried employees, are susceptible to operation in a discriminatory manner that favors executive officers, this exclusion may have deprived investors of disclosure of significant compensatory benefits. For this reason, we are deleting relocation plans from this exclusion, as we proposed. For the same reason, as we proposed, we are also deleting relocation plans from the exclusion from portfolio manager compensation in forms used by management investment companies to register under the Investment Company Act and offer securities under the Securities Act.[341] We also are revising the definition of "plan" so that it is more principles-based, as we proposed.[342] Finally, in order to

[331] See, *e.g.*, letters from ACC; Emerson; Leggett & Platt; SCSGP; and Unitrin.

[332] See, *e.g.*, letters from Frederic W. Cook & Co. and Intel.

[333] See, *e.g.*, letter from Intel.

[334] See Section II.C.1.f. above, discussing the effect of this change on compensation formerly reported as "bonus."

[335] Instruction 1 to Item 402(a)(3).

[336] This exclusion had been set forth in Instruction 3 to Item 402(a)(3) prior to these amendments.

[337] Instruction 3 to Item 402(a)(3).

[338] These relevant provisions were set forth in paragraphs (a)(2) and (a)(5) of Item 402 before today's amendments. Because paragraph (a)(5) of Item 402 as it had been stated prior to these amendments was otherwise redundant with paragraph (a)(2) of Item 402 as that provision had been stated, we are eliminating the language that had been set forth in paragraph (a)(5) in its entirety and making a conforming amendment to paragraph (a)(2) of Item 402.

[339] See Instruction 5 to Item 404(a), discussed in Section V.A.3., below.

[340] This language appeared in Item 402(a)(7)(ii) prior to today's amendments, which generally defined the term "plan."

[341] Amendment to Instruction 2 to Item 15(b) of Form N–1A; amendment to Instruction 2 to Item 21.2 of Form N–2; amendment to Instruction 2 to Item 22(b) of Form N–3.

[342] Item 402(a)(6)(ii).

simplify the language of the individual requirements, we have consolidated into one provision the definitions for the terms stock, option and equity as used in Item 402.[343]

9. Compensation of Directors

Director compensation has continued to evolve from simple compensation packages mostly involving cash compensation and attendance fees to more complex packages, which can also include equity-based compensation, incentive plans and other forms of compensation.[344] In light of this complexity, we proposed to require formatted tabular disclosure for director compensation, accompanied by narrative disclosure of additional material information. In doing so, we revisited an approach that the Commission proposed in 1995 but did not adopt at that time.[345]

Director compensation has continued to evolve since 1995 so that we are today adopting a Director Compensation Table, which resembles the revised Summary Compensation Table, but presents information only with respect to the company's last completed fiscal year. Consistent with the modifications to the Summary Compensation Table, this table moves pension and nonqualified deferred compensation plan disclosure from All Other Compensation to a separate column.[346] Because the same instructions as provided in the Summary Compensation Table govern analogous matters in the Director Compensation Table, our modifications to those instructions also apply to this table.

DIRECTOR COMPENSATION

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

As proposed and adopted, director fees earned or paid in cash would be reported separately from fees paid in stock. The All Other Compensation column of the Director Compensation Table includes, but is not limited to:

- All perquisites and other personal benefits if the total is $10,000 or greater;
- All tax reimbursements;
- For any security of the company or its subsidiaries purchased from the company or its subsidiaries (through deferral of fees or otherwise) at a discount from the market price of such security at the date of purchase, unless the discount is generally available to all security holders or to all salaried employees of the company, the compensation cost, if any, computed in accordance with FAS 123R;
- Amounts paid or accrued to any director pursuant to a plan or arrangement in connection with the resignation, retirement or any other termination of such director or a change in control of the company;
- Annual company contributions to vested and unvested defined contribution plans;
- All consulting fees;
- Awards under director legacy or charitable awards programs;[347] and
- The dollar value of any insurance premiums paid by, or on behalf of, the company for life insurance for the director's benefit.

An additional requirement to include the dollar value of any dividends or other earnings paid in stock or option awards when the dividend or earnings were not factored into the grant date fair value has been adopted for this column as discussed above.

In addition to the disclosure specified in the columns of the table, we proposed to require, by footnote to the appropriate column, disclosure for each director of the outstanding equity awards at fiscal year end as would be required if the Outstanding Equity Awards at Fiscal Year-End table for named executive officers were required for directors. In response to a comment that this disclosure would be provided

[343] Item 402(a)(6)(i).

[344] See, *e.g.*, National Association of Corporate Directors and Pearl Meyer & Partners, *2003–2004 Director Compensation Survey* (2004); National Association of Corporate Directors, *Report of the NACD Blue Ribbon Commission On Director Compensation* (2001); and Dennis C. Carey, *et al*, *How Should Corporate Directors Be Compensated?*, Investment Dealers' Digest Inc.—Special Issue: Boards and Directors (Jan. 1996).

[345] 1995 Release. The 1995 proposed amendment was coupled with a proposed amendment to permit companies to reduce the detailed executive compensation information provided in the proxy statement by instead furnishing that information in the Form 10–K. We did not act upon these proposed amendments.

[346] As noted in n. 303 above, Item 402(a)(5) provides that a column may be omitted if there is no compensation required to be reported in that column.

[347] Under director legacy programs, also known as charitable award programs, registrants typically agree to make a future donation to one or more charitable institutions in the director's name, payable by the company upon a designated event such as death or retirement. The amount to be disclosed in the table shall be the annual cost of such promises and payments, with footnote disclosure of the total dollar amount and other material terms of each such program. Instruction 1 to Item 402(k)(2)(vii).

in the narrative accompanying the table, we have simplified the relevant instruction to require footnote disclosure only of the aggregate numbers of stock awards and option awards outstanding at fiscal year end.[348] As with the Summary Compensation Table, the new rules make clear that all compensation must be included in the table.[349] As is the case with the current director disclosure requirement, companies will not be required to include in the director disclosure any amounts of compensation paid to a named executive officer and disclosed in the Summary Compensation Table with footnote disclosure indicating what amounts reflected in that table are compensation for services as a director.[350] An instruction to the Director Compensation Table permits the grouping of multiple directors in a single row of the table if all of their elements and amounts of compensation are identical.[351]

Following the table, narrative disclosure will describe any material factors necessary to an understanding of the table. Such factors may include, for example, a breakdown of types of fees.[352] In addition, as noted in Section II.A., disclosure regarding option timing or dating practices may be necessary under this narrative disclosure requirement when the recipients of the stock option grants are directors of the company. As we proposed, we are not requiring a supplemental Grants of Plan-Based Awards Table for directors.

D. Treatment of Specific Types of Issuers

1. Small Business Issuers

The Item 402 amendments continue to differentiate between small business issuers and other issuers, as we proposed. In adopting the amendments, we recognize that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies.[353] We also recognize that satisfying disclosure requirements designed to capture more complicated compensation arrangements may impose new, unwarranted burdens on small business issuers.[354]

Some commenters addressing the proposed amendments to Item 402 of Regulation S–B expressed the view that all companies whose shares are publicly traded should have to meet the same reporting and disclosure standards, regardless of their size, or urged that exemptions for smaller public companies be limited,[355] suggesting that they be required to file some form of a basic Compensation Discussion and Analysis.[356] We are not following these recommendations, because the executive compensation arrangements of small business issuers generally are so much less complex than those of other public companies that they do not warrant the more extensive disclosure requirements imposed on companies that are not small business issuers and related regulatory burdens that could be disproportionate for small business issuers.

Other commenters who supported the Commission's proposal to require less extensive disclosure for companies subject to Regulation S–B suggested that the Commission amend the definition of small business issuer to encompass a larger group of smaller public companies, such as by adopting the definition of "smaller public company" recommended by the Advisory Committee on Smaller Public Companies, and scale back the disclosure thresholds for all such smaller companies.[357] We are not following this recommendation at this time, but would instead defer consideration until we can fully consider all recommendations of the Advisory Committee.

As proposed and adopted, small business issuers will be required to provide, along with related narrative disclosure:

- The Summary Compensation Table;[358]
- The Outstanding Equity Awards at Fiscal Year-End Table; [359] and
- The Director Compensation Table.[360]

Small business issuers will be required to provide information in the Summary Compensation Table only for the last two fiscal years. In addition, small business issuers will be required to provide information for fewer named executive officers, namely the principal executive officer and the two most highly compensated officers other than the principal executive officer.[361] In light of our decision to link the Summary Compensation Table pension plan disclosure to the disclosure in the Pension Benefits Table, which is not required for small business issuers, and in response to comment,[362] we have decided not to require that small business issuers include pension plan disclosure in the Summary Compensation Table. Narrative discussion of a number of items to the extent material replaces tabular or footnote disclosure, for example identification of other items in the All Other Compensation column and a description of post-employment payments and other benefits.[363] In light of our request in Release No. 33–8735 for further comment on the proposed additional narrative disclosure requirement regarding up to three highly compensated employees so that it might apply only to large accelerated filers, we have not adopted this proposal for Item 402 of Regulation S–B. Small business issuers are not required to provide a Compensation

[348] Instruction to Item 402(k)(2)(iii) and (iv). See letter from ABA.

[349] The only exception is if all perquisites received by the director total less than $10,000, they do not need to be disclosed. Further, as described above for the Summary Compensation Table, disclosure of nonqualified deferred compensation earnings is limited to the above-market or preferential portion.

[350] Instruction 3 to Item 402(c).

[351] Instruction to Item 402(k)(2).

[352] Item 402(k)(3).

[353] These amendments apply only to small business issuers, as defined by Item 10(a)(1) of Regulation S–B. The Commission's Advisory Committee on Smaller Public Companies has recommended that the Commission incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S–B into Regulation S–K and make them available to all microcap companies. Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006). Any future consideration of this recommendation would be the subject of a separate rulemaking.

[354] Prior to today's amendments, under both Item 402 of Regulation S7–B and Item 402 of Regulation S–K, a small business issuer was not required to provide the Compensation Committee Report, the Performance Graph, the Compensation Committee Interlocks disclosure, the Ten-Year Option/SAR Repricings Table, and the Option Grant Table columns disclosing potential realizable value or grant date value. The rules prior to today's amendments also permitted small business issuers to exclude the Pension Plan Table.

[355] See, *e.g.*, letters from CII; CRPTF; IUE–CWA; SBAF; and WSIB.

[356] See, *e.g.*, letters from ISS and Institutional Investors Group.

[357] See letters from America's Community Bankers ("ACB"); Independent Community Bankers of America ("ICBA"); and SCSGP.

[358] Items 402(b) and 402(c) of Regulation S–B. Consistent with the instructions to the narrative disclosure required by Item 402(e) of Regulation S–K, we have added an instruction to Item 402(c) of Regulation S–B so that disclosure is not required regarding any repricing that occurs through specified provisions. Instruction to Item 402(c) of Regulation S–B.

[359] Item 402(d) of Regulation S–B.

[360] Item 402(f) of Regulation S–B.

[361] Item 402(a) of Regulation S–B. Item 402(c)(7) of Regulation S–B requires an identification to the extent material of any item included under All Other Compensation in the Summary Compensation Table. However, identification of an item will not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

[362] See letter from ABA.

[363] Items 402(c) and 402(e) of Regulation S–B.

Discussion and Analysis or the related Compensation Committee Report.[364]

2. Foreign Private Issuers

Prior to today's amendments, a foreign private issuer was deemed to comply with Item 402 of Regulation S–K if it provided the information required by Items 6.B. and 6.E.2. of Form 20–F, with more detailed information provided if otherwise made publicly available. We proposed to continue this treatment of these issuers and clarify that the treatment of foreign private issuers under Item 402 parallels that under Form 20–F. Commenters supported this approach, stating that it showed appropriate deference to a foreign private issuer's home country requirements.[365] We are adopting these requirements as proposed.[366]

3. Business Development Companies

As proposed, we are applying the same executive compensation disclosure requirements to business development companies that we are adopting for operating companies.[367] We received no comments on this proposal. Our amendments eliminate the inconsistency between Form 10–K, on the one hand, which requires business development companies to furnish all of the information required by Item 402 of Regulation S–K, and the proxy rules and Form N–2, on the other, which require business development companies to provide some of the information from Item 402 and other information that applies to registered investment companies.

Under the amendments, the registration statements of business development companies will be required to include all of the disclosures required by Item 402 of Regulation S–K for all of the persons covered by Item 402.[368] This disclosure will also be required in the proxy and information statements of business development companies if action is to be taken with respect to the election of directors or with respect to the compensation arrangements and other matters enumerated in Items 8(b) through (d) of Schedule 14A.[369] Business development companies will also be required to make these disclosures in their annual reports on Form 10–K.[370]

As a result of these amendments, the persons covered by the compensation disclosure requirements will be changed. The compensation disclosure in the proxy and information statements and registration statements of business development companies will be required to cover the same officers as for operating companies, including the principal executive officer and principal financial officer, as well as the three most highly compensated executive officers that have total compensation exceeding $100,000,[371] instead of each of the three highest paid officers of the company that have aggregate compensation from the company for the most recently completed fiscal year in excess of $60,000. In addition, the registration statements of business development companies will no longer be required to disclose compensation of members of the advisory board or certain affiliated persons of the company.

Finally, under the amendments, the proxy and information statements and registration statements of business development companies will not be required to include compensation from the "fund complex." Previously, this information was required in some circumstances.[372]

E. Conforming Amendments

The Item 402 amendments necessitate conforming amendments to the Items of Regulations S–K and S–B and the proxy rules that cross reference amended paragraphs of Item 402. On this basis, we are amending:

- the Item 201(d) of Regulations S–K and S–B and proxy rule references to the Item 402 definition of "plan;"[373]
- the Item 601(b)(10) of Regulation S–K reference to the Item 402 treatment of foreign private issuers;[374] and
- the proxy rule references to Item 402 retirement plan disclosure.[375]

III. Revisions to Form 8–K and the Periodic Report Exhibit Requirements

As part of our broader effort to revise our executive and director compensation disclosure requirements, we proposed revisions to Item 1.01 of Form 8–K. This item requires real-time disclosure about an Exchange Act reporting company's entry into a material definitive agreement outside of the ordinary course of the company's business, as well as any material amendment to such an agreement. Our staff's experience since Item 1.01 became effective in 2004 suggests that this item has elicited executive compensation disclosure regarding types of matters that do not appear always to be unquestionably or presumptively material, which is the standard we set for the expanded Form 8–K disclosure events.[376] We therefore proposed to revise Items 1.01 and 5.02 of Form 8–K to require real-time disclosure of employee compensation events that more clearly satisfy this standard. We are adopting the revisions substantially as proposed.

In addition to the amendments to Items 1.01 and 5.02 of Form 8–K, we proposed to revise General Instruction D of Form 8–K to permit companies in most cases to omit the Item 1.01 heading if multiple items including Item 1.01 are applicable, so long as all of the substantive disclosure required by Item 1.01 is included. We are adopting this provision as proposed.

A. Items 1.01 and 5.02 of Form 8–K

Item 1.01 of Form 8–K requires an Exchange Act reporting company to disclose, within four business days, the company's entry into a material definitive agreement outside of its ordinary course of business, or any

[364] We are also eliminating a provision of Item 402 of Regulation S–K that allows small business issuers using forms that call for Regulation S–K disclosure to exclude the disclosure required by certain paragraphs of that Item. This provision had been set forth in Item 402(a)(1)(i) of Regulation S–K prior to today's amendments.

[365] See, *e.g.*, letters from Federation of German Industries; DaimlerChrysler AG; and jointly, Allianz AG, Deutsche Bank AG and Siemens AG.

[366] Item 402(a)(1).

[367] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act [15 U.S.C. 80a–2(a)(48)].

[368] New Item 18.14 of Form N–2. Under the amendments, business development companies will no longer be required to respond to Item 18.13 of Form N–2, and Item 18.13(c) of Form N–2 is being deleted. Items 18.14 and 18.15 of Form N–2 are being redesignated as Items 18.15 and 18.16, respectively. As a result of the redesignation of Item 18.15 of Form N–2, a change to the cross reference to this Item in Instruction 8(a) of Item 24 of the form is also being made.

[369] Amendment to Item 8 of Schedule 14A. Under the amendments, business development companies will no longer be required to respond to Item 22(b)(13) of Schedule 14A, and Item 22(b)(13)(iii) of Schedule 14A is being deleted. Amendments to Item 22(b)(13) of Schedule 14A.

[370] Item 11 of Form 10–K.

[371] See Section II.C.6., above.

[372] See instructions 4 and 6 to Item 22(b)(13)(i) of Schedule 14A; and instructions 4 and 6 to Item 18.13(a) of Form N–2 (prior to today's amendments requiring certain entries in the compensation table in the proxy and information statements and registration statements of business development companies to include compensation from the fund complex).

[373] Amendments to: Instruction 2 to paragraph (d) of Item 201 of Regulation S–B; Instruction 2 to paragraph (d) of Item 201 of Regulation S–K; Exchange Act Rules 14a–6(a)(4) and 14c–5(a)(4); and Instruction 1 to Item 10 of Schedule 14A.

[374] Amendment to Item 601(b)(10)(iii)(C)(5).

[375] Amendments to Item 10(b)(1)(ii) and Instruction to Item 10(b)(1)(ii) of Schedule 14A.

[376] We stated in Section I of *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date*, Release No 33–8400 (Mar. 16, 2004) [69 FR 15594] (the "Form 8–K Adopting Release"): "The revisions that we adopt today will benefit markets by increasing the number of unquestionably or presumptively material events that must be disclosed currently."

amendment of such agreement that is material to the company. When we initially proposed this item, several commenters stated that it would be difficult to determine, within the shortened Form 8–K filing period, whether a particular definitive agreement met the materiality threshold of Item 1.01, and whether the agreement was outside of the ordinary course of business.[377] Some of these commenters suggested that we apply to Item 1.01 the standards used in pre-existing Item 601(b)(10) of Regulation S–K, which governs the filing as exhibits to Commission reports of material contracts entered into outside the ordinary course, because these standards had been in place for many years and were familiar to reporting companies.[378]

In response to the concerns raised by these comments, we adopted Item 1.01 of Form 8–K so that it uses the standards of Item 601(b)(10) to determine the types of agreements that are material to a company and not in the ordinary course of business. Item 601(b)(10) of Regulation S–K requires a company to file, as an exhibit to Securities Act and Exchange Act filings, material contracts that are not made in the ordinary course of business and are to be performed in whole or part at or after the filing of the registration statement or report, or were entered into not more than two years before the filing. Item 601(b)(10)(iii) refers specifically to employment compensation arrangements and established a company's obligation to file the following as exhibits:

- any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any named executive officer (as defined by Item 402(a)(3) of Regulation S–K) participates;
- any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the company participates, unless immaterial in amount or significance; and
- any compensation plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights in which any employee (whether or not an executive officer of the company) participates unless immaterial in amount or significance.[379]

Therefore, entry into these types of contracts triggered the filing of a Form 8–K within four business days. Importantly, the requirement for directors and named executive officers does not include an exception for those that are "immaterial in amount or significance." The incorporation of the Item 601(b)(10) standards into Item 1.01 of Form 8–K has therefore significantly affected executive compensation disclosure practices. Prior to the Form 8–K amendments in 2004, it was customary for a company's annual proxy statement to be the primary vehicle for disclosure of executive and director compensation information. However, Item 1.01 of Form 8–K as originally adopted has resulted in executive compensation disclosures that are much more frequent and accelerated than those included in a company's proxy statement. In addition, particularly because of the terms of Item 601(b)(10), Item 1.01 of Form 8–K triggered compensation disclosure of the types of matters that, in some cases, appear to have fallen short of the "unquestionably or presumptively material" standard associated with the expanded Form 8–K disclosure items. Companies and their counsel have raised concerns that the expanded Form 8–K requirements have resulted in real-time disclosure of compensation events that should be disclosed, if at all, in a company's proxy statement for its annual meeting or as an exhibit to the company's next periodic report, such as the Form 10–Q or Form 10–K.

As we stated in the Proposing Release, we believe that much of the disclosure regarding employment compensation matters required in real-time under the Form 8–K requirements is viewed by investors as material. However, we also believe it is appropriate to restore a more balanced approach to this aspect of Form 8–K, an approach which is designed to elicit unquestionably or presumptively material information on a real-time basis, but seeks to limit Form 8–K required disclosure of information below that threshold.

Accordingly, we are adopting amendments to Form 8–K that will uncouple Item 601(b)(10)(iii) of Regulation S–K from the current disclosure requirements of Form 8–K. As proposed, we are eliminating employment compensation arrangements from the scope of Item 1.01 altogether and expanding Item 5.02 of Form 8–K to cover only those compensatory arrangements with executive officers and directors that we believe are unquestionably or presumptively material. Commenters generally supported these proposed amendments.[380] We are adopting these amendments substantially as proposed.

1. Item 1.01—Entry Into a Material Definitive Agreement

Specifically, we are deleting the last sentence of former Instruction 1 to Item 1.01 of Form 8–K, which references the portions of Item 601(b)(10) of Regulation S–K that specifically relate to management compensation and compensatory plans. In place of the deleted sentence, we are adding a sentence specifying that agreements

---

[377] See, *e.g.*, letters on *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date*, Release No. 33–8106 (June 17, 2002) [67 FR 42914] in File No. S7–22–02 from the Committee on Federal Regulation of Securities, Section of Business Law of the American Bar Association dated September 12, 2002; Cleary, Gottlieb, Steen & Hamilton, dated August 26, 2002; Intel Corporation, dated August 26, 2002; Professor Joseph A. Grundfest *et al.* dated October 3, 2002; Perkins Coie LLP, dated August 26, 2002; Shearman & Sterling, dated August 30, 2002; and Sullivan & Cromwell, dated August 26, 2002.

[378] See, *e.g.*, letter in File No. S7–22–02 from the Section of Business Law of the American Bar Association.

[379] Item 601(b)(10)(iii) of Regulation S–K. We note the provision in Item 601(b)(10)(iii)(A) that carves out any plan, contract or arrangement in which named executive officers and directors do not participate that is "immaterial in amount or significance." In 1980, the Commission adopted amendments to Regulation S–K that consolidated all of the exhibit requirements of various disclosure forms into a single item in Regulation S–K. *Amendments Regarding Exhibit Requirements*, Release No. 33–6230 (Aug. 27, 1980) [45 FR 58822], at Section II.B. This item was a forerunner of the current Item 601. As part of that 1980 adopting release, the definition of material contract contained in the new item was also revised in an effort to reduce the number of remunerative plans or arrangements that must be filed. Not long after, though, the staff discovered that rather than reduce the number of exhibits filed, the provision actually had the opposite effect. The staff found that the revised definition of material contract "has resulted in registrants filing a large volume of varied remunerative contracts involving directors and executive officers, contracts which are not material and which would not have been filed under the previously existing 'material in amount or significance' standard." *Technical Amendment Regarding Exhibit Requirement*, Release No. 33–6287 (Feb. 6, 1981) [46 FR 11952], at Section I. Therefore, in February 1981, the Commission added "unless immaterial in amount or significance" to the definition of "material contracts" as applied to remunerative plans, contracts or arrangements participated in by executives who are not named executive officers. *Id.* We reiterate that this phrase was intended to indicate that whether plans, contracts or arrangements in which executive officers other than named executive officers participate are required to be disclosed under Item 601(b)(10) must be determined on the basis of materiality.

[380] See, *e.g.*, letters from ABA; Chamber of Commerce; N. Ludgus; Committee on Securities Regulation of the Business Law Section of the New York State Bar Association; SCSGP; and Sullivan.

involving the subject matter identified in Item 601(b)(10)(iii)(A) and (B) of Regulation S–K need not be disclosed under amended Item 1.01 of Form 8–K. This change also will apply to the disclosure of terminations of material definitive agreements under Item 1.02 of Form 8–K, which references the definition of "material definitive agreement" in Item 1.01 of Form 8–K.[381] Instead of being required to be disclosed based on the general requirements with regard to material definitive agreements in Item 1.01 and Item 1.02 of Form 8–K, employment compensation arrangements will now be covered under Item 5.02 of Form 8–K, as amended.

2. Item 5.02—Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Item 5.02 generally requires disclosure within four business days of the appointment or departure of directors and specified officers. In particular, Item 5.02(b) has required disclosure if a company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, retires, resigns or is terminated from that position and Item 5.02(c) has required disclosure if a company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions. Item 5.02 has also required disclosure if a director retires, resigns, is removed, or declines to stand for re-election.[382] Before adopting today's amendments, the required disclosure under Item 5.02 included a brief description of the material terms of any employment agreement between the company and the officer and a description of disagreements, if any.

As proposed, we are modifying Item 5.02 to capture generally the information already required under that item, as well as additional information regarding material employment compensation arrangements involving named executive officers that, prior to today's amendments, would be called for under Item 1.01.

With respect to the additional disclosure that we are requiring for named executive officers under amended Item 5.02, one commenter noted that because the definition of "named executive officer" is determined with reference to a company's last completed fiscal year, greater clarity is needed to determine how the standard should be applied for current Form 8–K reporting throughout the year.[383] The commenter suggested that companies might find it difficult to identify their named executive officers for purposes of real-time disclosure under Item 5.02 during the period following the completion of their last fiscal year but prior to preparing their proxy statements or Forms 10–K in the new fiscal year. Accordingly, we are including a new Instruction to Item 5.02 that will clarify that for purposes of this Item the named executive officers are the persons for whom disclosure was required in the most recent filing with the Commission that required disclosure under Item 402(c) of Regulation S–K or Item 402(b) of Regulation S–B, as applicable.[384]

In general, our revisions to Form 8–K will both modify the overall requirements for disclosure of employment compensation arrangements on Form 8–K and locate all such disclosure under a single item. We are accomplishing this by taking the following steps:

- Expanding the information regarding retirement, resignation or termination to include all persons falling within the definition of named executive officers for the company's previous fiscal year, whether or not included in the list specified in Item 5.02 prior to these amendments;[385]
- Expanding the disclosure items covered under Item 5.02 beyond employment agreements to require a brief description of any material plan, contract or arrangement to which a covered officer or director is a party or in which he or she participates that is entered into or materially amended in connection with any of the triggering events specified in Item 5.02(c) and (d), or any grant or award to any such covered person, or modification thereto, under any such plan, contract or arrangement in connection with any such event;[386]
- With respect to the principal executive officer, the principal financial officer, or persons falling within the definition of named executive officer for the company's previous fiscal year, expanding the disclosure items to include a brief description of any material new compensatory plan, contract or arrangement, or new grant or award thereunder (whether or not written), and any material amendment to any compensatory plan, contract or arrangement (or any modification to a grant or award thereunder), whether or not such occurrence is in connection with a triggering event specified in Item 5.02. Grants or awards or modifications thereto will not be required to be disclosed if they are consistent with the terms of previously disclosed plans or arrangements and they are disclosed the next time the company is required to provide new disclosure under Item 402 of Regulation S–K;[387] and
- Adding a requirement for disclosure of salary or bonus for the most recent fiscal year that was not available at the latest practicable date in connection with disclosure under Item 402 of Regulation S–K.[388] This disclosure will also require a new total compensation recalculation to reflect the new salary or bonus information.

In the case of each of these disclosure items for amended Item 5.02, we emphasize that we are requiring that a brief description of the specified matter be included. We have observed that in response to the requirements to disclose the entry into material definitive agreements under Item 1.01, some companies have included disclosure that resembles an updating of the disclosure required under former Item 402 of Regulation S–K. In the context of current disclosure under Form 8–K, we are seeking disclosure that informs investors of specified material events and developments. However, the information we are seeking does not require the information necessary to comply with Item 402.

In response to comments received,[389] we have revised Instruction 2 to new Item 5.02(e) from the text we proposed and created a new Item 5.02(f), as described above. The revised Instruction 2 to Item 5.02(e) that we are adopting: (i) Changes or eliminates prior references to "original terms" and uses instead the phrase "previously disclosed terms," in order to minimize

[381] Item 1.02(b) states: "For purposes of this Item 1.02, the term *material definitive agreement* shall have the same meaning as set forth in Item 1.01(b)."

[382] Items 5.02(a) and (b) of Form 8–K.

[383] See letter from ABA.

[384] Instruction 4 to Item 5.02.

[385] Item 5.02(b) of Form 8–K will continue to cover the officers currently specified therein, whether or not named executive officers for the previous or current years, and all directors.

[386] Items 5.02(c)(3) and (d)(5). Plans, contracts or arrangements (but not material amendments or grants or awards or modifications thereto) may be denoted by reference to the description in the company's most recent annual report on Form 10–K or proxy statement.

[387] Item 5.02(e) and Instruction 2 to Item 5.02(e).

[388] Item 5.02(f). See Section II.C.1.b. above for a discussion of the reporting delay that exists under the current disclosure rules when bonus and salary are not determinable at the most recent practicable date.

[389] See letter from ABA.

ambiguity; and (ii) clarifies that, for purposes of the Instruction, no distinction should be made between awards granted under cash or equity-based plans. New Item 5.02(f) responds to comments we received that our proposed Instruction 3 to 5.02(e) should be codified as a separate item because it called for disclosure (determining salary or bonus amounts for a completed fiscal year) that otherwise may not be required under Item 5.02(e).[390]

B. Extension of Limited Safe Harbor Under Section 10(b) and Rule 10b–5 to Item 5.02(e) of Form 8–K and Exclusion of Item 5.02(e) From Form S–3 Eligibility Requirements

We are extending the safe harbors regarding Section 10(b) and Rule 10b–5 and Form S–3 eligibility in the event that a company fails to timely file reports required by Item 5.02(e) of Form 8–K.

In March 2004, we adopted a limited safe harbor from liability under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder for failure to timely file reports required by Form 8–K Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) and 6.03. Because we believed that these items may require management to make rapid materiality and similar judgments within the condensed timeframe required for filing of a Form 8–K, we established a safe harbor that applies until the filing due date of the company's quarterly or annual report for the period in question. We concluded that the risk of liability under these provisions for the failure to timely file was disproportionate to the benefit of real-time disclosure and therefore justified the need for a limited safe harbor of a fixed duration. For the same reasons, we believe that the safe harbor should also extend to Item 5.02(e) of Form 8–K. We therefore are amending Exchange Act Rules 13a–11(c) and 15d–11(c) accordingly.

In addition, a company forfeits its eligibility to use Form S–3 if it fails to timely file all reports required under Exchange Act Section 13(a) or 15(d) during the 12 month period prior to filing of the registration statement.[391] For the same reasons, when adopting the expanded Form 8–K rules in 2004, we revised the Form S–3 eligibility requirements so that a company would not lose its eligibility to use Form S–3 registration statements if it failed to timely file reports required by the Form 8–K items to which the Section 10(b) and Rule 10b–5 safe harbor applies.[392] In particular, the burden resulting from a company's sudden loss of eligibility to use Form S–3 could be a disproportionately large negative consequence of an untimely Form 8–K filing under one of the specified items.[393] We believe that this safe harbor should be extended to Item 5.02(e) of Form 8–K and, therefore, we are amending General Instruction I.A.3.(b) of Form S–3, which pertains to the eligibility requirements for use of Form S–3 to reflect this position.

C. General Instruction D to Form 8–K

We are adopting the revision to General Instruction D as proposed. Frequently, an event may trigger a Form 8–K filing under multiple items, particularly under both Item 1.01 and another item. General Instruction D to Form 8–K permits a company to file a single Form 8–K to satisfy one or more disclosure items, provided that the company identifies by item number and caption all applicable items being satisfied and provides all of the substantive disclosure required by each of the items. In order to promote prompt filings on Form 8–K and avoid potential non-compliance with Form 8–K due to inadvertent exclusions of captions, we are amending General Instruction D to permit companies to omit the Item 1.01 heading in a Form 8–K that also discloses any other item, so long as the substantive disclosure required by Item 1.01 is included in the Form 8–K. This would not extend to allowing a company to omit any other caption if the Item 1.01 caption is included.

D. Foreign Private Issuers

We are amending the exhibit instructions to Form 20–F so that foreign private issuers will be required to file an employment or compensatory plan with management or directors (or portion of such plan) only when the foreign private issuer either is required to publicly file the plan (or portion of it) in its home country or if the foreign private issuer has otherwise publicly disclosed the plan.[394]

Under Item 6.B.1 of Form 20–F, a foreign private issuer must disclose the compensation of directors and management on an aggregate basis and, additionally, on an individual basis, unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the foreign private issuer. Under the exhibit instructions to Form 20–F prior to our amendments, management contracts or compensatory plans in which directors or members of management participate generally were required to be filed as exhibits, unless the foreign private issuer provided compensation information on an aggregate basis and not on an individual basis. Under those pre-amendment provisions, an issuer that provided any individualized compensation disclosure was required to file as an exhibit to Form 20–F management employment agreements that potentially relate to matters that have not otherwise been disclosed.

Our amendment of the exhibit instructions to Form 20–F[395] is intended to be consistent with the existing disclosure requirements under Form 20–F relating to executive compensation matters for foreign private issuers. In the same way that executive compensation disclosure under Form 20–F largely mirrors the disclosure that a foreign private issuer makes under home country requirements or voluntarily, so too the public filing of management employment agreements as an exhibit to Form 20–F under our amendments will mirror the public availability of such agreements under home country requirements or otherwise. In addition, we believe that the amendments may encourage foreign private issuers to provide more compensation disclosure in their filings with the Commission by eliminating privacy concerns associated with filing an individual's employment agreement when such agreement is not required to be made public by a home country exchange or securities regulator. As foreign disclosure related to executive remuneration varies in different countries but continues to improve,[396] the revisions recognize that trend and provide for greater harmonization of international disclosure standards with respect to executive compensation in a manner consistent with other requirements of Form 20–F.

IV. Beneficial Ownership Disclosure

Item 403 requires disclosure of company voting securities beneficially owned by more than five percent holders,[397] and company equity securities beneficially owned by

[390] See letter from ABA.

[391] General Instruction I.A.3 to Form S–3.

[392] Form 8–K Adopting Release, at Section II.E.

[393] *Id.*

[394] We are also making a similar revision to Item 601(b)(10)(iii)(C)(5) of Regulation S–K.

[395] New Instruction 4(c)(v) to Exhibits to Form 20–F.

[396] Many jurisdictions now require or encourage disclosure of executive compensation information. For example, enhanced disclosure of executive remuneration is included as part of the European Commission's 2003 Company Law Action Plan. See Guido Ferrarini and Niamh Moloney, *Executive Remuneration in the EU: The Context for Reform*, European Corporate Governance Institute, Law Working Paper N. 32/2005 (April 2005).

[397] Item 403(a).

directors, director nominees and named executive officers.[398] These disclosure requirements provide investors with information regarding concentrated holdings of voting securities and management's equity stake in the company, including securities for which these holders have the right to acquire beneficial ownership within 60 days.[399] Item 403 also requires disclosure of arrangements known to the company that may result in a change in control of the company.[400]

As proposed, we are amending Item 403(b)[401] by adding a requirement for footnote disclosure of the number of shares pledged as security by named executive officers, directors and director nominees.[402] To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral, these shares may be subject to material risk or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions.[403] As a result, we believe that the existence of these securities pledges could be material to shareholders. Because significant shareholders who are not members of management are in a different relationship with other shareholders and have different obligations to them, the amendments do not require disclosure of their pledges pursuant to Item 403(a), other than pledges that may result in a change of control currently required to be disclosed.[404] The amendments also specifically require disclosure of beneficial ownership of directors' qualifying shares, which was not required prior to these amendments, because we believe the beneficial ownership disclosure should include a complete tally of the securities beneficially owned by directors.

One commenter recommended that we expand this section to also require disclosure of hedging arrangements whereby the executive has altered his or her economic interest in the securities that he or she beneficially owns.[405] These transactions frequently involve the purchase or sale of a derivative security that the named executive officer would be required to report within two business days under Section 16(a) of the Exchange Act.[406] Because information concerning these transactions frequently would be available on a prompt basis in the Section 16(a) filings and companies would disclose their policies regarding these transactions in Compensation Discussion and Analysis,[407] we have not followed the commenter's recommendation.

V. Certain Relationships and Related Transactions Disclosure

As we explained in the Proposing Release, we believe that, in addition to disclosure regarding executive compensation, a materially complete picture of financial relationships with a company involves disclosure regarding related party transactions. Therefore, we are also adopting significant revisions to Item 404 of Regulation S–K, previously titled "Certain Relationships and Related Transactions." In 1982, various provisions that had been adopted in a piecemeal fashion and had been subject to frequent amendment were consolidated into Item 404 of Regulation S–K.[408] Today we are amending Item 404 of Regulation S–K and S–B to streamline and modernize this disclosure requirement, while making it more principles-based. Although the amendments significantly modify this disclosure requirement, its purpose—to elicit disclosure regarding transactions and relationships, including indebtedness, involving the company and related persons and the independence of directors and nominees for director and the interests of management—remains unchanged.

As discussed in greater detail below, the amendments have four parts:[409]

- Item 404(a) contains a general disclosure requirement for related person transactions, including those involving indebtedness.
- Item 404(b) requires disclosure regarding the company's policies and procedures for the review, approval or ratification of related person transactions.
- Item 404(c) requires disclosure regarding promoters and certain control persons of a company.[410]
- Item 407 consolidates corporate governance disclosure requirements.[411] Also, Item 407(a) requires disclosure regarding the independence of directors, including whether each director and nominee for director of the company is independent, as well as a description by specific category or type of any transactions, relationships or arrangements not disclosed under paragraph (a) of Item 404 that were considered when determining whether each director and nominee for director is independent.

A. Transactions With Related Persons

We are adopting amendments to Item 404 to make the certain relationships and related transactions disclosure requirements clearer and easier to follow. The revisions retain the principles for disclosure of related person transactions that were previously specified in Item 404(a), but no longer include all of the instructions that served to delineate what transactions are reportable or excludable from disclosure based on bright lines that can depart from a more appropriate materiality analysis. Instead, Item 404(a) as amended consists of a general statement of the principle for disclosure, followed by specific disclosure requirements and instructions. The instructions to Item 404(a) explain the related persons covered by the Item, the scope of transactions covered by the Item, the method for computation of the amount involved in the transaction, special requirements regarding indebtedness, the interaction with Item 402, the materiality of certain interests, and the circumstances in which disclosure need not be provided.

---

[398] Item 403(b).

[399] As specified in Exchange Act Rule 13d–3(d)(1) [17 CFR 240.13d–3(d)(1)].

[400] Item 403(c).

[401] Item 403(b) of Regulation S–K and Item 403(b) of Regulation S–B are both amended in the same manner.

[402] This was similar to a proposal the Commission made in 2002. See *Form 8–K Disclosure of Certain Management Transactions*, Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[403] See, *e.g.*, Marianne M. Jennings, *The Disconnect Between and Among Legal Ethics, Business Ethics, Law, and Virtue: Learning Not to Make Ethics So Complex*, 1 U. St. Thomas L.J. 995, 1010 (Spring 2004) (arguing that the extension of loans to the CEO of WorldCom, which were collateralized by WorldCom shares owned by the CEO, contributed to WorldCom's financial demise). Regarding commenters' views, contrast letters from Frederic W. Cook & Co.; PB–UCC; and SBAF with letters from FSR; NACCO Industries; Unitrin; and Compass Bancshares.

[404] Item 403(c) of Regulation S–K. See also Items 6 and 7(3) of Schedule 13D [17 CFR 240.13d–101].

[405] See letter from ABA.

[406] 15 U.S.C. 78p(a).

[407] See Item 402(b)(2)(xiii) of Regulation S–K, discussed in Section II.B.1., above.

[408] See the 1982 Release. For a discussion of these provisions, see also *Disclosure of Certain Relationships and Transactions Involving Management*, Release No. 33–6416 (July 9, 1982) [47 FR 31394], at Section II.

[409] The discussion that follows focuses on changes to Regulation S–K, with Section V.E.1. explaining the modifications to Regulation S–B. References throughout the following discussion are to Items of Regulation S–K, unless otherwise indicated.

[410] Prior to adoption of these amendments, disclosure regarding promoters was required under Item 404(d).

[411] These matters previously were required to be disclosed pursuant to various provisions, including Item 7 of Schedule 14A and Items 306, 401(h), (i) and (j), 402(j) and 404(b). We are eliminating as proposed the requirement for disclosure regarding specific director and director nominee relationships that had been set forth in Item 404(b) prior to today's amendments, in favor of the disclosures regarding director independence required by Item 407(a).

Item 404(a) as adopted extends to disclosure of indebtedness, by consolidating the disclosure formerly required under Item 404(a) regarding transactions involving the company and related persons with the disclosure regarding indebtedness which had been separately required by Item 404(c) prior to these amendments. We have consolidated these two provisions substantially as proposed in order to eliminate confusion regarding the circumstances in which each item applied and to streamline duplicative portions of Item 404.

1. Broad Principle for Disclosure

Item 404(a) as proposed and adopted articulates a broad principle for disclosure; it states that a company must provide disclosure regarding:

- Any transaction since the beginning of the company's last fiscal year, or any currently proposed transaction;
- In which the company was or is to be a participant;
- In which the amount involved exceeds $120,000; and
- In which any related person had or will have a direct or indirect material interest.

As proposed, amended Item 404(a) no longer includes an instruction that is repetitive of the general materiality standard applicable to the Item.[412] By omitting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). The materiality standard for disclosure embodied in Item 404(a) prior to these amendments is retained; a company must disclose based on whether the related person had or will have a direct or indirect material interest in the transaction. The materiality of any interest will continue to be determined on the basis of the significance of the information to investors in light of all the circumstances.[413] As was the case before adoption of amended Item 404(a), the relationship of the related persons to the transaction, and with each other, the importance of the interest to the person having the interest and the amount involved in the transaction are among the factors to be considered in determining the materiality of the information to investors.

We are also eliminating as proposed an instruction to Item 404(a) which had indicated that the dollar threshold is not a bright line materiality standard.[414] It remains true, however, that when the amount involved in a transaction exceeds the prescribed threshold ($120,000 under the amended rule we adopt today), a company should evaluate whether the related person has a direct or indirect material interest in the transaction to determine if disclosure is required. We eliminated the instruction because it was repetitive of the general materiality standard applicable to the Item. We believe that application of the materiality principles under the Item are more consistent with a principles-based approach and will lead to more appropriate disclosure outcomes than application of the instruction that was eliminated. By deleting this instruction, we do not intend to change the materiality standard applicable to Item 404(a). As was the case with Item 404(a) prior to adoption of these amendments, there may be situations where, although the instructions to Item 404(a) do not expressly provide that disclosure is not required, the interest of a related person in a particular transaction is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed under Item 404(a).

In addition, as proposed the amendments:

- Call for disclosure if a company is a "participant" in a transaction, rather than if it is "a party" to the transaction, as "participant" more accurately connotes the company's involvement;
- Modify the $60,000 threshold for disclosure to $120,000 to adjust for inflation;
- Include a defined term for "transaction" to provide that it includes a series of similar transactions and to make clear its broad scope; and
- Include a defined term for "related persons."[415]

As was the case before these amendments, disclosure is required for three years in registration statements filed pursuant to the Securities Act or the Exchange Act.[416]

One commenter questioned whether changing the test of company involvement from being a "party" to a transaction to being a "participant" in a transaction is intended to be a substantive change.[417] The purpose of this change is to more accurately connote the company's involvement in a transaction by clarifying that being a "participant" encompasses situations where the company benefits from a transaction but is not technically a contractual "party" to the transaction.[418]

Commenters expressed diverse views on the appropriate disclosure threshold. While some commenters supported increasing the threshold for disclosure from $60,000 to $120,000,[419] others recommended retaining the $60,000 threshold,[420] using a minimal dollar threshold,[421] not including any *de minimis* dollar threshold,[422] or increasing the threshold even further through use of a sliding scale.[423] We believe that a fixed dollar amount for the disclosure threshold will provide the most certainty as to the size of transactions that must be tracked for disclosure purposes under Item 404,[424] and that increasing the dollar amount of the threshold based on inflation is appropriate given the amount of time that has elapsed since it was last set nearly twenty-five years ago.

Finally, the rule changes include as proposed a technical modification. Prior to today's amendments, Item 404(a) stated that disclosure was required

---

[412] Prior to today's amendments, Instruction 1 to Item 404(a) had stated that "[t]he materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transactions are among the factors to be considered in determining the significance of the information to investors."

[413] See *Basic* v. *Levinson* and *TSC Industries* v. *Northway*.

[414] Prior to today's amendments, Instruction 9 to Item 404(a) had stated that "There may be situations where, although these instructions do not expressly authorize nondisclosure, the interest of a person specified in paragraphs (a)(1) through (4) in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph."

[415] The "related persons" covered by the amended Item are discussed below in Section V.A.1.b.

[416] However, if the disclosure is being incorporated by reference into a registration statement on Form S–4, the additional two years of disclosure will not be required, as specified in Instruction 1 to Item 404.

[417] See letter from Sullivan. See also letter from SCSGP.

[418] For example, disclosure would be required if a company benefits from a transaction with a related person that the company has arranged and in which it participates, notwithstanding the fact that it is not a party to a contract.

[419] See, *e.g.*, letters from BRT and Sullivan.

[420] See, *e.g.*, letters from Amalgamated and CalSTRS.

[421] See letter from Teamsters (recommending a $250 disclosure threshold).

[422] See, *e.g.*, letters from CII and ISS.

[423] See letter from SCSGP recommending a disclosure threshold for companies that are not small business issuers of the greater of $120,000 or a percentage (which it believes could be as low as two percent) of consolidated gross revenues of the recipient for certain types of transactions.

[424] The disclosure threshold in amended Item 404(a) of Regulation S–B is the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years because we believe that transactions that are below $120,000 can be significant for small business issuers given their relative size.

regarding situations involving "the registrant or any of its subsidiaries." Because companies must include subsidiaries in making materiality determinations in all circumstances, the reference to "subsidiaries" is superfluous, and we have therefore eliminated it. This modification does not change the scope of disclosure required under the Item.[425]

a. Indebtedness

Section 402 of the Sarbanes-Oxley Act prohibits most personal loans by a company to its officers and directors.[426] This development raises the issue of whether disclosure of indebtedness of the sort required under our rules prior to the amendments should be maintained. We believe that the approach to disclosure of indebtedness involving related persons that we adopt today is appropriate because of the scope of the direct and indirect interests covered by our disclosure requirements, because related persons include persons not covered by the prohibitions, and because there are certain exceptions to the prohibitions. We have, however, eliminated the distinction between indebtedness and other types of related person transactions.

As a result of integrating what had been required to be disclosed under paragraph (c) of Item 404 into paragraph (a) of Item 404, the rule proposals would have changed the situations in which indebtedness disclosure is necessary by requiring disclosure of indebtedness transactions with regard to all related persons covered by the related person transaction disclosure requirement, including significant shareholders.[427] Some commenters questioned whether disclosure of indebtedness of significant shareholders would be useful to investors and whether companies would have access to the information necessary to provide this disclosure.[428] In response to these comments, the amendments do not require disclosure of indebtedness transactions of significant shareholders (or their immediate family members).[429] Another result of integrating the disclosure requirements that had been specified in paragraph (c) of Item 404 into paragraph (a) of Item 404, is that the rule changes set a $120,000 threshold and require disclosure if there is a direct or indirect material interest in an indebtedness transaction, while prior to these amendments Item 404(c) required disclosure of all indebtedness exceeding $60,000.[430] For example, under amended Item 404(a) disclosure is required if an executive officer had a material indirect interest in an indebtedness transaction (exceeding $120,000) between the company and another entity due to that executive officer's ownership interest in the other entity. Disclosure of material indirect interests of related persons in transactions involving the company will be required by Item 404(a) as amended, just as it was prior to adoption of these amendments. We believe that disclosure requirements for indebtedness and for other related person transactions should be congruent. In particular, we believe that loans by companies other than financial institutions should be treated like any other related person transactions; however, as discussed below,[431] we address certain ordinary course loans by financial institutions in an instruction to Item 404(a).

b. Definitions

We have defined the terms "transaction," "related person" and "amount involved" substantially as proposed in order to streamline Item 404(a) and to clarify the broad scope of financial transactions and relationships covered by the rule.

The term "transaction" has a broad scope in Item 404(a).[432] This term is not to be interpreted narrowly, but rather broadly includes, but is not limited to, any financial transaction, arrangement or relationship or any series of similar transactions, arrangements or relationships. The definition of "transaction" also specifically notes that the term includes indebtedness and guarantees of indebtedness.

The definition of "related person" identifies the persons covered, and clarifies the time periods during which they are covered. The term "related person" [433] means any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of Item 404 is required:

- Any director or executive officer of the company and his or her immediate family members; and
- If disclosure were provided in a proxy or information statement relating to the election of directors, any nominee for director and the immediate family members of any nominee for director.

In addition, a security holder known to the company to beneficially own more than five percent of any class of the company's voting securities or any immediate family member of any such person, when a transaction in which such security holder or family member had a direct or indirect material interest occurred or existed, is also a related person.

The definition of "related person" that we have adopted will require disclosure of related person transactions involving the company and a person (other than a significant shareholder or immediate family member of such shareholder) that occurred during the last fiscal year, if the person was a "related person" during any part of that year.[434] A person who had a position or relationship giving rise to the person being a "related person" during only part of the last fiscal year may have had a material interest in a transaction with the company during that year. While prior to these amendments Item 404(a) did not indicate whether disclosure was required for the transaction in this situation, the history of Item 404 suggests that disclosure was required if the requisite relationship existed at the time of the transaction, even if the person was no longer a related person at the end of the year.[435] We believe

[425] For the same reason, we have eliminated as proposed the references to "subsidiaries" in the "compensation committee interlocks and insider participation in compensation decisions" disclosure requirement adopted in Item 407(e)(4). This revision does not change the scope of disclosure required under the rule.

[426] Codified in Section 13(k) of the Exchange Act [15 U.S.C. 78m(k)].

[427] Prior to today's amendments, the related person transaction disclosure requirement in Item 404(a) covered significant shareholders, while the indebtedness disclosure requirement in Item 404(c) did not. The significant shareholders covered by Item 404(a) as adopted will continue to be any security holder who is known to the company to beneficially own more than five percent of any class of the company's voting securities. See Instruction 1.b.i. to Item 404(a).

[428] See, *e.g.*, letter from Sullivan. See also, letter from SCSGP.

[429] See Instruction 4.b. to Item 404(a). Disclosure would be required, however, if the significant shareholder (or such shareholder's immediate family member) was also a related person specified in Instruction 1.a. to Item 404(a), for example, if the significant shareholder was also an executive officer.

[430] Prior to these amendments, Item 404(c) also had required disclosure of some specific indirect interests of directors, nominees for director, and executive officers of the company in indebtedness through corporations, organizations, trusts, and estates. Disclosure of these specific interests had been required by subparagraphs (c)(4) and (c)(5) of Item 404. Under the amendments, these subparagraphs have been eliminated as duplicative and the need for disclosure in these situations will be determined using a materiality analysis under the principle for disclosure in Item 404(a).

[431] See Section V.A.3. below.

[432] Instruction 2 to Item 404(a).

[433] Instruction 1 to Item 404(a).

[434] As proposed, the principle for disclosure that we have adopted only applies to nominees for director if disclosure is being provided in a proxy or information statement involving the election of directors. Also, as proposed, ongoing disclosure is not required regarding nominees for director who were not elected (unless a nominee has been nominated again for director).

[435] This position, which had been included in the proxy rule provisions that were the precursor to Item 404, was deleted from those provisions in 1967

Continued

that, because of the potential for abuse and the close proximity in time between the transaction and the person's status as a "related person," it is appropriate to require disclosure for transactions in which the person had a material interest occurring at any time during the fiscal year. For example, it is possible that a material interest of a person in a transaction during this timeframe could influence the person's performance of his or her duties.

We believe that transactions with persons who have been or who will become significant shareholders (or their immediate family members), but are not at the time of the transaction, raise different considerations and are harder to track, and thus we are excluding them as proposed. Disclosure will be required, however, regarding a transaction that begins before a significant shareholder becomes a significant shareholder, and continues (for example, through the on-going receipt of payments) on or after the time that the person becomes a significant shareholder.

We are adopting the definition of "immediate family member" as proposed. Under Item 404(a), the term "immediate family member" means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company. The amended definition differs from the former definition in that it includes stepchildren, stepparents, and any person (other than a tenant or employee) sharing the household of a director, nominee for director, executive officer, or significant shareholder of the company.[436]

The amended definition of "amount involved" is adopted as proposed.[437] The definition incorporates two concepts that were included in Item 404 prior to these amendments regarding how to determine the "amount involved" in transactions, and clarifies that the amounts reported must be in dollars even if the amount was set or expensed in a different currency. As adopted, the term "amount involved" means the dollar value of the transaction, or series of similar transactions, and includes:

- In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the company's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments;[438] and
- In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the company's last fiscal year and all amounts of interest payable on it during the last fiscal year.[439]

2. Disclosure Requirements

Subparagraphs of Item 404(a) as adopted provide the disclosure requirements for related person transactions. The company will be required to describe the transaction, including:

- The person's name and relationship to the company;
- The person's interest in the transaction with the company, including the related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to or has an interest in the transaction; and
- The approximate dollar value of the amount involved in the transaction and of the related person's interest in the transaction.[440]

Companies will also be required to disclose any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

As was the case prior to adoption of these amendments, the dollar value of the related person's interest in the transaction will be computed without regard to the amount of the profit or loss involved in the transaction.[441] One commenter pointed out that the proposals expanded the application of this provision to also cover the computation of the "amount involved" when the provision was moved from an instruction into the body of Item 404(a).[442] In streamlining Item 404(a), we did not intend to change the scope of the prior instruction. Therefore, the final rule clarifies the context in which profit or loss is not to be considered.

Consistent with the principles-based approach that we are applying to related person transaction disclosure, we are eliminating an instruction that, in the case of a related person transaction involving a purchase or sale of assets by or to the company otherwise than in the ordinary course of business, called for specific disclosure of the cost of the assets to the purchaser, and if acquired within two years of the transaction, the cost of the assets to the seller and related information about the price of the assets. We note, however, that if such information is material under the revised standards of Item 404(a), because, for example, the recent purchase price to the related person is materially less than the sale price to the company, or the sale price to the related person is materially more than the recent purchase price to the company, disclosure of such prior purchase price and related information about the prices could be required.

Prior to adoption of today's amendments, disclosure was required under Item 404(c) regarding amounts possibly owed to the company under Section 16(b) of the Exchange Act.[443] We believe that the purpose of related person transaction disclosure differs from the purpose of Section 16(b), and one commenter expressed support for eliminating this requirement.[444] Accordingly, the rule amendments eliminate this former Section 16(b)-related disclosure requirement.

3. Exceptions

Some categories of transactions do not fall within the principle for disclosure

as duplicative of a note that applied to all of the disclosure required in Schedule 14A (including the related party disclosure requirement in Schedule 14A). *Adoption of Amendments to Proxy Rules and Information Rules*, Release No. 34–8206 (Dec. 14, 1967) [32 FR 20960], at "Schedule 14A—Item7(f)." Before today's amendments, Note C to Schedule 14A provided that "[i]nformation need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made." We have amended Note C to Schedule 14A as proposed so that it will no longer apply to disclosure of related person transactions.

[436] The persons included in these additions to the definition are also included in the definition of "family member" in General Instruction A.1.(a)(5) to Securities Act Form S–8.

[437] Instruction 3 to Item 404(a).

[438] Prior to today's amendments, Instruction 3 to Item 404(a) had provided guidance regarding computing the amount involved in lease or other agreements providing for periodic payments or installments.

[439] Prior to today's amendments, the basis for determining the amount involved in indebtedness transactions had been set forth in Item 404(c).

[440] Because of the manner in which the amount involved in the transaction is calculated for indebtedness, as discussed above, disclosure with respect to indebtedness will include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, as well as the amount of principal and interest paid during the period for which disclosure is provided, the aggregate amount of principal outstanding as of the latest practicable date, and the rate or amount of interest payable on the indebtedness. Item 404(a)(5).

[441] Item 404(a)(4).

[442] See letter from Sullivan.

[443] This requirement had been set forth in Instruction 4 to Item 404(c) prior to these amendments.

[444] See letter from SCSGP.

and therefore Item 404(a) as amended includes disclosure exceptions that we believe are consistent with our principles-based approach.[445] The first category of transactions involves compensation. Disclosure of compensation to an executive officer will not be required if:

- The compensation is reported pursuant to Item 402 of Regulation S–K; or
- The executive officer is not an immediate family member and such compensation would have been reported under Item 402 as compensation earned for services to the company if the executive officer was a named executive officer, and such compensation had been approved, or recommended to the board of directors of the company for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the company.[446]

As proposed, this disclosure exception would have required compensation committee approval of an executive officer's compensation if that executive officer's compensation was not reported under Item 402. However, one commenter noted that in accordance with listing standards, compensation committees may only need to recommend to the board of directors, rather than approve, the compensation of executive officers (other than the chief executive officer).[447] We believe that it is appropriate for this disclosure exception to apply a standard that is consistent with the listing standards and we have thus modified this exception from the proposal accordingly. Finally, as proposed disclosure of compensation to a director will not be required if the compensation is reported pursuant to the director compensation disclosure requirement in Item 402(k).[448]

As we explained in the Proposing Release, since the disclosure either would be reported under Item 402, or would not be required under Item 402, we do not believe that these particular compensation transactions fall within our Item 404 disclosure principle, or they will have already been disclosed. Transactions involving compensation that do not fall within these exceptions, such as compensation of immediate family members, are within the scope of the principle for disclosure in amended Item 404(a).[449] These exceptions thus clarify the limited situations in which disclosure of compensation to related persons is not required under Item 404.

The second category of transactions involves three types of situations that we believe do not raise the potential issues underlying our principle for disclosure. First, in the case of transactions involving indebtedness, as proposed we have adopted amendments so that the following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed because they do not have the potential to impact the parties as do the transactions for which disclosure is required: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business.[450] Also, in the case of a transaction involving indebtedness, the amendments provide, as proposed, that if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T[451] and the loans are not disclosed as nonaccrual, past due, restructured or potential problems,[452] disclosure under paragraph (a) of Item 404 may consist of a statement, if correct, that the loans to such persons satisfied the following conditions:

- They were made in the ordinary course of business;
- They were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and
- They did not involve more than the normal risk of collectibility or present other unfavorable features.[453]

This exception is based on the exception that was included in Instruction 3 to Item 404(c) prior to these amendments, and has been modified as proposed to be more consistent with the prohibition of the Sarbanes-Oxley Act on personal loans to officers and directors.[454]

Second, we are adopting as proposed an instruction indicating that a person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the company shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of Item 404 if:

- The interest arises only: (i) From the person's position as a director of another corporation or organization that is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other related persons, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership; or
- The interest arises only from the person's position as a limited partner in a partnership in which the person and all other related persons, have an interest of less than ten percent, and the person is not a general partner of and does not have another position in the partnership.[455]

Finally, disclosure will not be required under paragraph (a) of Item 404 in three other types of circumstances. First, disclosure will not be required under paragraph (a) of Item 404 as to any transaction where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority.[456] We had proposed to eliminate this exception because we considered such bright-line presumptions as inconsistent with our principles-based approach to the rule. We are persuaded, however, by a commenter who indicated that the prior

[445] Instructions 4, 5, 6 and 7 to Item 404(a).

[446] Instruction 5.a. to Item 404(a).

[447] See letter from NYCBA.

[448] Instruction 5.b. to Item 404(a).

[449] One commenter believed that the proposals would have eliminated disclosure of related person transactions involving the employment of immediate family members. See letter from CRPTF. Item 404(a), as amended, continues to require disclosure of these types of related person transactions when the threshold for disclosure has been met and the immediate family member has or will have a direct or indirect material interest.

[450] Instruction 4.a. to Item 404(a), which is based on Instruction 2 to Item 404(c) as it was stated prior to today's amendments.

[451] 12 CFR part 220.

[452] See Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies [17 CFR 229.802(c)].

[453] Instruction 4.c. to Item 404(a).

[454] Specifically, the language that was in Instruction 3 to paragraph (c) of Item 404 prior to these amendments has been modified to replace the reference "comparable transactions with other persons" with the phrase "comparable loans with persons not related to the lender."

[455] Instruction 6 to Item 404(a). This amendment is based on the language that was in parts A and B of Instruction 8 to Item 404(a) prior to these amendments. This amendment omits the portion of that instruction (Instruction 8.C.) regarding interests arising solely from holding an equity or a creditor interest in a person other than the company that is a party to the transaction, when the transaction is not material to the other person. This exception may have resulted in inappropriate non-disclosure of transactions without regard to whether they were material to the company. In addition, we are eliminating the language that had been set forth in Instruction 6 to Item 404(a) prior to these amendments, which had covered a subset of transactions now covered by Instruction 6, as amended, and therefore was duplicative.

[456] Instruction 7.a. to Item 404(a).

exception embodied a conclusion that the terms of these types of transactions would likely not be influenced by the related persons and therefore should be excluded as not material.[457] As a result, the instruction is retained in the rule as adopted.

Second, disclosure need not be provided under paragraph (a) of Item 404 if the transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services.[458] We had proposed to eliminate this exception. We are persuaded by commenters' concerns that eliminating this exception may be detrimental to financial institutions and may not result in additional meaningful disclosure.[459] Accordingly, we are retaining this exception.

Third, we are adopting an exception indicating that disclosure need not be provided pursuant to paragraph (a) of Item 404 if the interest of the related person arises solely from the ownership of a class of equity securities of the company and all holders of that class of equity securities of the company received the same benefit on a *pro rata* basis.[460] Commenters expressed concern that our proposal to eliminate the former exception[461] would require disclosure if a related person receives over $120,000 in dividends on company stock in a year, even though those dividends are paid on the same terms as for all other stockholders.[462] We are persuaded by the commenters that related person transaction disclosure is not necessary for transactions where a related person receives *pro rata* dividends or returns on the ownership of equity securities, and therefore we have adopted an instruction to provide an exception from disclosure in these limited circumstances.[463]

Some commenters requested that we create a new exception for transactions undertaken in the ordinary course of business of the company and conducted on the same terms that the company offers generally in transactions with persons who are not related persons.[464] Former Item 404(a) did not include such an "ordinary course of business" disclosure exception, and we are not persuaded that it should be expanded to include one. In this regard, we note that transactions which should properly be disclosed under Item 404(a) might be excluded under an ordinary course of business exception, such as employment of immediate family members of officers and directors. However, we note that whether a transaction which was not material to the company or the other entity involved and which was undertaken in the ordinary course of business of the company and on the same terms that the company offers generally in transactions with persons who are not related persons, are factors that could be taken into consideration when performing the materiality analysis for determining whether disclosure is required under the principle for disclosure,

B. Procedures for Approval of Related Person Transactions

We are adopting a new requirement for disclosure of the policies and procedures established by the company and its board of directors regarding related person transactions substantially as proposed. State corporate law and increasingly robust corporate governance practices support or provide for such procedures in connection with transactions involving conflicts of interest.[465] We believe that this type of information may be material to investors, and our amendments therefore require disclosure of policies and procedures regarding related person transactions under paragraph (b) of Item 404, as amended.

Specifically, the amendments require a description of the company's policies and procedures for the review, approval or ratification of transactions with related persons that are reportable under paragraph (a) of Item 404. The description must include the material features of these policies and procedures that are necessary to understand them. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

- The types of transactions that are covered by such policies and procedures, and the standards to be applied pursuant to such policies and procedures;
- The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and
- Whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

Item 404(b) requires identification of any transactions required to be reported under paragraph (a) of Item 404 where the company's policies and procedures do not require review, approval or ratification or where such policies and procedures have not been followed.

One commenter expressed concern that it is not reasonable or customary for a company's related person transaction policy to extend to transactions occurring before an individual becomes affiliated with a company.[466] In response, we have added an instruction indicating that disclosure need not be provided pursuant to paragraph (b) of Item 404 regarding any transaction that occurred at a time before the related person had the relationship that would trigger disclosure under Item 404(a), if the transaction did not continue after the related person had that relationship.[467]

C. Promoters and Control Persons

As proposed and adopted, the amendments require a company to provide disclosure regarding the identity of promoters and its transactions with those promoters if the company had a promoter at any time during the last five fiscal years.[468] The disclosure will be required in Securities Act registration statements on Form S–1 or on Form SB–2 and Exchange Act Form 10 or Form 10–SB. The disclosure includes:

- The names of the promoters;
- The nature and amount of anything of value received by each promoter from the company and the nature and amount

[457] Letter from SCSGP.

[458] Instruction 7.b. to Item 404(a).

[459] See, *e.g.*, letters from American Bankers Association ("American Bankers"); Compass Bancshares; and Whitney Holding Corporation ("Whitney Holding").

[460] Instruction 7.c. to Item 404(a).

[461] Before the adoption of these amendments, Instruction 7.C. to Item 404(a) provided that no information was required under Item 404(a) for transactions where the interest of the related person arose solely from the ownership of securities of the company and such person received no extra or special benefit not shared on a pro rata basis.

[462] See, *e.g.*, letters from SCSGP and Sullivan.

[463] The instruction as adopted differs from the language of Instruction 7.C. prior to these amendments in that it is limited to ownership of a class of equity securities rather than securities generally and focuses on benefits being provided pro rata to the holders of that class rather than the absence of certain extra or special benefits.

[464] See, *e.g.*, letters from SCSGP and Sullivan.

[465] Del. Code Ann. tit. 8, § 144 (2004). See also NYSE, Inc. Listed Company Manual Section 307.00 and NASD Manual, Marketplace Rules 4350(h) and 4360(i).

[466] See letter from NYCBA.

[467] See Instruction to Item 404(b). For example, disclosure would not be required under Item 404(b) in a company's Form 10–K for the fiscal year ended December 31, 2005 of a transaction that occurred in March 2005 between the company and an immediate family member of a person who later became a director of the company in August 2005. However, disclosure would be required under Item 404(a) in this circumstance. This Instruction to Item 404(b) does not apply to transactions of significant shareholders of the company, because Item 404(a) does not require disclosure of transactions with significant shareholders that are completed before they become significant shareholders.

[468] Item 404(c).

of any consideration received by the company; and

• Additional information regarding any assets acquired by the company from a promoter.

The amendments are consistent with the previous disclosure requirements regarding promoters. However, prior to these amendments this disclosure was not required if the company had been organized more than five years ago, even if the company otherwise had a promoter within the last five years. Our staff's experience in reviewing registration statements, especially of smaller companies, suggests that the more appropriate five-year test for which the disclosure should be provided relates to the period of time during which the company had a promoter, as our revision provides, rather than the date of organization of the company.[469] We are also requiring the same disclosure that is required for promoters for any person who acquired control, or is part of a group that acquired control, of an issuer that is a shell company.[470] We are revising the title of this item to include the term control persons in order to clarify the scope of the disclosure requirement.

D. Corporate Governance Disclosure

We are consolidating our disclosure requirements regarding director independence and related corporate governance disclosure requirements under a single disclosure item and updating such disclosure requirements regarding director independence to reflect our current requirements and current listing standards.[471] Prior to these amendments, Item 404(b) had required disclosure of specific business relationships between a director or nominee for director and the company that could bear on the ability of directors and nominees for director to exercise independent judgment in the performance of their duties. We proposed to eliminate the disclosure requirement that was stated under paragraph (b) of Item 404 in favor of more direct disclosure about the determination of the independence of directors and nominees for director, including information supplementing the amended related person transaction disclosure that would permit qualitative assessment of those independence determinations. While one commenter suggested that we retain a revised version of paragraph (b) to Item 404 as it was stated prior to these amendments,[472] we continue to believe that disclosure focused on the determinations made regarding director independence is the appropriate approach. The comprehensive director independence disclosure requirement that we are adopting today recognizes the significant development of independence requirements since the disclosure requirements in former paragraph (b) of Item 404 were originally adopted. As directed by the Sarbanes-Oxley Act of 2002, we adopted a rule requiring national securities exchanges and national securities associations to adopt listing standards requiring independent audit committees meeting the standards of our rule.[473] Further, in 2003 and 2004, we approved amendments to additional listing standards, including those of the New York Stock Exchange and Nasdaq,[474] that imposed specific additional independence standards for boards of directors, and the compensation and nominating committees or persons performing similar functions. Each listed company (unless exempt) determines whether its directors and committee members are independent based on definitions that it adopts which, at a minimum, are required to comply with the listing standards applicable to the company.

The amendments we are adopting today, substantially as proposed, include a disclosure requirement to identify the independent directors of the company (and, in the case of disclosure in proxy or information statements relating to the election of directors, nominees for director) under the definition for determining board independence applicable to it.[475] The amendments also require disclosure of any members of the compensation, nominating and audit committees that the company has not identified as independent under the definition of

---

[469] We also adopt as proposed similar revisions to the disclosure requirement referencing promoters in Item 401(g)(1) of Regulation S–K. In addition, as proposed our revisions add Form SB–2 to the list of registration statement forms in Item 404 for which promoter disclosure is required. While this revision updates the registration statement forms listed in Item 404, it does not change the promoter disclosure requirement of Form SB–2.

[470] Item 404(c)(2). The term "group" has the same meaning as in Exchange Act Rule 13d–5(b)(1) [17 CFR 240.13d–5(b)(1)], that is, any two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer. The term "shell company" is defined in Securities Act Rule 405 and Exchange Act Rule 12b–2.

[471] Item 407 of Regulations S–K and S–B. As adopted, Item 407 consolidates corporate governance disclosure requirements located in several places under our rules and the principal markets' listing standards, including in particular requirements that had been specified in Items 306, 401(h), (i) and (j), 402(j) and 404(b) of Regulation S–K and Item 7 of Schedule 14A under the Exchange Act prior to these amendments. We are not making any changes to the substance of the requirements under Item 306, Item 401(h), (i) or (j), or Item 402(j) as part of this consolidation. However, as proposed, Item 407 rearders some provisions that were specified in Item 306 and reflects the relevant Public Company Accounting Oversight Board rules. See *PCAOB Rulemaking: Public Company Accounting Oversight Board; Order Approving Proposed Technical Amendments to Interim Standards Rules*, Release No. 34–49624 (Apr. 28, 2004) [69 FR 24199]; and *Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002*, Release No. 33–8223 (Apr. 25, 2003) [68 FR 2336].

[472] Letter from Fenwick.

[473] See Section 10A(m) of the Exchange Act [15 U.S.C. 78j–1(m)]; Exchange Act Rule 10A–3 [17 CFR 240.10A–3]; and *Standards Relating to Listed Company Audit Committees*, Release No. 33–8220 (Apr. 9, 2003) (the "Audit Committee Release") [68 FR 18788].

[474] NASD and NYSE Listing Standards Release. The other exchanges have also adopted corporate governance listing standards. See *Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies*, Release No. 34–48863 (Dec. 1, 2003) [68 FR 68432]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Corporate Governance*, Release No. 34–49881 (June 17, 2004) [69 FR 35408]; *Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the Exchange*, Release No. 34–49911 (June 24, 2004) [69 FR 39989]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend Chapter XXVII, Section 10 of the Rules of the Board of Governors by Adding Requirements Concerning Corporate Governance Standards of Exchange-Listed Companies*, Release No. 34–49955 (July 1, 2004) [69 FR 41555]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated, Relating to Enhanced Corporate Governance Requirements for Listed Companies*, Release No. 34–49995 (July 9, 2004) [69 FR 42476]; *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by National Stock Exchange Relating to Corporate Governance*, Release No. 34–49998 (July 9, 2004) [69 FR 42788]; and *Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend the Corporate Governance Requirements for PCX Listed Companies*, Release No. 34–50677 (Nov. 16, 2004) [69 FR 68205].

The Commission has previously received a rulemaking petition submitted by the AFL/CIO, which requested the Commission to amend Items 401 and 404 of Regulation S–K to require disclosure about transactions with non-profit organizations (letter dated Dec. 12, 2001 from Richard Trumka, Secretary-Treasurer, AFL/CIO, File No. 4–499, available at *www.sec.gov/rules/petitions/petn4-499.pdf*) and a rulemaking petition submitted by the Council of Institutional Investors, which requested amendments to Item 401 of Regulation S–K to require disclosure of certain transactions between directors, executive officers and nominees (letter dated Oct. 1, 1997, as amended Oct. 19, 1998, from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, File No. 4–404). We believe these requests have in large part been addressed by revised listing standards instituted by the exchanges, so that we are not now taking additional action under these petitions.

[475] Item 407(a).

independence for that board committee applicable to it.[476]

More specifically, if the company is an issuer[477] with securities listed, or for which it has applied for listing, on a national securities exchange[478] or in an automated inter-dealer quotation system of a national securities association[479] which has requirements that a majority of the board of directors be independent, Item 407(a) requires disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent), using the definition for independence for directors (and for committee members) that it uses for determining compliance with the applicable listing standards. If the company is not a listed issuer, we are requiring disclosure of those directors and director nominees that the company identifies as independent (and committee members not identified as independent) using the definition for independence for directors (and for committee members) of a national securities exchange or a national securities association, specified by the company. The company will be required to apply the same definition consistently to all directors and also to use the independence standards of the same national securities exchange or national securities association for purposes of determining the independence of members of the compensation, nominating and audit committees.[480]

One commenter pointed out the rule proposals did not make clear what disclosure would be required for listed issuers that relied upon an exemption from independence requirements, most notably a "controlled company" exemption.[481] To clarify the disclosure required in this situation, we added a requirement to the amendments that if the company is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for board or committee member independence) upon which the company relied, the company must disclose the exemption relied upon and explain the basis for its conclusion that such exemption is applicable.[482] Similar disclosure is required for those companies that are not listed issuers but would qualify for an exemption under the listing standards selected. In addition, this instruction clarifies that small business issuers listed on exchanges where at least half of the members of the board of directors, rather than a majority, are required to be independent must comply with the disclosure requirements specified in Item 407(a).[483]

The amendments require as proposed that an issuer which has adopted definitions of independence for directors and committee members must disclose whether those definitions are posted on the company's Web site, and if they are not include the definitions as an appendix to the company's proxy or information statement at least once every three years or if the policies have been materially amended since the beginning of the company's last fiscal year.[484] Further, if the policies are not on the company's Web site, or included as an appendix to the company's proxy or information statement, the company must disclose in which of the prior fiscal years the policies were included in the company's proxy or information statement.

In addition, the amendments require, for each director or director nominee identified as independent, a description, by specific category or type, of any transactions, relationships or arrangements not disclosed pursuant to paragraph (a) of Item 404 that were considered by the board of directors of the company in determining that the applicable independence standards were met. Under our proposals, disclosure of the specific details of each such transaction, relationship or arrangement would have been required. Several commenters objected to providing this disclosure, given the potential for extensive detail about these types of transactions, relationships or arrangements, and some suggested instead providing disclosure by category or type of transaction.[485] In response to the commenters, we have revised the disclosure requirement to permit transactions, relationships or arrangements of each director or director nominee to be described by the specific category or type. Consistent with the rule proposals, the amended rule requires that the disclosure be made on a director by director basis, with separate disclosure of categories or types of transactions, relationships or arrangements for each director and director nominee. We have also adopted an instruction indicating that the description of the category or type must be sufficiently detailed so that the nature of the transactions, relationships or arrangements is readily apparent.[486]

As proposed, this independence disclosure is required for any person who served as a director of the company during any part of the year for which disclosure must be provided,[487] even if the person no longer serves as director at the time of filing the registration statement or report or, if the information is in a proxy statement, if the director's term of office as a director will not continue after the meeting. In this regard, we believe that the independence status of a director is material while the person is serving as director, and not just as a matter of reelection.[488]

---

[476] *Id.* If the company does not have a separately designated compensation, nominating or audit committee or committee performing similar functions, it must provide this disclosure regarding independence under committee independence standards with respect to all members of the board of directors.

[477] Under the amendments, "listed issuer" has the same meaning as in Exchange Act Rule 10A–3.

[478] Under the amendments, "national securities exchange" means a national securities exchange registered pursuant to Section 6(a) of Exchange Act [15 U.S.C. 78f(a)].

[479] Under the amendments, "inter-dealer quotation system" means an automated inter-dealer quotation system of a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o–3(a)], and a "national securities association" means a national securities association registered pursuant to Section 15A(a) of the Exchange Act [15 U.S.C. 78o–3(a)] that has been approved by the Commission (as that definition may be modified or supplemented). Inter-dealer quotation systems such as the OTC Bulletin Board, the Pink Sheets and the Yellow Sheets, which do not maintain or impose listing standards and do not have listing agreements or arrangements with the issuers whose securities are quoted through them, are not within this definition. See Section II.F.1. in the Audit Committee Release.

[480] Similar disclosure had been required pursuant to Item 7(d)(2)(ii) and Item 7(d)(3)(iv) of Schedule 14A prior to these amendments. As part of our consolidation of these provisions into new Item 407, we adopt revised language for these provisions that reflects the general approach discussed above with regard to disclosure of director independence for board and committee purposes.

[481] Letter from NYCBA.

[482] Instruction 1 to Item 407(a).

[483] See Section 121.B.(2)(c) of the American Stock Exchange Company Guide; paragraph (g) of Chapter XXVII, Listed Securities, Section 10, Corporate Governance, of the Rules of the Board of Governors of the Boston Stock Exchange; and Rule 19(a)(1) of Article XXVIII, Listed Securities, of the Chicago Stock Exchange Rules.

[484] Item 407(a)(2).

[485] See, *e.g.*, letters from Chamber of Commerce; FSR; and Sidley Austin.

[486] Instruction 3 to Item 407(a).

[487] Instruction 2 to Item 407(a) has been revised to clarify this requirement. As proposed, disclosure under these amendments will not be required for persons no longer serving as a director in registration statements under the Securities Act or the Exchange Act filed at a time when the company is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d). As proposed, disclosure will not be required of anyone who was a director only during the time period before the company made its initial public offering if he or she was no longer a director at the time of the offering.

[488] For this reason, we are not incorporating the concept previously found in Instruction 4 to Item 404(b) into Item 407(a) as adopted.

We also amend the disclosure requirements regarding the audit committee and nominating committee applicable prior to these amendments in order to eliminate duplicative committee member independence disclosure and to update the required audit committee charter disclosure requirements for consistency with the more recently adopted nominating committee charter disclosure requirements.[489] As a result, as proposed the audit committee charter will no longer be required to be delivered to security holders if it is posted on the company's Web site.[490] We also are moving the disclosure required by Section 407 of the Sarbanes-Oxley Act regarding audit committee financial experts to Item 407, although as proposed we are not making any substantive changes to that requirement.[491]

The amendments require new disclosures regarding the compensation committee that are similar to the disclosures required regarding audit and nominating committees of the board of directors.[492] The company must state whether the compensation committee has a charter, and if it does make the charter available through its Web site or proxy materials in one of the ways that the audit and nominating committee charters may be made available. As proposed, the company will be required to describe its processes and procedures for the consideration and determination of executive and director compensation including:

- The scope of authority of the compensation committee (or persons performing the equivalent functions);
- The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority to other persons, specifying what authority may be so delegated and to whom;
- Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

Several commenters viewed this item as redundant with the Compensation Discussion and Analysis required under Item 402, and suggested that they be combined.[493] While this item and the Compensation Discussion and Analysis both involve the determination of executive officer compensation, they have different focuses. Item 407(e) focuses on the company's corporate governance structure that is in place for considering and determining executive and director compensation—such as the scope of authority of the compensation committee and others in making these determinations, as well as the resources utilized by the committee. In contrast, the Compensation Discussion and Analysis focuses on material information about the compensation policies and objectives of the company and seeks to put the quantitative disclosure about named executive officer compensation into perspective. We believe it is appropriate to discuss each of these matters separately and, accordingly, we have not combined them.

As for the required disclosure regarding compensation consultants, some commenters objected to the proposed requirements,[494] while other commenters suggested expanding the requirement to include, among other things, a discussion of the work performed by the compensation consultant for the company or others.[495] In addition, some commenters suggested deleting the requirement in proposed Item 407(e) that companies identify any executive officer of the company that the compensation consultants contacted in carrying out their assignment.[496] We continue to believe that the involvement of compensation consultants and their interaction with the compensation committee is material information that should be required. However, we are persuaded that disclosure regarding any executive officers of the company that the compensation consultants contacted in carrying out their assignment is not necessary. Therefore, we are adopting the compensation consultant disclosure requirement in Item 407(e) as proposed, except for the required disclosure regarding contacts with executive officers, which has not been adopted.[497]

Further, the amendments consolidate into this compensation committee disclosure requirement the disclosure requirements regarding compensation committee interlocks and insider participation in compensation decisions, as proposed.[498]

Finally, for registrants other than registered investment companies, the amendments eliminate an existing proxy disclosure requirement regarding directors who have resigned or declined to stand for re-election[499] which is no longer necessary since it has been superseded by a disclosure requirement in Form 8–K.[500] For registered investment companies, which do not file current reports on Form 8–K, the requirement has been moved to Item 22(b) of Schedule 14A.[501] Also as proposed, the amendments combine various proxy disclosure requirements regarding board meetings and committees into one location.[502] In addition, we are adopting as proposed two instructions to Item 407 to combine repetitive provisions, one relating to independence disclosure, and the other relating to board committee charters.[503]

E. Treatment of Specific Types of Issuers

1. Small Business Issuers

We are adopting amendments to Item 404 of Regulation S–B substantially as proposed. Amended Item 404 of Regulation S–B is substantially similar to amended Item 404 of Regulation S–K, except for the following two matters:

- Paragraph (b) of Item 404 of Regulation S–K relating to policies and procedures for reviewing related person transactions is not included in Regulation S–B, and
- Regulation S–B provides for a disclosure threshold of the lesser of

[489] However, we are not revising the provision that the Audit Committee Report is furnished and not filed.

[490] Item 407(d)(1) and Instruction 2 to Item 407.

[491] Item 407(d)(5).

[492] These compensation committee disclosure requirements are included in Item 407(e).

[493] See, *e.g.*, letters from J. Brill 1; Hewitt; Mercer; Pearl Meyer & Partners; and SCSGP.

[494] See, *e.g.*, letters from Buck Consultants; Chamber of Commerce; Hewitt; Pearl Meyer & Partners; Mercer; and Steven Hall & Partners.

[495] See, *e.g.*, letters from Brian Foley & Co.; 3C-Compensation Consulting Consortium; BCIMC; CFA Centre 1; Governance for Owners; Michelle Leder; James McFadden; Institutional Investor Group; SBAF; and Theodore Schlissel.

[496] See, *e.g.*, letters from Compensia; FedEx Corporation; Hewitt; and Mercer.

[497] Under the rules as adopted, disclosure would also not be required under this Item if an employee of a consulting firm met with company management to work on matters not involving compensation. See letter from Hewitt.

[498] Prior to these amendments, disclosure regarding compensation committee interlocks and insider participation in compensation decisions was required by Item 402(j).

[499] Prior to these amendments, this disclosure was required by Item 7(g) of Schedule 14A.

[500] Item 5.02(a) of Form 8–K.

[501] Item 22(b)(17) of Schedule 14A.

[502] Item 407(b) includes disclosure requirements previously specified in paragraphs (d)(1), (f), and (h)(3) of Item 7 of Schedule 14A.

[503] Instructions 1 and 2 to Item 407. Instruction 2 also includes as proposed a requirement that the charter be provided if it is materially amended.

$120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years,[504] to require disclosure for small business issuers that may have material related person transactions even though smaller than the absolute dollar amount of $120,000.

Both amended items consist of disclosure requirements regarding related person transactions and promoters. These provisions of Item 404 of Regulation S–B are substantially identical to those of Item 404 of Regulation S–K, except for certain changes conforming amended Item 404 of Regulation S–B to former Item 404 of Regulation S–B. These changes consist of the following:

- Retaining in amended Item 404 of Regulation S–B an instruction in former Item 404 of Regulation S–B regarding underwriting discounts and commissions;[505] and
- Not including an instruction in amended Item 404 of Regulation S–B regarding the treatment of foreign private issuers that is included in amended Item 404 of Regulation S–K.[506]

The two year time period for disclosure embodied in Item 404 of Regulation S–B prior to these amendments was retained in the principle for disclosure in proposed Item 404(a) of Regulation S–B. Amended Item 404(a) of Regulation S–B continues to require two years of disclosure, but does so by including an instruction to Item 404(a) of Regulation S–B[507] requiring a second year of disclosure, rather than by including the two year time period in the principle for disclosure in Item 404(a) of Regulation S–B as was proposed. This change from the proposal clarifies that for purposes of applying the definition of "related person" to determine whether disclosure is required of a transaction that occurred prior to a person having the relationship that resulted in the person becoming a related person, a one year time period should be used rather than a two year time period.[508] This change from the proposal also results in the structure of Item 404(a) of Regulation S–B more closely resembling the structure of Item 404(a) of Regulation S–K, particularly in situations where Item 404(a) of Regulation S–K applies to time periods longer than one year.

In addition, amended Item 404 of Regulation S–B retains a paragraph requiring disclosure of a list of all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by the small business issuer's immediate parent, if any.[509]

One conforming change that we are not making to Regulation S–B, however, concerns the calculation of a related person's interest in a given transaction. Prior to today's amendments, Item 404(a) of Regulation S–B differed from Item 404(a) of Regulation S–K with respect to, among other things, the calculation of the dollar value of a person's interest in a related person transaction. Prior to these amendments, Instruction 4 to Item 404(a) of Regulation S–K had specifically provided that the amount of such interest was to be computed without regard to the amount of profit or loss involved in the transaction. In contrast, Item 404(a) of Regulation S–B contained no such instruction prior to these amendments. We are adopting amendments as proposed so that the method of calculation of a related person's interest in a transaction will be the same for both Regulation S–B and Regulation S–K. We believe that differences, if any, between the types of transactions that small business issuers may engage in with related persons as compared to transactions of larger issuers would not warrant a different approach for calculating a related person's interest in a transaction.

As proposed, new Item 407 of Regulation S–K is substantially identical to new Item 407 of Regulation S–B,[510] except that it would not require disclosure regarding compensation committee interlocks and insider participation in compensation decisions or the Compensation Committee Report, since Regulation S–B did not require disclosure of this information prior to adoption of these amendments.

2. Foreign Private Issuers

Before today's amendments, a foreign private issuer would be deemed to comply with Item 404 of Regulation S–K if it provided the information required by Item 7.B. of Form 20–F. The amendments retain this approach, but require that if more detailed information is otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded, that same information must also be disclosed pursuant to Item 404.[511]

3. Registered Investment Companies

We are revising Items 7 and 22(b) of Schedule 14A, substantially as proposed, to reflect the reorganization that we have undertaken with respect to operating companies. Under the amendments, information that was required to be provided by registered investment companies under Item 7 prior to the amendments is instead required by Item 22(b).[512] The requirements of Item 7 that prior to the amendments applied to registered investment companies regarding the nominating and audit committees, board meetings, the nominating process, and shareholder communications generally will be included in Item 22(b) by cross-references to the appropriate paragraphs of new Item 407 of Regulation S–K.[513] The substance of these requirements has not been altered. In addition, the revisions to Item 22(b) directly incorporate disclosures relating to the independence of members of

[504] We are revising Item 404(a) of Regulation S–B from the proposal to clarify that the determination of a small business issuer's total assets for purposes of this Item shall be made as of the issuer's fiscal year-end for its last three completed fiscal years.

[505] Instruction 8 to Item 404(a) of Regulation S–B.

[506] This is consistent with the requirements of Regulation S–B prior to these amendments.

[507] Instruction 9 to Item 404(a) of Regulation S–B.

[508] For example, if an employee had a material interest in a transaction with the small business issuer which occurred in February 2005 and then became an executive officer in July 2005, disclosure would be required in the small business issuer's Form 10–KSB for the fiscal year ended December 31, 2005. However, if the transaction had occurred in February 2004, disclosure would not be required in the small business issuer's 2005 Form 10–KSB.

[509] Item 404(b) of Regulation S–B.

[510] The requirements that were specified in paragraphs (e), (f), and (g) of Item 401 of Regulation S–B prior to these amendments are now specified in paragraphs (d)(5), (d)(4) and (c)(3), respectively, of Item 407 of Regulation S–B.

[511] Instruction 2 to Item 404 of Regulation S–K.

[512] Amendments to Item 7(e) of Schedule 14A. Business development companies will furnish the information required by Item 7 of Schedule 14A, in addition to the information required by Items 8 and 22(b) of Schedule 14A. See amendments to Items 7, 8, and 22(b) of Schedule 14A.

[513] Amendments to Items 22(b)(15)(i) and (ii)(A) and 22(b)(16)(i) of Schedule 14A. Amended Item 22(b)(15)(i) requires the information required by new Items 407(b)(1) and (2) and (f), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(f) and 7(h) prior to today's amendments. Amended Item 22(b)(15)(ii)(A) requires the information required by new Items 407(c)(1) and (2), corresponding to the information that registered investment companies have been required to provide pursuant to Items 7(d)(2)(i) and 7(d)(2)(ii) (other than the nominating committee independence disclosures required prior to today's amendments by Item 7(d)(2)(ii)(C)). Amended Item 22(b)(16)(i) requires closed-end investment companies to provide the information required by new Items 407(d)(1) through (3), corresponding to the information that closed-end investment companies have been required to provide prior to today's amendments pursuant to Item 7(d)(3) (other than the audit committee independence disclosures required prior to today's amendments by Items 7(d)(3)(iv)(A)(1) and (B)).

nominating and audit committees that are similar to those contained in new Item 407(a) of Regulation S–K and contained in Item 7 prior to the amendments.[514] We are also adding instructions that are similar to new Instruction 1 to Item 407(a).[515]

As proposed, we are also raising from $60,000 to $120,000 the threshold for disclosure of certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be an "interested person" of an investment company within the meaning of Section 2(a)(19) of the Investment Company Act.[516] This disclosure is required in investment company proxy and information statements and registration statements. The increase in the disclosure threshold corresponds to the increase in the disclosure threshold for amended Item 404 from $60,000 to $120,000.

F. Conforming Amendments

The changes to Item 404 necessitate conforming amendments to other rules that refer specifically to Item 404.

1. Regulation Blackout Trading Restriction

We are adopting, as proposed, conforming changes to Regulation Blackout Trading Restriction,[517] also known as Regulation BTR, which we originally adopted to clarify the scope and operation of Section 306(a)[518] of the Sarbanes-Oxley Act of 2002 and to prevent evasion of the statutory trading restriction.[519] Rule 100 of Regulation BTR defines terms used in Section 306(a) and Regulation BTR, including the term "acquired in connection with service or employment as a director or executive officer."[520] Under this definition as originally adopted, one of the specified methods by which a director or executive officer directly or indirectly acquires equity securities in connection with such service is an acquisition "at a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) or (b) of Item 404 of Regulation S–K."[521] To conform this provision of Regulation BTR to the Item 404 amendments, we are amending Rule 100(a)(2) so that it references only transactions described in paragraph (a) of Item 404, as we proposed.

2. Rule 16b–3 Non-Employee Director Definition

We also are adopting conforming amendments to the definition of Non-Employee Director in Exchange Act Rule 16b–3.[522] Section 16(b) provides an issuer (or shareholders suing on its behalf) the right to recover from an officer, director, or ten percent shareholder profits realized from a purchase and sale of issuer equity securities within a period of less than six months. However, Rule 16b–3 exempts transactions between issuers of securities and their officers and directors if specified conditions are met. In particular, acquisitions from and dispositions to the issuer are exempt if the transaction is approved in advance by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors.[523]

Before adoption of these amendments, the definition of "Non-Employee Director," among other things, limited these directors to those who:

- Do not directly or indirectly receive compensation from the issuer, its parent or subsidiary for consulting or other non-director services, except for an amount that does not exceed the Item 404(a) dollar disclosure threshold;
- Do not possess an interest in any other transaction for which Item 404(a) disclosure would be required; and
- Are not engaged in a business relationship required to be disclosed under Item 404(b).

As described above, the Item 404 amendments substantially revise or rescind the Item 404 provisions on which the Non-Employee Director definition was based. To minimize potential disruptions and because no problems were brought to our attention regarding any aspect of the definition as it was stated before adoption of these amendments, we proposed a conforming amendment that would delete the provision referring to business relationships subject to disclosure under Item 404(b) as it was stated prior to today's amendments, without otherwise revising the text of the rule.

In the interest of providing certainty regarding Non-Employee Director status and to recognize corporate governance changes since the definition was adopted, one commenter suggested basing the definition instead on whether a director meets the independence standards under the rules of the principal national securities exchange where the company's securities are traded.[524] If the company has no securities traded on an exchange, the commenter suggested relying on the director's eligibility to serve on the issuer's audit committee under Exchange Act Section 10A(m) and Exchange Act Rule 10A–3.[525] We are not following the suggested approach. As we stated in the Proposing Release, the standards for an exemption from Section 16(b) liability should be readily determinable by reference to the exemptive rule, and not variable depending upon where the issuer's securities are listed.[526] Further, basing the Non-Employee Director definition on eligibility to serve on the issuer's audit committee could burden the audit committee with a compensation committee function.

As proposed and adopted, the Non-Employee Director definition continues to permit consulting and similar arrangements subject to limits measured by reference to the revised Item 404(a) disclosure requirements. Because the disclosure threshold of Item 404(a) is raised from $60,000 to $120,000, however, the effect in some cases may be to permit previously ineligible

---

[514] Amendments to Items 22(b)(15)(ii)(B) and (16)(ii) of Schedule 14A. Amended Item 22(b)(15)(ii)(B) requires disclosure about the independence of nominating committee members that is similar to those required by Item 7(d)(2)(ii)(C) prior to today's amendments and amended Item 22(b)(16)(ii) requires disclosure about the independence of audit committee members that is similar to those required by Items 7(d)(3)(iv)(A)(*1*) and (B) prior to today's amendments.

[515] Instruction to Item 22(b)(15)(ii)(B) of Schedule 14A; Instruction to Item 22(b)(16)(ii) of Schedule 14A.

[516] Amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; amendments to Items 12(b)(6), 12(b)(7), and 12(b)(8) of Form N–1A; amendments to Items 18.9, 18.10, and 18.11 of Form N–2; amendments to Items 20(h), 20(i), and 20(j) of Form N–3.

[517] 17 CFR 245.100–104.

[518] 15 U.S.C. 7244(a), entitled "Prohibition of Insider Trading During Pension Fund Blackout Periods."

[519] *Insider Trades During Pension Fund Blackout Periods*, Release No. 34–47225 (Jan. 22, 2003) [68 FR 4337]. Section 306(a) makes it unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any pension plan blackout period with respect to such equity security, if the director or executive officer acquires the equity security in connection with his or her service or employment as a director or executive officer. This provision equalizes the treatment of corporate executives and rank-and-file employees with respect to their ability to engage in transactions involving issuer equity securities during a pension plan blackout period if the securities were acquired in connection with their service to, or employment with, the issuer.

[520] This term is defined in Rule 100(a) of Regulation BTR.

[521] Rule 100(a)(2) of Regulation BTR.

[522] Exchange Act Rule 16b–3(b)(3)(ii), which defines a Non-Employee Director of a closed-end investment company as "a director who is not an 'interested person' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940," is not amended.

[523] Exchange Act Rules 16b–3(d)(1) and 16b–3(e).

[524] See letter from Sullivan.

[525] 15 U.S.C. 78j–1(m) and 17 CFR 240.10A–3.

[526] Proposing Release at n. 309.

directors to be Non-Employee Directors. In other cases, where revised Item 404(a) may require disclosure of director indebtedness and disclosure of business relationships not subject to disclosure under former Item 404(b), some formerly eligible directors may become ineligible.

In response to concerns of commenters about the potential difficulty of making a determination,[527] we have revised the rule as it was proposed to include an additional note to Rule 16b–3.[528] The Non-Employee Director definition contemplates that the director must satisfy the definition's tests at the time he or she votes to approve a transaction. For purposes of determining a director's status under those tests that are based on Item 404(a), a company may rely on the disclosure provided under Item 404 of Regulation S–K for the issuer's most recent fiscal year contained in the most recent filing in which Item 404 disclosure is presented.[529] Where a transaction disclosed in that filing was terminated before the director's proposed service as a Non-Employee Director, that transaction will not bar such service. The issuer must believe in good faith that any current or contemplated transaction in which the director participates will not require Item 404(a) disclosure, based on information readily available to the issuer and the director at the time such director proposes to act as a Non-Employee Director. At such time as the issuer believes in good faith, based on readily available information, that a current (or contemplated) transaction with a director will require Item 404(a) disclosure in a future filing, the director no longer is eligible to serve as a Non-Employee Director. However, this determination does not result in retroactive loss of a Rule 16b–3 exemption for a transaction previously approved by the director while serving as a Non-Employee director consistent with the note. In making determinations under the note, an issuer may rely on information it obtains from the director, for example pursuant to a response to an inquiry.

3. Other Conforming Amendments

The changes to Item 404, along with the consolidation of provisions into Item 407, necessitate conforming amendments to various forms and schedules under the Securities Act and the Exchange Act. The amendments modify:

- Forms that prior to these amendments required disclosure of the information required by Item 404 to instead require disclosure of the information required by amended Item 404 and new Item 407(a);[530]
- Some forms that prior to these amendments required disclosure of the information required by Item 404(a) or by Items 404(a) and (c), to instead require disclosure of the information required by Items 404(a) and (b) as amended, or amended Item 404(a), as appropriate;[531]
- A form that prior to these amendments cross-referenced an instruction in Item 404 which we are eliminating to instead include the text of this instruction;[532]
- Item 7 of Schedule 14A, to require disclosure of the information required by new Item 407(a) rather than the disclosure that was required prior to these amendments by Item 404(b), to eliminate paragraphs (d)–(h) of Item 7 that were duplicative of new Item 407 and replace them with a requirement to disclose information specified by corresponding paragraphs of new Item 407;
- Forms that prior to these amendments required disclosure of the information required by Item 402 to instead require disclosure of the information required by amended Item 402 and new Item 407(e)(4), and, in the case of proxy statements and annual reports on Form 10–K, new Item 407(e)(5);[533]
- Some forms that prior to these amendments required disclosure of the information required by Item 401 to instead require disclosure of the information required by Item 401 as amended and paragraphs (c)(3), (d)(4) and/or (d)(5) of new Item 407, as appropriate;[534]
- Forms that prior to these amendments required disclosure of the information required by Item 401(j), to instead require disclosure of the information required by new Item 407(c)(3);[535] and
- Item 10 of Form N–CSR to include a cross reference to new Item 407(c)(2)(iv) of Regulation S–K and new Item 22(b)(15) of Schedule 14A, in lieu of the former reference to Item 7(d)(2)(ii)(G) of Schedule 14A.

In addition, conforming amendments have been made to a provision in Regulation AB, which prior to these amendments required disclosure of the information required by Items 401, 402 and 404, so that instead it will require disclosure of the information required by amended Items 401, 402, 404 and paragraphs (a), (c)(3), (d)(4), (d)(5) and (e)(4) of new Item 407.[536]

VI. Plain English Disclosure

We are adopting as proposed a requirement that most of the disclosure called for by amended Items 402, 403, 404 and 407 be provided in plain English. This plain English requirement will apply when information responding to these items is included (whether directly or through incorporation by reference) in reports required to be filed under Exchange Act Sections 13(a) or 15(d). Commenters were generally supportive of the plain English requirement,[537] and some commenters suggested extending the plain English requirements to the proxy statement as a whole and to other Commission filings.[538]

In 1998, we adopted rule changes requiring issuers preparing prospectuses to write the cover page, summary and

[527] See, *e.g.*, letter from SCSGP.

[528] Note 4 to Rule 16b–3.

[529] As under Rule 16b–3 prior to these amendments, each test referring to Item 404 is measured by reference to Regulation S–K, even if the disclosure requirements applicable to the company are governed by Regulation S–B.

[530] See amendments to Item 15 of Form SB–2, Item 11(n) of Form S–1, Item 18(a)(7)(iii) and Item 19(a)(7)(iii) of Form S–4, Item 23 of Form S–11, Item 7 of Form 10, Item 13 of Form 10–K, Item 7 of Form 10–SB and Item 12 of Form 10–KSB. The amendments to Forms SB–2, 10–SB and 10–KSB require disclosure of the information required by amended Item 404 and new Item 407(a) of Regulation S–B.

[531] See amendment to Item 7(b) of Schedule 14A, which refers to amended Items 404(a) and (b), and Item 22(b)(11) and the Instruction to Item 22(b)(11) of Schedule 14A, and Item 5.02(c)(2) of Form 8–K, which refer to amended Item 404(a). The amendments to Form 8–K that reference Regulation S–B require disclosure of the information required by amended Item 404(a) of Regulation S–B.

[532] See amendments to Item 23 of Form S–11.

[533] See amendments to Item 8 of Schedule 14A, Item 11(l) of Form S–1, General Instruction I.B.4.(c) of Form S–3, Items 18(a)(7)(ii) and 19(a)(7)(ii) of Form S–4, Item 22 of Form S–11, Item 6 of Form 10 and Item 11 of Form 10–K.

[534] See amendments to General Instruction I.B.4.(c) of Form S–3, and Item 10 of Form 10–K, which refer to Item 401 and paragraphs (c)(3), (d)(4) and (d)(5) of new Item 407, and Item 7(b) of Schedule 14A, which refers to Item 401 and paragraphs (d)(4) and (d)(5) of new Item 407. The amendments to Form 10–KSB require disclosure of the information required by amended Item 401 and new Item 407(c)(3), (d)(4) and (d)(5) of Regulation S–B. We are not making any changes to the reference to Item 401 in Note G to Form 10–K, however, because the portion of Item 401 applicable in Note G (certain disclosure regarding executive officers) does not include the part of Item 401 that we are combining into new Item 407.

[535] See amendments to Item 5 in Part II of Form 10–Q, and Item 5 in Part II of Form 10–QSB. The amendments to Item 5 in Part II of Form 10–QSB require disclosure of the information required by new Item 407(c)(3) of Regulation S–B.

[536] See amendments to Item 1107(e) of Regulation AB.

[537] See, *e.g.*, letters from SCSGP; jointly, Angela Chappa, Annie Gabel and Michelle Prater; SBAF; and Standard Life.

[538] See, *e.g.*, letters from SCSGP; Foley; and Mercer.

risk factors section of prospectuses in plain English and apply plain English principles to other portions of the prospectus.[539] These rules transformed the landscape of public offering disclosure and made prospectuses more accessible to investors. We believe that plain English principles should apply to the disclosure requirements that we are adopting, so disclosure provided in response to those requirements is easier to read and understand. Clearer, more concise presentation of executive and director compensation, related person transactions, beneficial ownership and corporate governance matters can facilitate more informed investing and voting decisions in the face of complex information about these important areas.

We are adding Exchange Act Rules 13a–20 and 15d–20 to require that companies prepare their executive and director compensation, related person transaction, beneficial ownership and corporate governance disclosures included in Exchange Act reports using plain English, including the following principles:

- Present information in clear, concise sections, paragraphs and sentences;
- Use short sentences;
- Use definite, concrete, everyday words;
- Use the active voice;
- Avoid multiple negatives;
- Uuse descriptive headings and subheadings;
- Use a tabular presentation or bullet lists for complex material, wherever possible;
- Avoid legal jargon and highly technical business and other terminology;
- Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information;
- Define terms in the glossary or other section of the document only if the meaning is unclear from the context;
- Use a glossary only if it facilitates understanding of the disclosure; and
- In designing the presentation of the information, include pictures, logos, charts, graphs, schedules, tables or other design elements so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements and any other included information, drawn to scale and not misleading.

The new rule also provides additional guidance on drafting the disclosure that would comply with plain English principles, including guidance as to the following practices that companies should avoid:

- Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
- vague "boilerplate" explanations that are overly generic;
- complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

Under the new rules, if disclosures about executive compensation, beneficial ownership, related person transaction or corporate governance matters are incorporated by reference into an Exchange Act report from a company's proxy or information statement, the disclosure is required to be in plain English in the proxy or information statement.[540] The plain English rules are part of the disclosure rules applicable to filings required under Sections 13(a) and 15(d) of the Exchange Act. We believe that these plain English requirements are best administered by the Commission under these rules, and therefore we are not at this time extending plain English requirements to the entire proxy statement or to other Commission filings.

We believe that several areas where commenters requested that information be required in a specific format, such as tables, are best addressed by application of our plain English principles. The plain English rules adopted today specifically provide that, in designing the presentation of the information, companies may include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.[541] In response to our request for comment, several commenters recommended using a separate supplemental table, rather than footnotes, to identify the components of All Other Compensation, including individual perquisites, reported in the Summary Compensation Table.[542] While we have not mandated such a separate table, we encourage companies to use additional tables wherever tabular presentation facilitates clearer, more concise disclosure. Several commenters also requested that we specifically permit tabular disclosure of the required potential post-employment payments disclosure.[543] Because of the difficulty of prescribing a single format that would cover all circumstances, the rule as proposed and adopted does not mandate tabular disclosure. However, consistent with the plain English principles that we adopt today, we encourage companies to develop their own tables to report post-termination compensation if such tabular presentation facilitates clearer, more concise disclosure. Similarly, while we do not require tabular presentation of the narrative disclosure following the director compensation table, such as a breakdown of director fees, consistent with the plain English rules we adopt today, we encourage tabular presentation where it facilitates an understanding of the disclosure. Companies should also consider ways in which design elements such as tables can facilitate the presentation of the related person transaction disclosure and corporate governance disclosures.

VII. Transition

A number of commenters recommended that we adopt the rules by September or October 2006 in order for companies to have sufficient time to implement them for the 2007 proxy season.[544] One commenter expressed concern on how the transition would apply to Securities Act registration statements.[545] In keeping with these comments, we believe we have adopted the new rules and amendments in sufficient time for compliance in the 2007 proxy season. Therefore, the compliance dates are as follows:

[539] *Plain English Disclosure*, Release No. 33–7497 (Jan. 28, 1998) [63 FR 6369] (adopting revisions to Securities Act Rule 421 [17 CFR 230.421]). We have also required that risk factor disclosure included in annual reports and Summary Term Sheets in business combination filings be in plain English. See Item 1A. to Form 10–K and Item 1001 of Regulation M–A [17 CFR 229.1001], respectively.

[540] See, *e.g.*, General Instruction G(3) to Form 10–K and General Instruction E.3. to Form 10–KSB (specifying information that may be incorporated by reference from a proxy or information statement in an annual report on Form 10–K or 10–KSB).

[541] Of course, the tables required under the rules we adopt today must be included and cannot be modified except as specifically allowed for in the rules. See Item 402(a)(5) of Regulation S–K and Item 402(a)(4) of Regulation S–B.

[542] See, *e.g.*, letters from Amalgamated; CFA Centre 1; CII; IUE–CWA; Mercer; and SBAF.

[543] See, *e.g.*, letters from Buck Consultants; Frederic W. Cook & Co.; HRPA; ISS; Mercer; and The Value Alliance and Corporate Governance Alliance.

[544] See, *e.g.*, letters from ABA; ACC; Brian Foley & Co.; Jesse Brill, Chair of CompensationStandards.com and Chair of the National Association of Stock Plan Professionals, dated April 28, 2006; Buck Consultants; Foley; Frederic W. Cook & Co.; Fried Frank; Mercer; and Sullivan.

[545] See letter from BDO Seidman.

- For Forms 8–K, compliance is required for triggering events that occur 60 days or more after publication in the **Federal Register**;
- For Forms 10–K and 10–KSB, compliance is required for fiscal years ending on or after December 15, 2006;
- For proxy and information statements covering registrants other than registered investment companies, compliance is required for any proxy or information statements filed on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;
- For Securities Act registration statements covering registrants other than registered investment companies and Exchange Act registration statements (including pre-effective and post-effective amendments, as applicable), compliance is required for registration statements that are filed with the Commission on or after December 15, 2006 that are required to include Item 402 and 404 disclosure for fiscal years ending on or after December 15, 2006;
- For initial registration statements and post-effective amendments that are annual updates to effective registration statements that are filed on Forms N–1A, N–2 and N–3 (except those filed by business development companies), compliance is required for registration statements and post-effective amendments that are filed with the Commission on or after December 15, 2006; and
- For proxy and information statements covering registered investment companies, compliance is required for any new proxy or information statement filed on or after December 15, 2006.[546]

Commenters expressed some confusion concerning the periods for which disclosure under the new rules and amendments will be required during the transition from the former rules. As we noted in the Proposing Release, companies will not be required to "restate" compensation or related person transaction disclosure for fiscal years for which they previously were required to apply our rules prior to the effective date of today's amendments. This means, for example, that only the most recent fiscal year will be required to be reflected in the revised Summary Compensation Table when the new rules and amendments applicable to the Summary Compensation Table become effective, and therefore the information for years prior to the most recent fiscal year will not have to be presented at all. For the subsequent year's Summary Compensation Table, companies will be required to present only the most recent two fiscal years in the Summary Compensation Table, and for the next and all subsequent years will be required to present all three fiscal years in the Summary Compensation Table.[547] As another example, if a calendar year-end company files its initial public offering on Form S–1 in November, the initial filing will contain compensation disclosure regarding 2005 following the prior rules. If the registration statement does not become effective until after the Item 402 disclosure must be updated, then an amendment will have to be filed that includes the 2006 compensation information that complies with the rules we adopt today. The Summary Compensation Table, however, will only contain the information for 2006 and will not need to contain the information restated from 2005.

This transition approach will result in phased-in implementation of the amended Summary Compensation Table and amended Item 404(a) disclosure over a three-year period for Regulation S–K companies, and a two-year period for Regulation S–B companies. During this phase-in period, companies will not be required to present prior years' compensation disclosure or Item 404(a) disclosure under the former rules.

VIII. Paperwork Reduction Act

A. Background

The new rules and amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[548] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act.[549] The titles for the collection of information are:[550]

(1) "Regulation S–B" (OMB Control No. 3235–0417);
(2) "Regulation S–K" (OMB Control No. 3235–0071);
(3) "Form SB–2" (OMB Control No. 3235–0418);
(4) "Form S–1" (OMB Control No. 3235–0065);
(5) "Form S–4" (OMB Control Number 3235–0324);
(6) "Form S–11" (OMB Control Number 3235–0067);
(7) "Regulation 14A and Schedule 14A" (OMB Control Number 3235–0059);
(8) "Regulation 14C and Schedule 14C" (OMB Control Number 3235–0057);
(9) "Form 10" (OMB Control No. 3235–0064);
(10) "Form 10–SB" (OMB Control No. 3235–0419);
(11) "Form 10–K" (OMB Control No. 3235–0063);
(12) "Form 10–KSB" (OMB Control No. 3235–0420);
(13) "Form 8–K" (OMB Control No. 3235–0060); and
(14) "Form N–2" (OMB Control No. 3235–0026).

We adopted all of the existing regulations and forms pursuant to the Securities Act and the Exchange Act. In addition, we adopted Form N–2 pursuant to the Investment Company Act. These regulations and forms set forth the disclosure requirements for annual[551] and current reports, registration statements, proxy statements and information statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions, as well as informed voting decisions in the case of proxy statements.

Our amendments to the forms and regulations are intended to:

- Provide investors with a clearer and more complete picture of compensation awarded to, earned by or paid to principal executive officers, principal financial officers, the highest paid executive officers other than the principal executive officer and principal financial officer, and directors;

---

[546] The amendments to the cross-references in Item 10 of Form N–CSR will appear in the Form concurrent with the effective date of the amendments to our proxy rules, and will be effective for a particular registrant's Forms N–CSR that are filed after the filing of any proxy statement that includes a response to new Item 407(c)(2)(iv) of Regulation S–K (as required by new Item 22(b)(15) of Schedule 14A). The substance of the information required by the Item has not been changed.

[547] The other amended executive and director compensation disclosure requirements which relate to the last completed fiscal year will not be affected by this transition approach. The Summary Compensation Table will be treated differently because, as amended, it requires disclosure of compensation to the named executive officers for the last three fiscal years.

[548] 44 U.S.C. 3501 *et seq.*

[549] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[550] The paperwork burden from Regulations S–K and S–B is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulations S–K and S–B to be a total of one hour.

[551] The pertinent annual reports are those on Form 10–K or 10–KSB.

• Provide investors with better information about key financial relationships among companies and their executive officers, directors, significant shareholders and their respective immediate family members;

• Include more complete information about independence regarding members of the board of directors and board committees;

• Reorganize and modify the type of executive and director compensation information that must be disclosed in current reports; and

• Require most of the disclosure required under these amendments to be provided in plain English.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to annual and current reports, registration statements, proxy statements and information statements are mandatory. However, the information collection requirements relating exclusively to proxy and information statements will only apply to issuers subject to the proxy rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The amendments will increase existing disclosure burdens for annual reports on Form 10–K [552] and registration statements on Forms 10, S–1, S–4 and S–11 by requiring:

• An expanded and reorganized Summary Compensation Table, which will require expanded disclosure of a "total compensation" amount, and information necessary for computing the total amount of compensation, such as the grant date fair value of equity-based awards computed in accordance with FAS 123R, and the aggregate annual change in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans;

• Disclosure at lower thresholds of information regarding perquisites and other personal benefits;

• A more focused presentation of compensation plan awards in a Grants of Plan-Based Awards Table, which builds upon former tabular disclosures regarding long term incentive plans and awards of option and stock appreciation rights to supplement the information required to be included in the amended Summary Compensation Table;

• Expanded disclosure regarding holdings and exercises by named executive officers of previously awarded stock, options and similar instruments (with disclosure regarding outstanding option awards required on an award-by-award basis), including disclosure of option exercise prices and expiration dates, as well as the amounts (both the number of shares and the value) realized upon the exercise of options and the vesting of stock;

• Improved narrative disclosure accompanying data presented in the executive compensation tables and a new Compensation Discussion and Analysis section to explain material elements of compensation of named executive officers;

• With regard to Form 10–K, a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors concerning the disclosure of the Compensation Discussion and Analysis in the Form 10–K or proxy or information statement;

• New tables and narrative disclosure regarding retirement plans and nonqualified defined contribution and other deferred compensation plans;

• Expanded disclosure regarding post-employment payments other than pursuant to retirement and deferred compensation plans;

• A new table and improved narrative disclosure for director compensation to replace the more general disclosure requirements in place prior to these amendments;

• Disclosure regarding additional related persons by expanding the definition of "immediate family member" under an amended related person transaction disclosure requirement;

• New disclosure regarding a company's policies and procedures for the review, approval or ratification of transactions with related persons;

• New disclosure regarding corporate governance matters such as the independence of directors; and

• Additional disclosure regarding pledges of securities by officers and directors and directors' qualifying shares.

At the same time, the amendments will decrease existing disclosure burdens for annual reports on Form 10–K and registration statements on Forms 10, S–1, S–4 and S–11 by:

• Eliminating tabular presentation regarding projected stock option values under alternative stock appreciation scenarios;

• Eliminating a generalized tabular presentation regarding defined benefit plans, which will offset in part the increased burdens regarding pension plan disclosure; and

• Eliminating a disclosure requirement regarding specific director relationships that could affect independence.

In addition, the amendments may increase or decrease existing disclosure burdens, or not affect them at all, for annual reports on Form 10–K and registration statements on Forms 10, S–1, S–4 and S–11, depending on a company's particular circumstances, by:

• Eliminating the requirement to include in proxy or information statements a compensation committee report on the repricing of options and stock appreciation rights and a table reporting on the repricing of options and stock appreciation rights over the past ten years, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year, which will be required to be included or incorporated by reference (as applicable) in annual reports and registration statements;

• Increasing the dollar value threshold for determining if related person transaction disclosure is required from $60,000 to $120,000;

• Narrowing the scope of an instruction that provides bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances; and

• Requiring disclosure about reliance on an exemption from requirements for director independence when such an exemption is available.

Specifically with respect to proxy and information statements, the amendments will impose a new disclosure requirement regarding the

[552] The amended disclosure requirements regarding executive and director compensation, beneficial ownership, related person transactions and parts of the amended corporate governance disclosure requirements are in Form 10–K, Schedule 14A and Schedule 14C. Form 10–K permits the incorporation by reference of information in Schedule 14A or 14C to satisfy the disclosure requirements of Form 10–K. The analysis that follows assumes that companies would either provide the required disclosure in a Form 10–K only, if the company is not subject to the proxy rules, or would incorporate the required disclosure into the Form 10–K by reference to the proxy or information statement if the company is subject to the proxy rules. This approach takes into account the burden from the amended disclosure requirements that are included in both the Form 10–K and in Schedule 14A or Schedule 14C.

company's processes and procedures for the consideration and determination of executive and director compensation with respect to the compensation committee or persons performing the equivalent functions, and disclosure regarding the availability of the compensation committee's charter (if it has one), either as an appendix to the proxy or information statement at least once every three fiscal years or on the company's Web site. These amendments will not require a compensation committee to establish or maintain a charter. The amended disclosure that will be required regarding compensation committees is similar to what is currently required for audit committees and nominating committees. The amendments will decrease disclosure requirements for proxy and information statements by eliminating a disclosure requirement regarding the resignation of directors and a compensation committee report on the repricing of options and stock appreciation rights. The amendments require the Compensation Discussion and Analysis disclosure in the annual report on Form 10–K and in proxy or information statements to be accompanied by a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis. This new Compensation Committee Report, along with the Compensation Discussion and Analysis, is required instead of the Board Compensation Committee Report on Executive Compensation that was previously required to be furnished with proxy and information statements prior to these amendments. The extent to which eliminating the former requirements to provide the Board Compensation Committee Report on Executive Compensation and a compensation committee report on the repricing of options and stock appreciation rights reduces burdens for proxy and information statements will be offset to a substantial extent, as discussed above, by the periodic reporting and proxy or information statement requirements for Compensation Discussion and Analysis, the new Compensation Committee Report and a narrative disclosure requirement regarding repricings and other modifications of outstanding awards. The Compensation Discussion and Analysis and narrative disclosure requirement regarding repricings and other modifications will be required to be included or incorporated by reference in annual reports and registration statements, while the Compensation Committee Report will only be required to be included or incorporated by reference from the proxy or information statement in the annual report on Form 10–K. We estimate that, on balance, the changes that are specific to proxy or information statements will result in some incremental burdens on proxy or information statement collections of information, as described in more detail below.

The amendments will increase existing disclosure burdens for annual reports on Form 10–KSB [553] and registration statements on Forms 10–SB and SB–2 filed by small business issuers by requiring:

- An expanded and reorganized Summary Compensation Table, which will require expanded disclosure of a "total compensation" amount, and information necessary for computing the total amount of compensation, such as the grant date fair value of equity-based awards computed in accordance with FAS 123R;
- Disclosure at lower dollar thresholds for information regarding perquisites and other personal benefits;
- Expanded disclosure regarding holdings by named executive officers of previously awarded stock, options and similar instruments (with disclosure regarding outstanding option awards required on an award-by-award basis), including disclosure of option exercise prices and expiration dates.
- A new table for director compensation, to replace narrative disclosure requirements that existed prior to these amendments;
- A narrative description of retirement plans;
- Disclosure regarding additional related persons under the amended related person transaction disclosure requirement;
- New and reorganized disclosure regarding corporate governance matters such as the independence of directors and members of the nominating, compensation and audit committees of the board of directors; and
- Additional disclosure regarding pledges of securities by officers and directors, and director qualifying shares.

At the same time, the amendments will decrease existing disclosure burdens for annual reports on Form 10–KSB and registration statements on Forms 10–SB and SB–2 filed by small business issuers by:

- Reducing by two the number of named executive officers for the purposes of executive compensation disclosure, to include only the principal executive officer and the two most highly compensated executive officers other than the principal executive officer;
- Reducing the required information in the Summary Compensation Table from three years to two years of data;
- Eliminating tabular disclosure of grants of options and stock appreciation rights in the last fiscal year;
- Eliminating tabular disclosure regarding exercises of options and stock appreciation rights; and
- Eliminating tabular disclosure regarding long-term incentive plan awards in the last fiscal year.

In addition, the amendments may increase or decrease, or not affect, existing disclosure burdens for annual reports on Form 10–KSB or registration statements on Forms 10–SB and SB–2 filed by small business issuers depending on the small business issuer's particular circumstances, by:

- Eliminating the requirement to include a compensation committee report on the repricing of options and stock appreciation rights, in favor of a narrative discussion of repricings, if any occurred in the last fiscal year, which will be required to be included or incorporated by reference (as applicable) in annual reports and registration statements;
- Changing the dollar value threshold used for determining if related person transaction disclosure is required from $60,000 to the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years; and
- Narrowing the scope of an instruction that provides bright line tests for determining whether transactions with related persons are required to be disclosed in particular circumstances.

The amendments may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances, for Forms N–1A, N–2, and N–3 by increasing to $120,000 the former $60,000 threshold in such forms for disclosure of certain interests, transactions, and relationships of disinterested directors, although as discussed below we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to

[553] The same analysis as discussed above with regard to the relationship of Form 10–K to the disclosure required in proxy or information statements is also applied to Form 10–KSB

these items. The amendments will increase the existing disclosure burdens for Form N–2 by requiring business development companies to provide additional disclosure regarding compensation. However, the amendments will decrease the existing disclosure burden by no longer requiring compensation disclosure with respect to certain affiliated persons and the advisory board of business development companies and by no longer requiring business development companies to disclose certain compensation from the fund complex.

The amendments will decrease the Form 8–K disclosure burdens, by focusing the Form 8–K disclosure requirement on more presumptively material employment agreements, plans or arrangements of the narrower group of named executive officers, which should reduce the number of current reports on Form 8–K filed each year relating to executive and director compensation matters.

We do not believe that our amendments regarding exhibit filing requirements for Form 20–F and our treatment of foreign private issuers under the revised rules will impose any incremental increase or decrease in the disclosure burden for these issuers.

C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the Paperwork Reduction Act analysis contained in the Proposing Release. We did not receive comments on our Paperwork Reduction Act estimates;[554] however, a number of commenters expressed concerns that costs associated with the proposals were understated. Commenters also raised concerns with costs and burdens associated with particular aspects of the proposals.

One commenter indicated that the Commission needs to take into consideration that the disclosure is more detailed and lengthy, and realistically will require more preparation time by more people; historically, the individuals involved in the process outside a company have been attorneys and accountants who are preparing or reviewing the documents, but compensation consultants and their advisors and special counsel to the directors would be introduced into the process; and the cost analysis does not reflect additional director time that will be required to read the lengthy new disclosure.[555] The commenter also expressed the view that smaller to mid-size issuers will be negatively affected disproportionately more than larger public companies, as disclosure requirements increase and greater reliance on external support is thus necessitated.

Other commenters stated their belief that the Commission underestimated the cost of the proposed disclosure requirements.[556] One of these commenters cited the limited availability of information from existing information systems and requested that the Commission afford an adequate transition period to accommodate the proposed changes,[557] while another commenter suggested that the proposal would notably impose a reporting and administrative burden that would add to the already substantial reporting obligations imposed by the Sarbanes-Oxley Act of 2002 and related rules.[558] Another commenter noted that companies will likely incur considerable costs in preparing the first proxy statement under the revised rules, even if, as was proposed, they do not have to "restate" compensation for prior years.[559]

Other commenters noted that specific aspects of the proposals would result in significant costs or burdens, including:

- Compensation Discussion and Analysis generally, as well as the status of this disclosure as filed rather than furnished;[560]
- Disclosure of the increase in actuarial value of pension plans in the Summary Compensation Table and its inclusion in the determination of named executive officer status;[561]
- Lowering the disclosure threshold for perquisites and other personal benefits to $10,000, and changing the threshold for separate identification and quantification;[562]
- Footnote disclosure to the Outstanding Equity Awards at Year-End Table regarding expiration and vesting dates;[563]
- Plan-by-plan disclosure of pension benefits;[564]
- Numerical estimates of termination or change in control payments;[565]
- Amendments to the related person transaction disclosure requirement;[566]
- Disclosure of director relationships (other than those disclosed under the related person transaction disclosure requirement) considered by the board of directors when making independence determinations;[567] and
- Disclosure regarding the use of compensation consultants by the compensation committee[568] as well as the contacts between compensation consultants and executive officers of the company.[569]

Some commenters also noted their belief that costs and burdens arising from the proposals would disproportionately affect small business issuers and smaller public companies.[570]

We have made substantive modifications to the proposals that address, in part, the concerns expressed by commenters about costs. Some of the changes in the final rules include:

- Treating Compensation Discussion and Analysis as filed (and not furnished), but requiring a separate Compensation Committee Report over the names of compensation committee members as a means of emphasizing the committee's involvement in the disclosure and providing additional information to which the principal executive officer and principal financial officer may look to in completing their certifications;
- Requiring disclosure of the actuarial present value of the named executive officers' accumulated benefits under defined benefit and actuarial pension plans in the Pension Benefits Table, which under the final rules will include the actuarial present value of accumulated benefits computed by utilizing assumptions used for financial reporting purposes under generally accepted accounting principles (rather than requiring disclosure of an estimate of the annual benefit payable upon retirement as proposed), and requiring in the Summary Compensation Table

[554] One commenter noted our aggregate burden estimates in commenting that the "administrative costs" noted in the Proposing Release did not account for the need to overcome compliance risks "where concern for satisfying new rules is multiplied by the potential legal risks associated with sufficiency and completeness under a regime of CEO and CFO certification." Letter from Hodak Value Advisors.

[555] See letter from Chamber of Commerce.

[556] See, *e.g.*, letters from Computer Sciences; HRPA; N. Ludgus; and Kathy B. Wheby.

[557] See letter from Computer Sciences.

[558] See letter from HRPA.

[559] See letter from Sullivan.

[560] See, *e.g.*, letters from Hodak Value Advisors and Chamber of Commerce.

[561] See, *e.g.*, letters from E&Y and KPMG.

[562] See, *e.g.*, letters from Hodak Value Advisors; ACC; Eli Lilly; and NACCO Industries.

[563] See, *e.g.*, letters from ABA; Leggett & Platt; SCSGP; and Sidley Austin.

[564] See, *e.g.*, letters from ABA; Hewitt; HRPA; and Towers Perrin.

[565] See, *e.g.*, letters from Sullivan; Kellogg; SCSGP; and Chamber of Commerce.

[566] See, *e.g.*, letters from American Bankers; Whitney Holding; SCSGP; and FSR.

[567] See, *e.g.*, letters from BRT; Chadbourne; Chamber of Commerce; FSR; Intel; SCSGP; Sidley Austin; and Sullivan.

[568] See, *e.g.*, letters from Chamber of Commerce and Compensia.

[569] See, *e.g.*, letters from Mercer and Compensia.

[570] See, *e.g.*, letters from ABA; ACB; ICBA; and SCSGP.

the aggregate annual change in that value, so that the Summary Compensation Table data will directly relate to the data presented in the Pension Benefits Table;

- Specifying that companies compute estimates of compensation under post-termination arrangements applying the assumptions that the triggering event occurred on the last day of the company's last completed fiscal year and the price per share of the company's securities is the closing market price on that day;
- Specifying that companies must exclude the amounts for the aggregate annual change in the actuarial present value of accumulated benefits under defined benefit and actuarial pension plans and the above-market or preferential earnings on nonqualified deferred compensation when determining which executive officers are named executive officers for the purposes of disclosure in the compensation tables;
- Including some instructions to the related person disclosure requirement that were proposed to be eliminated, so that some bright line standards for non-disclosure, as modified, continue to apply with respect to specific transactions;
- Requiring disclosure of director relationships (other than any transactions, relationships or arrangements disclosed under the related person transaction disclosure requirement) considered by the board of directors when making independence determinations by specific category or type, rather than by individual transactions, relationships or arrangements as proposed; and
- Not requiring that companies identify the executive officers that compensation consultants have contacted as proposed.

Further, the final rules applicable to small business issuers are adopted substantially as proposed, providing for significantly less detailed disclosure regarding executive compensation for these companies as compared to the disclosure required for larger issuers.

We made other modifications to the proposals in response to issues raised by commenters that could, depending on the particular circumstances, increase costs relative to the costs estimated for the proposals. In this regard, the final rules:

- Require expanded disclosure about option grants and outstanding options, including disclosure of the date the compensation committee or full board took action or was deemed to take action to grant an award if that date is different from the grant date, a description of the methodology for determining the exercise price of options if the exercise price is not determined based on the closing market price on the date of grant, and the amount of securities underlying unexercised options, the exercise prices and the option expiration dates for each outstanding option (rather than on an aggregate basis as proposed);
- Require disclosure of the Performance Graph (which would have been eliminated under the proposals) in annual reports to security holders that precede or accompany a proxy or information statement relating to an annual meeting at which directors are to be elected; and
- Require disclosure about reliance on an exemption from requirements for director independence when such an exemption is available.

D. Revisions to Paperwork Reduction Act Burden Estimates

As discussed above, in consideration of commenters' concerns that the costs associated with the disclosure requirements were understated in the Proposing Release, we are revising our Paperwork Reduction Act burden estimates that were originally submitted to the Office of Management and Budget. In revising our estimates, we have considered the comments identifying increased costs and burdens in the proposals, as well as the revisions that we have made in the final rules as compared to the proposals in response to some of the commenters' concerns.

The discussion that follows focuses on the incremental change in burden estimates resulting from the amendments adopted today. The pre-existing burden estimates to which these incremental changes will be added reflect the current aggregate burden assigned to each information collection, which already include the estimated burden of complying with the executive compensation, related person transaction and corporate governance disclosure requirements in place before adoption of these amendments. The burden estimates (expressed as total burden hours per form) prior to adding the additional burdens imposed by the amended executive compensation, related person transaction and corporate governance rules are as follows: 2,202 hours for Form 10–K; 1,646 hours for Form 10–KSB; 156 hours for Form 10; 133 hours for Form 10–SB; 593 hours for Form SB–2; 1,102 hours for Form S–1; 4,048 hours for Form S–4; 1,892 hours for Form S–11; 271.4 hours for Form N–2;[571] 5 hours for Form 8–K; 84.5 hours for Schedule 14A; and 84 hours for Schedule 14C. The estimated incremental burden arising from today's amendments for each of these forms has been estimated with reference to each of these pre-existing burden estimates.

For purposes of the Paperwork Reduction Act, we now estimate that the annual incremental increase in the paperwork burden for companies to comply with our collection of information requirements to be approximately 783,284 hours of in-house company personnel time and to be approximately $133,883,300 for the services of outside professionals.[572] These estimates include the additional time and the cost of collecting information, preparing and reviewing disclosure, filing documents and retaining records over our existing burden estimate for preparing executive compensation, related person transaction and corporate governance disclosures. Our methodologies for deriving these revised estimates are discussed below.

Our revised estimates represent the average burden for all issuers, both large and small.[573] As described below, we expect that the burdens and costs could be greater for larger issuers and lower for smaller issuers under the rules as adopted. For Exchange Act annual reports on Forms 10–K or 10–KSB, current reports on Form 8–K, proxy statements and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[574] For Securities Act registration statements on Forms SB–2, S–1, S–4, S–11, or N–2 and Exchange Act registration statements on Forms 10

[571] The pre-existing estimate for Form N–2 represents the internal hour burden per response. In addition there is a pre-existing external cost estimate for Form N–2 of $12,766 per response.

[572] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest hundred.

[573] Our estimates are based on annual responses on Form 10–K of 8,602 and annual responses on Form 10–KSB of 3,504. Our estimates of the number of annual responses to the collections of information are based on the number of filings made in the period from October 1, 2004 through September 30, 2005.

[574] At the proposing stage, we used an estimated hourly rate of $300.00 to determine the estimated cost to public companies of executive compensation and related disclosure prepared or reviewed by outside counsel. We recently have increased this hourly rate estimate to $400.00 per hour after consulting with several private law firms. The cost estimates in this release are based on the $400.00 hourly rate.

or 10–SB, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[575] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

1. Securities Act Registration Statements, Exchange Act Registration Statements, Exchange Act Annual Reports, Proxy Statements and Information Statements

For the purposes of the Paperwork Reduction Act, we estimate that, over a three year period,[576] the annual incremental disclosure burden imposed by the amendments will average 95 hours per Form 10–K; 50 hours per Form 10–KSB; 85 hours per Form 10; 45 hours per Forms 10–SB and SB–2; 74 hours per Form S–1; 17 hours per Form S–4; 85 hours per Form S–11; 3 hours per Schedules 14A and 14C; and 5 hours per Form N–2.[577] While the amendments to Item 22(b) of Schedule 14A and increasing to $120,000 the former $60,000 threshold in Forms N–1A, N–2, and N–3 for disclosure of certain interests, transactions, and relationships of disinterested directors may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances, we estimate that, as discussed below, the amendments will not impose an annual incremental disclosure burden.

These estimates were based on the following assumptions:

- The hours of company personnel time and outside professional time required to prepare the disclosure regarding executive and director compensation under amended Item 402 of Regulation S–K will be greater in light of the expansion and reorganization of the amended disclosure requirements relative to the disclosure requirements on these topics in place prior to adoption of these amendments, in particular the requirements regarding Compensation Discussion and Analysis, expanded disclosures concerning options and other equity-based awards and new disclosure requirements regarding pension benefits, non-qualified deferred compensation, other potential post-employment payments and director compensation.
- Companies filing annual reports on Form 10–K that will be required to include disclosure under Item 402 of Regulation S–K, as we are amending it, and Item 407(e)(4) of Regulation S–K (regarding compensation committee interlocks and insider participation), will experience greater costs in responding to these disclosure requirements in the first year of compliance with them, and, to a lesser extent, in the second and third years, as systems and processes are implemented to obtain the relevant data and disclosure controls and procedures with respect to new or expanded disclosure requirements are implemented, with lower incremental costs expected in subsequent years.
- The hours of company personnel time and outside professional time required to prepare the disclosure regarding related person transactions under amended Item 404, director independence under new Item 407(a) and compensation committee functions under paragraphs (e)(1) through (e)(3) of Item 407 of both Regulation S–K and Regulation S–B, will be greater as compared to the burden that was imposed in complying with the related party transaction disclosure requirements and disclosure about the board of directors required by Item 404 of Regulations S–K and S–B and Item 7 of Schedule 14A prior to these amendments. The new Compensation Committee Report that is required in the Form 10–K (and is not required for small business issuers, because they are not required to include Compensation Discussion and Analysis) will increase the burdens. Other amendments to be made by moving disclosure requirements relating to corporate governance to new Item 407 of Regulations S–K and S–B will not change the substance of the disclosure requirements and will therefore not increase burdens, particularly for proxy or information statements where much of the disclosure about these topics is currently required.
- For Form 10–K, we estimate that it would take issuers 170 additional hours to prepare the amended disclosure in year one, 80 hours in year two and 35 hours in year three and thereafter, which results in an average of 95 hours over the three year period to comply with the amended disclosure requirements. This estimate takes into account that the burden will be incurred by either including the required disclosure in the report directly or incorporating by reference from a proxy or information statement. This estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file annual reports on Form 10–K, recognizing that larger companies with more complex executive and director compensation arrangements, more related person transactions and more involved corporate governance structures may require more time to comply with the amended disclosure requirements, while smaller issuers with potentially less complex circumstances are likely to require less time to comply with the amended requirements.
- For proxy statements on Schedule 14A and information statements on Schedule 14C, we estimate that it would take companies 6 additional hours to prepare the additional corporate governance and other compensation committee disclosures required only in the proxy or information statement in year one, and 2 hours in year two and 2 hours in year three and thereafter, which results in an average of approximately 3 hours over the three year period.[578] As with the estimates for Form 10–K, this estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file proxy statements on Schedule 14A and

[575] As mentioned above, we do not believe that the amendments increasing to $120,000 the current $60,000 threshold in Forms N–1A, N–2, and N–3 for disclosure of certain interests, transactions, and relationships of disinterested directors will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items.

[576] We calculated an annual average over a three year period because OMB approval of Paperwork Reduction Act submissions covers a three year period. Embedded in the three year period is the recognition that the costs in the initial year of compliance are likely to be higher than in later years.

[577] In the Proposing Release, we estimated that the proposed revisions would average 67 hours per Form 10–K; 35 hours per Form 10–KSB; 60 hours per Form 10; 30 hours per Forms 10–SB and SB–2; 60 hours per Forms S–1, S–4 and S–11; and 1.675 hours per Form N–2.

[578] Similarly, the hours of company personnel time and outside professional time required to prepare the disclosure required by the amended conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies will be approximately the same as for compliance with the requirements regarding disclosure of the independence of nominating and audit committee members of investment companies that were required by Item 7 of Schedule 14A prior to today's amendments.

information statements on Schedule 14C, taking into account that larger companies may require more time to comply with the amended disclosure requirements, while smaller companies (including small business issuers) with potentially less complex circumstances may require less additional time to comply with the amended requirements.

• Companies filing registration statements on Forms 10, S–1, S–4 and S–11 that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or 15(d) will in many cases not have been required to comply with the amended disclosure requirements prior to filing such registration statements, and will therefore take an estimated 85 additional hours on average to comply with the changes in the disclosure requirements. For Forms S–1 and S–4, which permit incorporation of information by reference to disclosure provided in Exchange Act reports, we have estimated a lower average incremental number of burden hours in order to recognize that the incremental burden arising from the amendments is already factored into the estimated average incremental burden for Forms 10–K and 10–KSB.[579] These estimated incremental burdens are based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The additional time required by these companies to obtain the relevant data and to compile the required executive compensation information is offset to some extent by the fact that only one year of executive compensation information will generally be required for presentation in the Summary Compensation Table, as compared to three years for issuers already subject to Exchange Act reporting requirements. By contrast, information regarding related person transactions, as was the case prior to the amendments, is generally required for three years in Securities Act and Exchange Act registration statements, so that any additional burden associated with obtaining data and compiling the related person transaction disclosure under the amended requirements would be with respect to this three year period.

• Small business issuers filing annual reports on Form 10–KSB will be subject to lower incremental costs than other issuers as a result of the amendments, given the reduced disclosure required by Item 402 of Regulation S–B relative to Item 402 of Regulation S–K, as described above. As with companies filing annual reports on Form 10–K, we expect that small business issuers will experience greater costs in responding to the amended disclosure requirements in the first year of compliance with them, as systems are implemented to obtain the relevant data and disclosure controls and procedures with respect to new or expanded disclosure requirements are implemented, with lower incremental costs in subsequent years.

• For Form 10–KSB, we estimate that it would take issuers an estimated 100 additional hours on average to prepare their disclosure under the amended requirements in year one, 35 additional hours in year two and 15 additional hours in year three and thereafter, which results in an average of 50 additional hours over the three year period. This estimate assumes that the burden would be incurred by either including the amended disclosure in the report directly or incorporating by reference from a proxy or information statement. This estimated incremental burden is based on a consideration of the extent to which the amendments will increase, decrease or not affect the burden imposed by the requirements in place prior to these amendments, as described in Section VIII.B., above. The incremental burden represents the estimate of the average burden across the range of companies that file annual reports on Form 10–KSB, recognizing that small business issuers with more complex executive and director compensation arrangements, more related person transactions and more involved corporate governance structures may require more time to comply with the amended disclosure requirements, while other small business issuers with potentially less complex circumstances, particularly the smallest companies in this group, are likely to require less time to comply with the amended requirements.

• Small business issuers filing registration statements on Forms 10–SB and SB–2, including those small business issuers that are not already filing periodic reports pursuant to Exchange Act Sections 13(a) or 15(d) and thus will not have been required to comply with the amended disclosure requirements prior to filing such registration statements, will take an estimated 45 additional hours on average to comply with the changes in the disclosure requirements. The additional time required by these registrants to obtain the relevant data and to compile the required information is offset to some extent by the fact that only one year of compensation information will generally be required for presentation in the Summary Compensation Table, as compared to two years for small business issuers already subject to Exchange Act reporting requirements.

• Based on our experience with the requirement we adopted in 1998 for issuers to write certain sections of prospectuses in plain English, drafting documents in plain English will result in an initial increase in time and cost burdens in the first year of implementation, and to a lesser extent, the second year, with those time or cost burdens decreasing in the year following implementation of the new rules. To the extent that companies incorporate required information by reference to proxy or information statements, the amended plain English requirements would apply to disclosure in those filings; however, the incremental burden of preparing plain English disclosure is factored into the burden estimates for Forms 10–K and 10–KSB. The plain English rule amendments will not affect the substance of the required disclosure, and companies that have filed registration statements under the Securities Act are already familiar with the requirements.

• The amendments to increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of disinterested directors in Forms N–1A, N–2, and N–3 and in proxy and information statements may increase or decrease existing disclosure burdens, or not affect them at all, depending on the particular circumstances. Because these forms are already required to disclose these interests, transactions, and relationships in amounts exceeding $60,000, we do not believe the increase in the disclosure threshold will significantly impact the hours of company personnel time and cost of outside professionals in responding to these items, and we estimate these amendments will neither increase nor decrease the annual paperwork burden.

[579] For Form S–1, we estimate an average incremental burden of 74 hours, based on an estimate that 459 out of the 528 registration statements that we estimate will be filed on Form S–1 will not include the disclosure contemplated by these rule changes through incorporation by reference to a Form 10–K or Form 10–KSB (459 filings times 85 hours = 39,015 hours, which when divided by the 528 total annual filings results in approximately 74 hours per Form S–1). For Form S–4, we estimate an average incremental burden of 17 hours, based on an estimate that 123 out of the 619 registration statements that we estimate will be filed on Form S–4 will not include the disclosure contemplated by these rule changes through incorporation by reference to a Form 10–K or Form 10–KSB (123 filings times 85 hours = 10,455 hours, which when divided by the 619 total annual filings results in approximately 17 hours per Form S–4).

• Business development companies filing Form N–2 will be required to include Item 402 of Regulation S–K, as we are amending it, and will experience higher costs in responding to these disclosure requirements in the first year of complying with them, and, to a lesser extent, in the second year, as systems are implemented to obtain the relevant data and compliance efforts with respect to new or expanded disclosure requirements are implemented, with lower incremental costs expected in subsequent years.[580]

Tables 1 and 2 below illustrate the incremental annual compliance burden in the collection of information in hours and cost for Exchange Act periodic reports for companies other than registered investment companies, proxy statements, information statements, Securities Act registration statements and Exchange Act registration statements.

TABLE 1.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR EXCHANGE ACT PERIODIC REPORTS, PROXY STATEMENTS AND INFORMATION STATEMENTS

Form	Annual responses	Incremental hours/form	Incremental burden	75% Issuer	25% Professional	$400 Professional cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*$400
10–K[581]	8,602	95	817,190	612,892.50	204,297.50	$81,719,000
10–KSB	3,504	50	175,200	131,400.00	43,800.00	17,520,000
DEF 14A	7,250	3	21,750	16,312.50	5,437.50	2,175,000
DEF 14C	681	3	2,043	1,532.25	510.75	204,300
Total			1,016,183	762,137.25	254,045.75	101,618,300

TABLE 2.—CALCULATION OF INCREMENTAL PAPERWORK REDUCTION ACT BURDEN ESTIMATES FOR SECURITIES ACT REGISTRATION STATEMENTS AND EXCHANGE ACT REGISTRATION STATEMENTS

Form	Annual responses	Incremental hours/form	Incremental burden	75% Issuer	25% Professional	$400 Professional cost
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*$400
10	72	85	6,120	1,530.00	4,590.00	$1,836,000
10–SB	166	45	7,470	1,867.50	5,602.50	2,241,000
SB–2	885	45	39,825	9,956.25	29,868.75	11,947,500
S–1	528	74	39,072	9,768.00	29,304.00	11,721,600
S–4	619	17	10,523	2,630.75	7,892.25	3,156,900
S–11	60	85	5,100	1,275.00	3,825.00	1,530,000
N–2	462	5	2,310	577.50	1,732.50	693,000
Total			110,420	27,605.00	82,815.00	33,126,000

2. Exchange Act Current Reports

For purposes of the Paperwork Reduction Act, we estimate that the amendments affecting the collection of information requirements related to current reports on Form 8–K will reduce the annual paperwork burden by approximately 6,458 hours of company personnel time and by a cost of approximately $861,000 for the services of outside professionals. This estimate reflects the reduction in the number of filings that could result from our amendments.[582] These estimates were based on the following assumptions:

• The number of annual responses for Form 8–K is estimated to be 110,416.[583] Based on a study of current reports on Form 8–K filed in September 2005, we estimate that approximately 22,083 current reports filed on Forms 8–K would be filed annually pursuant to Item 1.01 of Form 8–K;

• Based on a review of Item 1.01 of Form 8–K filings made in September 2005, we estimate that 6,625 of the 22,083 current reports on Form 8–K that would be filed annually under Item 1.01

[580] For Form N–2, we estimate that it will take business development companies 150 additional hours to prepare the amended disclosure in year one, 75 hours in year two and 30 hours in year three and thereafter, which results in an average of 85 hours for each business development company to comply with the amended compensation disclosures that would be required on Form N–2. We estimate an average annual incremental disclosure burden of 5 hours per Form N–2, based on 85 hours per Form N–2 filing by business development companies times 27 filings on Form N–2 by business development companies (representing all Form N–2 and N–2/A filings by business development companies during the year ended December 31, 2005) (85 hours times 27 Form N–2 filings (including amendments) = 2,295 hours), divided by 462 total annual filings on Form N–2 (representing all Form N–2 and N–2/A filings during the year ended December 31, 2005) (2,295 hours divided by 462 filings on Form N–2 (including amendments) = approximately 5 hours per Form N–2 (including amendments)).

We note that in the Proposing Release, we estimated 935 total annual filings on Form N–2 and N–2/A, but this higher number double counted certain filings that were made under both the Securities Act and the Investment Company Act. Our revised estimate is 462 annual filings.

[581] The burden estimates for Form 10–K and 10–KSB assume that the amended requirements are satisfied by either including information directly in the annual reports or incorporating the information by reference from the proxy statement or information statement in Schedule 14A or Schedule 14C, respectively. As described above, we now estimate that the changes to executive compensation and corporate governance disclosure requirements applicable only in proxy or information statements (and thus not in Securities Act registration statements or Exchange Act reports or registration statements) will impose an incremental burden

[582] The amendments do not change the exhibit filing requirements under Item 601(b)(10) of Regulations S–K and S–B, therefore companies may be required to file compensatory plans, contracts or arrangements as exhibits to filings even if current reporting on Form 8–K is no longer required for the entry into or amendment of those plans, contracts or arrangements.

[583] This is based on the number of responses made in the period from October 1, 2004 through September 30, 2005.

would relate to executive or director compensation matters; and

• Based on a review of Item 1.01 of Form 8–K filings made in September 2005, we estimate that 1,722 fewer current reports on Form 8–K would be filed annually as a result of more focused current reporting of executive officer and director compensation transactions under new Item 5.02(e) of Form 8–K.[584]

IX. Cost-Benefit Analysis

A. Background

We are adopting amendments to our rules governing disclosure of executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. The revisions to the executive and director compensation disclosure rules are intended to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the highest paid executive officers and directors. We are also amending our rules relating to current reports on Form 8–K to require real-time disclosure of only executive and director compensation events that are unquestionably or presumptively material, thereby reducing the number of filings for events relating to executive officers other than named executive officers and those officers specified in Item 5.02. We are amending our closely related rules requiring disclosure regarding the extent to which executive officers, directors, significant shareholders and other related persons participate in financial transactions and relationships with the issuer. We are amending our beneficial ownership disclosure requirement to require disclosure regarding pledges of securities by management and directors' qualifying shares. Finally, we are requiring that most of the disclosure that will be called for by the amendments be provided in plain English, so that investors can more easily understand this information when it is required to be included in Exchange Act reports or is incorporated by reference from proxy or information statements. While we believe that these amendments will result in significant benefits, we also recognize that the amendments to the disclosure requirements will impose additional costs. We have considered the costs and benefits in adopting these amendments.

B. Summary of Amendments

In light of the complexity of, and variations in, compensation programs, the sometimes inflexible and highly formatted nature of former Item 402 of Regulations S–K and S–B has resulted, in some cases, in disclosure that does not clearly inform investors as to all elements of compensation. The changes to Item 402 apply a broader approach that eliminates some tables, simplifies or refocuses other tables, reflects total compensation in the Summary Compensation Table, and reorganizes the compensation tables to group together compensation elements that have similar functions so that the quantitative disclosure is both more informative and more easily understood. This improved quantitative disclosure will be complemented by enhanced narrative disclosure clearly and comprehensively describing the context in which compensation is paid and received. In particular, the narrative disclosure requirements will provide transparency regarding company compensation policies and procedures, and is designed to be sufficiently flexible to operate effectively as new forms of compensation continue to evolve.

We have also taken into account the relative burden of providing disclosure by smaller companies that file information pursuant to Regulation S–B (as opposed to Regulation S–K). Under the amendments, the scope and presentation of information in Item 402 of Regulation S–B will differ in a number of significant ways from Item 402 of Regulation S–K. Item 402 of Regulation S–B will:

• Limit the named executive officers for whom disclosure is required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers; [585]

• Require a revised Summary Compensation Table to disclose compensation information for the small business issuer's two most recent fiscal years, and to require that narrative disclosure accompany the Summary Compensation Table; [586]

• Provide a higher threshold for separate identification of categories of "All Other Compensation" in the Summary Compensation Table;

• Require a new Outstanding Equity Awards at Fiscal Year-End Table that includes expanded disclosure regarding holdings of previously awarded stock, options and similar instruments, which includes the value of stock and other similar incentive plan awards that have not vested, as well as information regarding options on an award-by-award basis;

• Require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and

• Require a new Director Compensation Table.

Item 402 of Regulation S–B will not include the following disclosures that will be required by amended Item 402 of Regulation S–K:

• Compensation Discussion and Analysis or a Compensation Committee Report;

• Information regarding two additional executive officers;

• A third fiscal year of Summary Compensation Table disclosure;

• The supplementary Grants of Plan-Based Awards Table, the Option Exercises and Stock Vested Table, the Pension Benefits Table, the Nonqualified Deferred Compensation Table, and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

In addition, the application of Item 1.01 of Form 8–K to compensatory arrangements has raised concerns that real-time disclosure may be required for executive compensation events that are not unquestionably or presumptively material, and that are more appropriately disclosed, if at all, in the company's proxy statement for its annual meeting of shareholders. The amendments to Items 1.01 and 5.02 of

[584] For Form 8–K, the current burden estimate is 5 hours per filing. We estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour. The computation of the reduction in burden is thus based on 1,722 fewer current reports on Form 8–K filed with a per filing burden of 3.75 hours carried by the company and 1.25 hours at a cost of $400 per hour (or $500 per filing).

[585] Prior to these amendments, Item 402(a)(2) of Regulation S–B required compensation disclosure for all individuals serving as the small business issuer's chief executive officer and the small business issuer's four highest paid executive officers other than the chief executive officer.

[586] Prior to these amendments, Item 402(b)(1) of Regulation S–B required disclosure in the Summary Compensation Table of compensation of the named executive officers for each of the last three fiscal years, and narrative disclosure was not required to accompany the Summary Compensation Table. Under the amendments adopted today, new narrative disclosure will address some elements of compensation previously required to be disclosed in tables.

Form 8–K focus real-time disclosure on compensation arrangements with executives and directors that we believe are unquestionably or presumptively material, and eliminate the obligation to file Form 8–K with respect to other compensatory arrangements.

Further, the amendments streamline and modernize Item 404 of Regulation S–K, while making it more principles-based. For example, indebtedness of related persons is limited by the Sarbanes-Oxley Act, and the disclosure requirement regarding indebtedness of related persons has been combined into the requirement regarding other transactions with related persons. This consolidated disclosure requirement applies to an expanded group of related persons through amendments to the definition of the term "immediate family member." While the pre-existing principles for disclosure have been retained, the amendments increase the threshold for disclosure from $60,000 to $120,000 and eliminate or narrow the scope of certain instructions delineating what transactions are reportable or excludable. The disclosure requirements in Item 404 regarding transactions with promoters have been slightly expanded in the amendments to apply when a company had a promoter over the past five years, as well as to require analogous disclosure regarding transactions with control persons of a shell company.

With respect to registered investment companies and business development companies, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 similarly increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). In addition, amended Form N–2 requires business development companies to include the compensation disclosure required by Item 402 of Regulation S–K, as amended.

The amendments also replace the disclosure requirement for certain business relationships of directors that had been required by Item 404(b) of Regulation S–K prior to these amendments, which focused on relationships relevant to director independence, with requirements for director independence disclosure in new Item 407 discussed below. Under the amendments, some of the disclosure that had been required under the certain business relationship disclosure requirement may be required by the consolidated disclosure requirement regarding transactions and relationships with related persons in Item 404(a) of Regulation S–K. Item 404(b) of Regulation S–K as amended requires disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons.

We are adopting similar amendments to Item 404 of Regulation S–B, which will result in a more detailed related person transaction disclosure requirement than had existed in Item 404 of Regulation S–B prior to these amendments. However, unlike Item 404 of Regulation S–K, Item 404 of Regulation S–B as amended does not require disclosure regarding the company's policies for the review, approval or ratification of transactions with related persons. We are retaining the requirement that transactions occurring within the last two years must be disclosed under Item 404 of Regulation S–B, whereas Item 404 of Regulation S–K requires disclosure for the last fiscal year, unless the information is included in a Securities Act or Exchange Act registration statement, where information as to the last three fiscal years is required.

We are adopting a new disclosure requirement in Item 407 of Regulations S–K and S–B that consolidates disclosures previously required in several places throughout our rules addressing director independence, board committee functions and other related corporate governance matters. This new Item, which requires new disclosure regarding independence of members of the board of directors and board committees, is intended to enhance disclosures regarding independence required by corporate governance listing standards of national securities exchanges and automated inter-dealer quotation systems of a national securities association.[587] Item 407 of Regulations S–K and S–B also includes a new disclosure requirement regarding the compensation committee's processes and procedures for the consideration and determination of executive and director compensation, and disclosure regarding the availability of the compensation committee's charter (if it has one), either as an appendix to the proxy or information statement at least once every three fiscal years or on the company's Web site. The amendments to Item 407 of Regulation S–K require a short Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the Board with regard to the disclosure of the Compensation Discussion and Analysis. This new Compensation Committee Report, along with the Compensation Discussion and Analysis, is required instead of the Board Compensation Committee Report on Executive Compensation that was previously required by Item 402 of Regulation S–K prior to today's amendments.

To the extent that shares beneficially owned by named executive officers, directors and director nominees are used as collateral for loans, these shares are subject to risks or contingencies that do not apply to other shares beneficially owned by these persons. These circumstances have the potential to influence management's performance and decisions. As a result, we believe that the existence of these securities pledges could be material to shareholders and should be disclosed. We therefore are amending Item 403 of Regulations S–K and S–B to require this disclosure as well as disclosure regarding directors' beneficial ownership of qualifying shares.

We are requiring that most of the information that is required by these amendments be provided in plain English in Exchange Act reports or in proxy or information statements incorporated by reference into those reports. The plain English requirements will make these documents easier to understand.

The amendments to Item 402 of Regulation S–K, Items 402 and 404 of Regulation S–B, and Form 8–K will affect all companies reporting under Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies. The amendments to Item 404 of Regulation S–K will affect all companies reporting under Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies, and all companies, including registered investment companies, filing proxy or information statements with respect to the election of directors. The changes to Items 402 and 404 of Regulation S–K and Regulation S–B will also affect additional companies filing Securities Act and Exchange Act registration statements. The changes to Item 22(b) of Schedule 14A will affect business

[587] We are also adopting conforming revisions to Item 22(b) relating to the independence of members of nominating and audit committees of investment companies.

development companies and registered investment companies filing proxy statements with respect to the election of directors. The changes to Form N–1A will affect open-end investment companies registering with the Commission on Form N–1A. The changes to Form N–2 will affect closed-end investment companies (including business development companies) registering with the Commission on Form N–2. The changes to Form N–3 will affect separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3.

C. Benefits

As discussed, the overall goal of the executive and director compensation amendments is to provide investors with clearer, better organized and more complete disclosure regarding the mix, size and incentive components of executive and director compensation. This goal is accomplished by eliminating some tables and other disclosures that we believe may no longer be useful to investors, revising other tables so that they are more informative, and requiring new disclosure for retirement plans and similar benefits, nonqualified deferred compensation, post-termination benefits and director compensation. The amendments require enhanced narrative disclosure, in the form of a Compensation Discussion and Analysis section and narrative disclosure accompanying the tables, to explain the significant factors underlying the compensation decisions reflected in the tabular data. The amendments also require companies to report the total amount of compensation for named executive officers and directors, and provide important context to the disclosure of total compensation.

Improved disclosure under the amendments of executive and director compensation, such as equity-based compensation, non-equity incentive plan compensation, and retirement and other post-employment compensation, combined with the ability of investors to track the elements of compensation and the relative weights of those elements over time (and the reasons why companies allocate compensation in the manner that they do), will better enable investors to make comparisons both within and across companies. A presentation facilitating the comparability of different elements of compensation in different companies should make it easier for investors to analyze both the manner of compensation across companies and the quality of compensation disclosure across companies. Disclosure of total compensation will benefit investors by reducing the need to make individual computations in order to assess the size of current compensation. Further, improved executive and director compensation disclosure will enhance investors' understanding of this use of corporate resources and the actions of boards of directors and compensation committees in making decisions in this area.[588] Particularly with respect to the proxy statement for the annual meeting at which directors are elected, this improved disclosure will provide better information to shareholders for purposes of evaluating the actions of the board of directors in fulfilling its responsibilities to the company and its shareholders.

With respect to the new Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to disclosure of the Compensation Discussion and Analysis, we believe that benefits will be derived from the attention of the compensation committee to the disclosure provided in Compensation Discussion and Analysis. Further, the principal executive officer and principal financial officer can look to the Compensation Committee Report when providing their certifications. Finally, the Board Compensation Committee Report on Executive Compensation has been eliminated in favor of company disclosure in the form of the Compensation Discussion and Analysis, which will provide investors with enhanced disclosure about the objectives and implementation of executive compensation programs.

We believe that the extent to which increased transparency and completeness in executive and director compensation disclosure will result in broader benefits depends at least in part on the extent to which current executive and director compensation practices are aligned with the interests of investors as reflected in their investment and voting decisions. Any changes to a company that might occur, including changes in corporate governance, changes in control, changes in the employment of particular executives or other changes could depend to some extent on the degree to which improved transparency in executive and director compensation will affect investors' decision-making with respect to that company.

Disclosure under these new regulations will provide substantial benefit to investors in terms of the accuracy, transparency, completeness and accessibility of executive compensation and related person transaction disclosure. Improved transparency in executive and director compensation under these amendments could have other benefits in terms of the allocative efficiency of affected corporations with regard to the use of resources for executive compensation relative to other corporate needs, as well as improvements in efficiency of managerial labor markets. Benefits such as these depend on the extent to which the amendments, including requirements to disclose a total amount of compensation and more detail regarding compensation policies, alter existing and future policies or practices in these areas. We emphasize that we are not seeking to foster any particular policy or practice. Our objective is to increase transparency to enable decision-makers to make more informed decisions, which could result in different policies or practices or an increase in investor confidence in existing policies or practices.

Enhanced disclosure of outstanding option awards on an award-by-award basis, and additional disclosure regarding other equity-based awards, will further benefit investors by making it easier to evaluate the components of equity compensation for each named executive officer and the valuations of those equity awards provided by companies in the Summary Compensation Table.

The amendments to Form 8–K will facilitate shareholder and investor access to real-time disclosure of public companies' significant personnel and compensation decisions by focusing this disclosure only on what we believe are the most important compensatory arrangements with executive officers and directors. This information will be filed pursuant to Item 5.02 of Form 8–K. To find this information, shareholders and investors no longer will need to examine multiple Item 1.01 disclosures relating to other actions. Companies will also be relieved of obligations to quickly report arguably less important compensation information on Form 8–K.

The amendments to Item 404 will provide investors with more complete disclosure of related person transactions and director independence, and new disclosure regarding a company's policies and procedures for the review,

[588] For a discussion of the debate concerning board of directors and managerial decision-making in the area of executive compensation, see, *e.g.*, Steven M. Bainbridge, *Executive Compensation: Who Decides?*, 83 Tex. L. Rev. 1615 (2005).

approval or ratification of relationships with related persons. These amendments will enhance investors' understanding of how corporate resources are used in related person transactions, and provide improved information to shareholders for purposes of better evaluating the actions of the board of directors and executive officers in fulfilling their responsibilities to the company and its shareholders.

In addition, by combining similar provisions of former Item 404 into a single combined disclosure requirement, the amendments will reduce confusion that may have occurred regarding the disclosure required when more than one of the provisions of Item 404 applied to a particular transaction or relationship before these amendments. Improved corporate governance disclosure in new Item 407 will provide investors with better organized and more complete information regarding the independence of members of the board of directors.

The amendments to Item 403 of Regulation S–K and Regulation S–B will provide investors with disclosure of pledges of the securities beneficially owned by management and directors and full disclosure of beneficial ownership by directors, including directors' qualifying shares. This information will contribute to investor understanding of the economic incentives for executives and directors of public companies.

Changes to Items 22(b)(7), 22(b)(8) and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 may increase or decrease existing disclosure burdens imposed on investment companies, or not affect them at all, depending on the particular circumstances, by increasing the threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members).

The amendments to the executive and director compensation, related person transaction, beneficial ownership and corporate governance disclosure requirements will in many respects make these requirements clearer for companies and their advisors, which could have the benefit of improving overall compliance with these provisions, including those provisions where disclosure requirements have not changed substantively.

Finally, presentation in plain English will facilitate investor understanding of most of the matters contemplated by our amendments.

D. Costs

In our view, the amendments to the executive officer and director compensation, related person transaction and corporate governance disclosure requirements will increase the costs of complying with the Commission's rules. We further believe that the costs related to preparing required disclosure in plain English will be short-term costs arising mainly in the first two years of implementation.[589]

We believe that compliance with these amendments will, on balance, be more costly for companies than compliance with the former disclosure requirements, with the highest incremental annual costs occurring principally in the first two years as companies and their advisors determine how best to compile and report information in response to new or expanded disclosure requirements.

The improved quantitative and textual disclosure regarding executive and director compensation that we are adopting will incrementally increase costs for companies in several ways as a result of the following new or expanded requirements. First, we are requiring that companies provide a Compensation Discussion and Analysis involving a discussion and analysis of material factors underlying compensation decisions reflected in the tabular presentations.[590] To respond to commenters' concerns that it is appropriate for the compensation committee to continue to focus on the executive compensation disclosure process as well as concerns with certifications, we are adopting a new Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis. To the extent that members of the compensation committee would need to spend additional time and resources reviewing the executive and director compensation disclosures and potentially retaining experts and advisors to assist them in that review,[591] this requirement will result in additional costs to issuers.

In addition to the Compensation Discussion and Analysis section, we are requiring narrative disclosure to accompany tabular presentations so that the data included in the tables may be understood in context. We are also expanding disclosure regarding compensation-related equity-based and other plan-based holdings, as well as retirement and similar plans. Finally, we are adopting a Director Compensation Table that will require more detailed information regarding director compensation than was specified in the narrative disclosure requirement that existed prior to today's amendments. Each of these revisions seeks to elicit clearer and more complete information than was required under the requirements in place before adoption of these amendments. We have also decided to retain the Performance Graph in light of commenters' overwhelming support for this disclosure requirement, but we are moving it to new paragraph (e) of Item 201 of Regulation S–K and requiring that it will be furnished in the annual report to security holders rather than the proxy or information statement. Since we originally proposed to delete the Performance Graph altogether, its retention requires us to consider the costs incurred by issuers to continue to comply with this requirement; however,

[589] The new plain English requirements will require both the rewriting of existing disclosures in plain English, as well as drafting new disclosures in plain English, such as Compensation Discussion and Analysis.

[590] The Compensation Discussion and Analysis, unlike the Board Compensation Committee Report on Executive Compensation that was required prior to the adoption of these amendments, but like all of the rest of the current compensation disclosure, is considered filed and as such will be part of the documents for which certifications apply. The new Compensation Committee Report will be furnished rather than filed. The release adopting our certification requirements discussed the costs and benefits of the requirements as follows:

> The new certification requirement may lead to some additional costs for issuers. The new rules require an issuer's principal executive and financial officers to review the issuer's periodic reports and to make the required certification. To the extent that corporate officers would need to spend additional time thinking critically about the overall context of their company's disclosure, issuers would incur costs (although investors would benefit from improved disclosure). The certification requirement creates a new legal obligation for an issuer's principal executive and financial officers, but does not change the standard of legal liability. * * * Conversely, the new rules are likely to provide significant benefits by ensuring that information about an issuer's business and financial condition is adequately reviewed by the issuer's principal executive and financial officers. *Certification Release*, at Section VII.

[591] While our rules do not require the retention of consultants or other advisers, to the extent that companies do retain compensation consultants or other professionals we understand that they would generally charge per-hour rates comparable to those rates charged by outside counsel, which we have estimated for the purposes of our Paperwork Reduction Act analysis are approximately $400 per hour.

the substance of what is required with regard to the Performance Graph will not change substantially from what was required prior to the adoption of these amendments.

While the Summary Compensation Table as amended will require reporting of the grant date fair value of equity-based awards, we do not believe that this change will increase costs for companies, because the computation of the grant date fair values of stock, options and similar instruments already is required for financial statement purposes as a result of the implementation of FAS 123R. Companies may incur additional costs, however, in determining the year to year incremental changes in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans for the purposes of reporting such compensation in the Summary Compensation Table. In an effort to reduce costs in response to commenters' suggestions, we have revised the requirement to specify that in computing the amount to be disclosed under the amendments, companies must use the same assumptions (other than the normal retirement age) that they use for financial reporting purposes under generally accepted accounting principles. Another change which may help to make the calculation less costly is our revision to the proposal that the incremental change in the actuarial present value of the named executive officers' accumulated benefit under defined benefit and actuarial pension plans required in the Summary Compensation Table directly correspond to the disclosure required in the Pension Benefits Table. Therefore, a second and different calculation of pension benefits is not being adopted as proposed. Costs may also arise from the reporting of other compensation in the All Other Compensation Column of the Summary Compensation Table. We do not believe that the addition of a "Total" column to the Summary Compensation Table in and of itself will increase costs, because former disclosure requirements already mandated the disclosure of all compensation, and the mechanical process of adding up disclosure amounts should not be significant.

Companies will incur additional costs associated with disclosing the number and key terms of out-of-the-money instruments in the Outstanding Equity Awards at Fiscal Year-End Table. As adopted, this table will require companies to disclose, on an award-by-award basis, the number of underlying securities, the exercise or base price and the expiration date with respect to each award of unexercised options, stock appreciation rights and similar instruments with option-like features. Given the detailed information required, the disclosure generated may be lengthy, but commenters indicated that this information is meaningful to them.[592] Instead of disclosure on an aggregate basis, as was proposed and as was required for some outstanding option awards before adoption of these amendments, the disclosure of individual awards will enable investors to understand the extent and magnitude to which an executive's previously awarded options provide the potential to generate upside growth in the value of these holdings.[593] We have attempted to minimize the cost of this rule as amended by requiring that companies list only the key terms of the securities, as opposed to computing the weighted average of exercise prices or some other calculation necessary for the purposes of aggregation.

Additional costs may also be incurred in preparing and presenting required disclosures regarding retirement benefits, deferred compensation and post-termination or change in control payments, to the extent that information regarding these matters is not currently collected in a way that would facilitate disclosure under the amendments. However, these costs will likely be mitigated to some extent for the following reasons:

- As noted above, the calculation of the actuarial value of pension benefits required in the Pension Benefits Table and the Summary Compensation Table will be standardized to a significant extent by requiring companies to use many of the same assumptions for purposes of these calculations as they use for financial reporting purposes under generally accepted accounting principles;
- The Pension Benefits Table will not require different calculations from those called for in the Summary Compensation Table and will not require the disclosure of estimated retirement benefits payable upon early retirement, as proposed; and
- We have adopted commenters' suggestions that the quantitative disclosure required for post-termination agreements in new Item 402(j) of Regulation S–K be calculated by applying standard assumptions as to the share price of the company's securities and the date of the event triggering termination.

In addition, because the determination of named executive officers will be based on total compensation rather than salary and bonus, some companies will incur higher costs tracking the compensation paid to all executive officers in order to determine which are the most highly compensated. At the same time, however, companies will not be required to track the incremental change in the value of pension benefits or the amount of above-market or preferential earnings on nonqualified deferred compensation for purposes of identifying named executive officers, as they would have under the proposed requirements.

Under the amendments regarding Form 8–K, disclosure regarding executive and director arrangements and other plans that are no longer required to be reported within four days under Item 1.01 of Form 8–K will be required to be disclosed by way of the exhibit filing requirements on at least a quarterly basis. To the extent that a reduction in timeliness of this information will reduce its value to investors, the amendments may impose costs on investors other than those associated with transitioning to the new threshold.

We believe that there will be some increase in the cost of complying with the related person transaction disclosure requirement and corporate governance disclosures. The amendments may increase the cost of complying with the related person transaction disclosure requirement by eliminating or reducing the scope of certain instructions and by expanding the group of related persons covered to include additional "immediate family members." We did not adopt, as proposed, a requirement for disclosure of indebtedness transactions with significant shareholders. Similarly, with respect to registered investment companies and business development companies, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 will increase to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members).

[592] Several commenters recommended expanded disclosure of the number and key terms of out-of-the-money instruments. See n. 277. Other commenters suggested award-by-award disclosure for options. See letters from Hodak Value Advisors and The Rock Center for Corporate Governance.

[593] See, *e.g.*, letters from Brian Foley & Co.; Buck Consultants; and Grundfest.

Since these forms already require such disclosure using the $60,000 threshold, we do not believe the amendments would impose additional costs.

Amended Item 404(b) of Regulation S–K introduces new costs by imposing new disclosure requirements on companies regarding their policies for review, approval or ratification of related person transactions. In order to comply with disclosure requirements regarding policies for the review, approval or ratification of related person transactions, we understand that companies will incur costs of collecting the type of information that will be required to be disclosed. These costs will be higher to the extent companies do not already collect this information, either pursuant to their corporate governance policies or through directors' and officers' questionnaires. The new rules do not require companies to create new policies or processes for review, approval or ratification of relationships with related persons. However, to the extent that companies do create new policies or processes that require the collection of different or additional information, they may incur incremental costs.

The amended disclosures regarding director independence are similar to disclosure requirements under the proxy rules regarding the independence of directors who are members of the company's audit and nominating committees. Thus, for companies that are subject to the proxy rules, the task of complying with the disclosure requirement regarding director independence can be performed by the same person or group of persons already responsible for compliance with the rules requiring disclosure about the independence of nominating and audit committee members. Because the rules prior to these amendments already required companies subject to the proxy rules to collect and disclose information about the independence of directors who serve on the audit and nominating committees, this amended disclosure should not impose significant new costs for the collection of information by companies that are subject to the proxy rules. The new disclosure requirement regarding director and committee member independence may require disclosure of additional categories or types of director relationships. Additional costs may be incurred in seeking this information. However, such costs are limited by the extent to which companies already identify and track the relationships that may be required to be disclosed for the purposes of complying with pre-existing disclosure requirements or corporate governance listing standards. Finally, additional costs may be incurred by companies complying with Item 407(a) when companies rely on an exemption from independence standards, as we are requiring disclosure regarding reliance on any such exemption, including the basis for the conclusion that the exemption is available.

We believe that, overall, the costs noted above which are associated with the amended disclosure requirements for related person transactions and director independence will be offset to some extent by cost decreases associated with narrowing the scope of other disclosure requirements under the amendments, such as the disclosure that was required about director relationships under Item 404(b) of Regulation S–K before today's amendments. In this regard, we believe that companies will generally be required to provide an amount of information that is comparable to what had been required by our rules before the amendments. However, under the amendments the information regarding these matters will be presented in a manner that recognizes recent changes, such as the imposition of corporate governance listing standards at the major markets.

Moreover, our amendments to the related person transaction and director independence disclosure requirements differ in certain respects from the proposals, which may lessen the expected compliance costs. In response to commenters' concerns, we are retaining certain exceptions to the related person transaction disclosure requirements that existed under the rules prior to these amendments, and we are not requiring disclosure of indebtedness transactions with significant shareholders (or their immediate family members). For the amended disclosures under new Item 407(a), any additional compliance costs associated with requiring companies to disclose the transactions, relationships and arrangements considered by the board of directors in determining the independence of directors or director nominees is mitigated to some extent because the amendments require only the disclosure of the specific type or category of transactions considered by the board of directors that are not otherwise disclosed under the related person transaction disclosure requirement of Item 404(a). In contrast, under the rule proposals, disclosure of the specific details of each such transaction, relationship or arrangement would have been required. Furthermore, in response to several commenters, we have eliminated the proposed requirement under new Item 407(e) to identify any executive officer within the company that a compensation consultant contacted in carrying out its assignment. The overall effect of these modifications to Items 404(a) and 407 as they were proposed will be to reduce the number and type of transactions or contacts for which disclosure will be required under the new rules and lessen the aggregate burden imposed on companies to comply with the new rules. We recognize, as suggested by commenters, that additional costs may be incurred in preparing the additional disclosures required regarding the compensation committee process, including disclosure regarding the use of compensation consultants, as well as in the compensation committee's involvement with the Compensation Discussion and Analysis through the Compensation Committee Report.

Our plain English amendments require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that are required to be disclosed in Exchange Act reports such as annual reports on Forms 10–K or 10–KSB. We believe the amended rules will result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these amendments. Additional costs, if any, should be one-time or otherwise short-term.

We believe that there would be little, if any, increase in the cost of complying with the beneficial ownership rule amendments. A company will be required to disclose named executive officer, director and director nominee pledges of securities, and directors' full beneficial ownership of equity securities, including directors' qualifying shares. The company can inquire as to this information in questionnaires it already circulates to the company's officers and directors.

For purposes of the Paperwork Reduction Act, we have estimated the annual incremental increase in the paperwork burden for companies to comply with our collection of information requirements to be approximately 783,284 hours of in-house company personnel time and to be approximately $133,883,300 for the

services of outside professionals. As noted in the Paperwork Reduction Act section, we have revised these estimates both in response to comments about the proposed estimates and in light of the changes we have made from the proposal.[594] These costs are based on our estimates that the annual incremental disclosure burden imposed by the revisions that we adopt today will average 95 hours per Form 10–K; 50 hours per Form 10–KSB; 3 hours per Schedule 14A and Schedule 14C; 85 hours per Form 10; 45 hours per Forms 10–SB and SB–2; 74 hours per Form S–1; 17 hours per Form S–4; 85 hours per Form S–11; and 5 hours per Form N–2. We estimate that the amendments to Item 22(b) of Schedule 14A and increasing to $120,000 the former $60,000 threshold for disclosure of certain interests, transactions, and relationships of each director in Forms N–1A, N–2, and N–3 will not impose an annual incremental disclosure burden. These estimated costs include an estimated reduction in costs attributable to current reports on Form 8–K of approximately 6,458 hours of company personnel time and by a cost of approximately $861,000 for the services of outside professionals, based on an estimate that 1,722 fewer current reports on Form 8–K will be filed because of more focused current reporting of compensation transactions. Based on these estimates solely computed for the purposes of the Paperwork Reduction Act and assuming that the cost of in-house company personnel time is $175, the total estimated incremental costs of the amendments is approximately $270,958,000. These estimates of incremental costs, which were prepared for the purposes of the Paperwork Reduction Act, are limited to hours and costs associated with collecting information, preparing disclosure, filing forms, and retaining records imposed by the applicable forms, and were based in part with reference to the pre-existing burden estimates for each of the forms.

X. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2)[595] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[596] Exchange Act Section 3(f)[597] and Investment Company Act Section 2(c)[598] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We have also discussed other impacts of the amendments in our Cost-Benefit, Paperwork Reduction Act and Final Regulatory Flexibility Act Analyses. The amendments to Regulations S–K and S–B, to Items 8 and 22(b) of Schedule 14A, and to Forms N–1A, N–2, and N–3 are intended to improve the completeness and clarity of executive compensation and related person transactions disclosure available to investors and the financial markets. These amendments will enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions of the board of directors in fulfilling their responsibilities, as well as the incentives for executive officers.

The amendments to Form 8–K are intended to facilitate the ability of investors and shareholders to access real-time disclosure of public companies' executive compensation events that are unquestionably or presumptively material by requiring this disclosure only for compensatory agreements with specified executive officers. To find this information, shareholders and investors no longer need to examine multiple Form 8–K disclosures relating to other executive officers or other material non-ordinary course definitive agreements.

The amendments to expand and consolidate into one item the director independence and related corporate governance disclosure requirements in new Item 407 of Regulation S–K will improve the understanding of shareholders and investors about the composition and functions of the board of directors and board committees. Amendments to beneficial ownership reporting requiring disclosure of pledged securities and director qualifying shares are intended to improve the disclosure regarding security holdings of directors and executive officers.

The requirement that most of the information called for in these amendments be written in plain English is intended to make Exchange Act reports and proxy or information statements incorporated by reference in those reports easier to understand. Thus, the amended rules will enhance the reporting requirements in place before adoption of these amendments by providing more effective material disclosure to investors in a timely manner. We anticipate that these amendments will improve investors' ability to make informed investment and voting decisions and, therefore, may lead to increased efficiency and competitiveness of the U.S. capital markets. As discussed more fully in our Cost-Benefit Analysis, improved transparency in disclosure under these amendments could have other benefits in terms of the allocative efficiency of affected corporations with regard to the use of resources for executive compensation relative to other corporate needs, as well as improvements in efficiency of managerial labor markets.

Some commenters were concerned as to whether including examples in the principles-based Compensation Discussion and Analysis disclosure item would in some way cause companies and compensation committees to feel obligated to conform their compensation decision-making processes to those examples. As we discussed in Section II.B.1., we emphasize that application of a particular example must be tailored to the company. We believe using a disclosure concept along with illustrative examples strikes an appropriate balance to effectively elicit meaningful disclosure applicable to the company. Companies must assess the materiality to investors of the information that is identified by the examples in light of the particular situation of the company.

We recognize that increased time and resources will need to be devoted by companies and their officers, directors and advisors to prepare the revised disclosures required by these amendments. As discussed in more detail above, we have made substantive modifications to the proposals to address, in part, cost and burden concerns raised by some commenters.[599] We have also revisited and increased our burden estimates for Paperwork Reduction Act purposes. Ultimately, the impact of additional

[594] See Section VIII. above.

[595] 15 U.S.C. 78w(a)(2).

[596] 15 U.S.C. 77b(b).

[597] 15 U.S.C. 78c(f).

[598] 15 U.S.C. 80a–2(c).

[599] For example, we have attempted to reduce the burden on quantifying post-employment compensation. See Section II.C.5. In addition, several of our other modifications to the proposals were made to address some commenter concerns over the possible perception of "double-counting" of compensation elements, which should also help to improve the utility of the compensation disclosures to investors.

resources being used by companies to prepare the new disclosures will be borne by the companies' shareholders. Based on the extensive comment we received from investors supporting our proposals, strong evidence suggests that shareholders are willing to bear these costs.[600]

Because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act, and companies filing registration statements under the Securities Act and Exchange Act, will be required to make the amended disclosures required by Items 402, 404 and 407, competitors not in those categories could gain an informational advantage. However, with respect to executive compensation, as under Item 402 before adoption of these amendments, a company will not be required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, or any other factors or criteria involving confidential trade secrets and commercial or financial information, the disclosure of which would result in competitive harm to the company. Notwithstanding this exception for competitively sensitive information, competitors could potentially gain additional insight into the executive compensation policies of companies through disclosure required in Compensation Discussion and Analysis and in other portions of the required disclosure. Further, the availability of more broad-based compensation disclosure may provide additional information to be used by competitors in recruiting executive talent, although much of this information is already available from compensation consultants and other sources.

We have considered any impact the amendments may have on smaller as opposed to larger public companies, including the ability of smaller companies to absorb the costs of the amendments and whether any resulting disproportionate impact might affect the competitiveness of smaller issuers or their capital formation decisions. Further, as discussed in our Final Regulatory Flexibility Act Analysis, we have considered alternatives to minimize any significant adverse impact on smaller companies, including adopting different and less restrictive reporting requirements for small business issuers under Regulation S–B, particularly given that small business issuer compensation structures are likely to be less complex than those of larger issuers. We believe the changes that are reflected in the amendments to Regulation S–B will balance the information needs of investors in smaller companies with the burdens imposed on such companies by the disclosure requirements.

We do not expect that the incremental effect of the amendments overall will have a material effect on competition. We expect that the amended reporting requirements will enhance the efficiency of capital formation. Investors have stated that they believe that the improved transparency and completeness of executive compensation information resulting from these amendments will help them make more informed investment and voting decisions.[601] Investors are likely to be more confident allocating capital to firms in which compensation practices are well-aligned with the investors' interests when investors possess more information regarding executive compensation. Improved transparency thus may encourage investors to commit their capital and thereby facilitate issuers' access to capital.

XI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the rules and forms under the Securities Act and Exchange Act that seek to improve the clarity and completeness of companies' disclosure of the compensation earned by the principal executive officer, principal financial officer,[602] other highly paid executive officers and all members of the board of directors, and of related person transactions. These changes include amending the executive and director compensation disclosure requirements, modifying our rules so that only elements of compensation that are unquestionably or presumptively material to investors must be disclosed in current reports on Form 8–K, streamlining and modernizing disclosure requirements regarding related person transactions, adding disclosure regarding pledges of securities beneficially owned by executive officers and directors and regarding directors' qualifying shares, consolidating corporate governance disclosure requirements and expanding disclosure regarding the independence of the board of directors, as well as requiring that most of the disclosure required by the amended rules be provided in plain English.

A. Need for the Rules and Amendments

On January 27, 2006, we issued proposals to change the rules requiring disclosure of executive and director compensation, related person transactions, director independence and other corporate governance matters, and security ownership of officers and directors.

We are adopting amendments that establish a broader-based approach to eliciting executive and director compensation disclosure, while retaining comparability. In addition, we are adopting amendments to Form 8–K in order to focus current disclosure on compensation-related events that are unquestionably or presumptively material to investors. Given the close relationship between executive and director compensation and other financial transactions and relationships involving companies and their directors, executive officers, significant shareholders and respective immediate family members, we are also adopting amendments to streamline and modernize the related person transaction disclosure requirements, while also making the requirements more principles-based and expanding the requirements to elicit disclosure about policies and procedures for the review, approval or ratification of related person transactions.[603] With respect to disclosure about director independence, we are replacing requirements for disclosure about specific relationships that can affect director independence with a narrative explanation of the independence status of directors under a company's independence policies for the majority of the board and for the nominating, audit and compensation committees. We are also consolidating these and other requirements regarding director independence, board committees and other corporate governance matters in a new disclosure item. In addition, we are adopting corresponding changes to items in our registration forms and proxy and information statements filed by registered investment companies and business development companies that impose requirements to disclose certain interests, transactions, and relationships of each director or nominee for election as director who is not or would not be

[600] See, *e.g.*, letters from CalPERS; CalSTRS; D. Cayot; CII; CRPTF; C. Green; ICI; Institutional Investors Group; M. McPherson; A. Silverstein; and M. von Euler.

[601] See, *e.g.*, letters from CH; CFA Centre 1; ICI; and ISS.

[602] The principal financial officer is not specified as a named executive officer in Item 402 of Regulation S–B.

[603] Item 404 of Regulation S–B as adopted does not require disclosure about policies and procedures for the review, approval or ratification of related person transactions.

an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members). Further, we are adopting amendments to require disclosure of the number of shares pledged by named executive officers, directors and director nominees, given that these shares are subject to risks and contingencies that do not apply to other shares beneficially owned by these persons. Finally, in order to emphasize that most of these amended requirements must be presented in a manner that is clear, concise and understandable for investors, we are adopting rules requiring that the disclosure regarding executive and director compensation, beneficial ownership, related person transactions and most corporate governance matters be provided in plain English when included in Exchange Act reports.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on any aspect of the Initial Regulatory Flexibility Act Analysis, including the number of small entities that would be affected by the proposals, and both the qualitative and quantitative nature of the impact. Several commenters noted that costs and burdens arising from the proposals would have disproportionately affected small business issuers and smaller public companies that are not small business issuers but did not provide any specific comments on the Initial Regulatory Flexibility Act Analysis.[604] As summarized in Section XI.D. below and discussed in greater detail in previous sections, we have taken these comments into account in adopting different requirements for small business issuers.

C. Small Entities Subject to the Rules and Amendments

The amendments will affect small entities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. The amendments also will affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act or the Exchange Act and that has not been withdrawn. Securities Act Rule 157[605] and Exchange Act Rule 0–10(a)[606] define an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. These are the types of entities that we refer to as small entities in this section. We believe that the amendments will affect small entities that are operating companies. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. An investment company is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[607] We believe that the amendments will affect small entities that are investment companies. We estimate that there are approximately 240 investment companies that may be considered small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

We note that small business issuers,[608] which is a broader category of issuers than small entities, in certain circumstances may provide the executive and director compensation, relationships with related persons and promoters, beneficial ownership and corporate governance disclosure specified, respectively, in Items 402, 403, 404 and 407 of Regulation S–B, rather than the corresponding disclosure specified in Items 402, 403, 404 and 407 of Regulation S–K.

The amendments to Item 402 of Regulation S–K expand some former disclosure requirements, and consolidate or eliminate others. The amendments to Item 402 of Regulation S–B will require less extensive disclosure for small business issuers than will be required for companies complying with Item 402 of Regulation S–K as amended. Under the amendments, the scope and presentation of information in Item 402 of Regulation S–B will differ in a number of significant ways from Item 402 of Regulation S–K. Item 402 of Regulation S–B will:

- Limit the named executive officers for whom disclosure will be required to a smaller group, consisting of the principal executive officer and the two other highest paid executive officers;
- Require that the Summary Compensation Table disclose the two most recent fiscal years and that narrative disclosure accompany the Summary Compensation Table;
- Provide a higher threshold for separate identification of categories of "All Other Compensation" in the Summary Compensation Table;
- Require the Outstanding Equity Awards at Fiscal Year-End Table;
- Require additional narrative disclosure addressing the material terms of defined benefit and defined contribution plans and other post-termination compensation arrangements; and
- Require the Director Compensation Table.

New Item 402 of Regulation S–B does not include the following disclosures that are required by new Item 402 of Regulation S–K:

- Compensation Discussion and Analysis or a Compensation Committee Report;
- Information regarding two additional executive officers;
- The third fiscal year of Summary Compensation Table disclosure; and
- The supplementary Grants of Plan-Based Awards Table, the Option Exercises and Stock Vested Table, the Pension Benefits Table, and the Nonqualified Deferred Compensation Table and the separate Potential Payments Upon Termination or Change-in-Control narrative section, while providing a general requirement to discuss the material terms of retirement plans and the material terms of contracts providing for payment upon a termination or change in control.

As a result, the amendments to Item 402 of Regulation S–B will not result in the same level of incremental increase in costs or burdens as will the requirements of amendments to Item 402 of Regulation S–K.

The amendments to Item 404 of Regulations S–K and S–B will decrease the related person transaction disclosure requirement that companies, including small entities, must comply with in some respects and expand it in other respects. The amendments to Item 404 of Regulation S–B will potentially decrease the scope of the related person transaction disclosure requirement by changing the $60,000 threshold for disclosure of related person transactions to the lesser of $120,000 or one percent of the average of the small business issuers' total assets at year-end for the last three completed fiscal years.[609] At

---

[604] See, *e.g.*, letters from ABA; ACB; ICBA; and SCSGP.

[605] 17 CFR 230.157.

[606] 17 CFR 240.0–10(a).

[607] 17 CFR 270.0–10(a).

[608] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a registrant that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer.

[609] Amended Item 404(a) of Regulation S–K only includes $120,000 as the threshold.

the same time, the amendments to Item 404 of Regulation S–B will increase the scope of the related person transaction disclosure requirement by expanding the group of related persons covered to include additional "immediate family members." In addition, the amendments may decrease or increase the scope of the related person transaction disclosure requirement by eliminating or reducing the scope of instructions that provide bright line tests for whether related person transaction disclosure is required.

Unlike the amendments to Item 404 of Regulation S–K, the amendments to Item 404 of Regulation S–B will not impose an additional disclosure requirement for small business issuers, including small entities, regarding their policies and procedures for the review, approval or ratification of relationships with related persons. The amendments to Item 404 of Regulation S–B and new Item 407 of Regulation S–B require, depending upon the particular circumstances of a company, more or less disclosure by changing the disclosure requirement regarding director independence.[610] Unlike the amendments to Item 407 of Regulation S–K, the amendments to Item 407 of Regulation S–B do not require a Compensation Committee Report regarding the compensation committee's review and discussion with management of the Compensation Discussion and Analysis, and the compensation committee's recommendation to the board of directors with regard to the disclosure of the Compensation Discussion and Analysis, because Item 402 of Regulation S–B does not require Compensation Discussion and Analysis disclosure.

Similar to amended Item 404(a) of Regulation S–K, amendments to Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A and to Forms N–1A, N–2, and N–3 decrease the scope of the requirement imposed on registered investment companies and business development companies to disclose certain interests, transactions, and relationships of each director (and, in the case of Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A, each nominee for election as director) who is not or would not be an "interested person" of the fund within the meaning of Section 2(a)(19) of the Investment Company Act (and their immediate family members) by increasing to $120,000 the former $60,000 threshold for disclosure of such interests, transactions, and relationships.

The amendments to Item 403 of Regulations S–K and S–B require footnote disclosure to the beneficial ownership table of the number of shares pledged by named executive officers, directors and director nominees and disclosure of directors' qualifying shares. This imposes an additional disclosure requirement on companies, including small entities.

The new plain English rules applicable to Exchange Act reports and proxy or information statements incorporated by reference into Exchange Act reports will not affect the substance of disclosures that companies must make. The new plain English rules will also not impose any new recordkeeping requirements or require reporting of additional information. Other changes to our rules will decrease the scope of the disclosure requirements for Form 8–K, and thereby result in a reduction in the number of current reports on Form 8–K filed each year.

Overall, the amendments are expected to result in increased costs to all subject companies, large or small, as follows:

- Incremental increase in costs is expected with changes to executive and director compensation disclosure requirements;
- Incremental increase in costs is expected from the amendments to the related person transaction rules and corporate governance disclosures; and
- Decreased costs are expected as a result of the revisions to Form 8–K.

Because the current proxy rules require a subject registrant to collect and disclose information about the independence of its directors who serve on the audit or nominating committee of its board, the amended disclosure should not impose on companies subject to the proxy rules significant new costs for the collection of information regarding the independence of directors. Thus, the task of complying with the expanded director independence disclosure in new Item 407 of Regulations S–K and S–B could be performed by the same person or group of persons responsible for compliance under the former rules at a minimal incremental cost. Additional costs will likely be incurred to provide additional disclosure regarding compensation committee processes.

Our plain English amendments require that companies use a clear writing style to present the information about executive and director compensation, related person transactions, beneficial ownership and some corporate governance matters that are required to be disclosed in Exchange Act reports such as annual reports on Forms 10–K or 10–KSB. We believe the new rules will result in a short-term increase in costs for companies as they rewrite the information required to be included in annual reports or incorporated by reference from proxy or information statements, but few additional costs after the first year or two of implementation, as companies become familiar with the organizational, language, and document structure changes necessary to comply with these amendments. Additional costs, if any, should be one-time or otherwise short-term.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form 10–KSB, it will take issuers 100 additional hours to prepare the revised disclosure in year one, 35 additional hours in year two, and 15 additional hours in year three and thereafter, which results in an average of 50 additional hours over the three year period. The same estimates apply to preparation of information in the proxy or information statement that is then incorporated by reference into the Form 10–KSB. With regard to persons other than small business issuers who will file a Form 10–K, we estimate for purposes of the Paperwork Reduction Act that it will take issuers 170 additional hours to prepare the revised disclosure in year one, 80 additional hours in year two, and 35 additional hours in year three and thereafter, which results in an average of 95 hours over the three year period. If we assume that a small entity complies with the disclosure provisions of Regulation S–B rather than Regulation S–K and 75% of the burden will be performed by the company internally at a cost of $175 per hour and 25% of the burden will be carried by outside professionals retained by the company at a cost of $400 per hour, the average annual cost to comply with the amended disclosure requirements in periodic reports and/or proxy or information statements will be approximately $11,563. The extent to which an additional average compliance cost of approximately $11,563 per small entity over a three year period constitutes a significant economic impact for small entities will depend on the relative revenues, costs and allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

For purposes of the Paperwork Reduction Act, we estimate that with respect to Form N–2, it will take business development companies 150 additional hours to prepare the revised

[610] As was the case prior to these amendments, compensation committee interlocks disclosure is required by Regulation S–K but is not required under Regulation S–B.

disclosure in year one, 75 hours in year two and 30 hours in year three and thereafter, which results in an average of 85 hours for each business development company to comply with the revised compensation disclosures that will be required on Form N–2. If we assume that 25% of the burden will be borne internally at a cost of $175 per hour and 75% of the burden will be carried by outside professionals retained by the company at a cost of $400 per hour, the average annual cost for business development companies to comply with the revised disclosure requirements on Form N–2 will be approximately $29,219. The extent to which an additional average compliance cost of approximately $29,219 per small entity over a three year period constitutes a significant economic impact for small entities will depend on the relative assets, income, operating expenses and the allocation of resources toward compliance with the Commission's rules for small entities both individually and as a group.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;
2. The clarification, consolidation or simplification of disclosure for small entities;
3. Use of performance standards rather than design standards; and
4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

With regard to Alternative 1, we have adopted different compliance or reporting requirements for small entities. We nevertheless believe improving the clarity and completeness of disclosure regarding executive and director compensation and related person transactions requires a high degree of comparability between all issuers. Regarding Alternative 2, the amendments clarify, consolidate and simplify the requirements for all public companies, and some especially for small entities. Regarding Alternative 3, we believe that design rather than performance standards are appropriate, because design standards for small entities are necessary to promote the goal of relatively uniform presentation of comparable information for the benefit of investors. Finally, although we are exempting some information required of larger issuers, a wholesale exemption for small entities is not appropriate because the amendments are designed to make uniform the application of the disclosure and other requirements that we are adopting.

We have used design rather than performance standards in connection with the amendments for two reasons. First, based on our past experience, we believe the disclosure provided in response to the amended requirements will be more useful to investors if there are specific informational requirements. The mandated disclosures we are adopting are intended to result in more focused and comprehensive disclosure. Second, the specific disclosure requirements in the amendments will promote more consistent disclosure among public companies, because they provide greater certainty as to the scope of required disclosure.

XII. Statutory Authority and Text of the Amendments

We are adopting new rules and amendments pursuant to Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 10(b), 12, 13, 14, 15(d), 16 and 23(a) of the Exchange Act, as amended, Sections 8, 20(a), 24(a), 30 and 38 of the Investment Company Act of 1940, as amended, and Sections 3(a) and 306(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 232, 239, 240, 245 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 228.201 by revising Instruction 2 to paragraph (d) to read as follows:

§ 228.201 (Item 201) Market for common equity and related stockholder matters.

* * * * *

Instructions to paragraph (d).

1. * * *

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(5)(ii) of Regulation S–B (§ 228.402(a)(5)(ii)).

* * * * *

§ 228.306 [Removed and reserved]

■ 3. Remove and reserve § 228.306.

§ 228.401 [Amended]

■ 4. Amend § 228.401 by removing paragraphs (e), (f) and (g).

■ 5. Revise § 228.402 to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) *General*—(1) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this Item, and directors covered by paragraph (f) of this Item, by any person for all services rendered in all capacities to the small business issuer and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the small business issuer and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the small business issuer's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) The small business issuer's two most highly compensated executive

officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the small business issuer at the end of the last completed fiscal year.

Instructions to Item 402(a)(2).

1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (b)(2)(viii) of this Item, *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a small business issuer to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a small business issuer not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the small business issuer's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the small business issuer (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (*"SARs"*) refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the small business issuer or a named executive officer. The term equity is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Small business issuers may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the small business issuer and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the small business issuer or an affiliate, the small business issuer's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment,* as modified or supplemented ("FAS 123R"). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the small business issuer's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) *Summary compensation table*—(1) *General.* Provide the information specified in paragraph (b)(2) of this Item, concerning the compensation of the named executive officers for each of the small business issuer's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Nonequity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(b)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8–K (17 CFR 249.308).

2. Small business issuers need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a small business issuer's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (*e.g.*, stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the Summary Compensation Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (c) of this Item) where the material terms of the award are reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instructions to Item 402(b)(2)(v) and (vi).

1. For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the small business issuer's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

2. If at any time during the last completed fiscal year, the small business issuer has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the small business issuer shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(b)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(b)(2)(viii).

Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the small business issuer's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the small business issuer's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the small business issuer's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the small business issuer's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c)–(h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the small business issuer and its subsidiaries; or

(*2*) A change in control of the small business issuer;

(E) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in columns (e) or (f); and

Instructions to Item 402(b)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options,

except as specified in paragraph (b)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (e)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (b)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the small business issuer.

5. For purposes of paragraph (b)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(b).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the small business issuer was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the small business issuer will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (f) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(c) *Narrative disclosure to summary compensation table.* Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (b) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (b) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraph (b)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(c).

The disclosure required by paragraph (c)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(d) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the small business issuer's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested ($)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or others rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(d)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the small business issuer's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, small business issuers must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(e) *Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the small business issuer or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(f) *Compensation of directors.* (1) Provide the information specified in

paragraph (f)(2) of this Item, concerning the compensation of the directors for the small business issuer's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Non-qualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (b) of this Item and otherwise as required pursuant to paragraphs (c) through (e) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

Instruction to Item 402(f)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the small business issuer could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b)–(f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (c)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the small business issuer or its subsidiaries purchased from the small business issuer or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the small business issuer, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the small business issuer;

(E) Small business issuer contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the small business issuer and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the small business issuer during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instruction to Item 402(f)(2)(vii). Programs in which small business issuers agree to make donations to one or more charitable institutions in a director's name, payable by the small business issuer currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (f)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such

program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(f)(2).

Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(f).

In addition to the Instruction to paragraph (f)(2)(vii) of this Item, the following apply equally to paragraph (f) of this Item: Instructions 2 and 4 to paragraph (b) of this Item; the Instructions to paragraphs (b)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (b)(2)(v) and (vi) of this Item; the Instructions to paragraph (b)(2)(vii) of this Item; the Instruction to paragraph (b)(2)(viii) of this Item; the Instructions to paragraph (b)(2)(ix) of this Item; and paragraph (c)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (f) of this Item that correspond to analogous disclosures provided for in paragraph (b) of this Item to which they refer.

■ 6. Amend § 228.403 by revising paragraph (b) to read as follows:

§ 228.403 (Item 403) Security ownership of certain beneficial owners and management.

* * * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the small business issuer or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(2) (§ 228.402(a)(2)), and directors and executive officers of the small business issuer as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d–3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

* * * * *

■ 7. Revise § 228.404 to read as follows:

§ 228.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the small business issuer's last fiscal year, or any currently proposed transaction, in which the small business issuer was or is to be a participant and the amount involved exceeds the lesser of $120,000 or one percent of the average of the small business issuer's total assets at year-end for the last three completed fiscal years, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the small business issuer, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a).

1. For the purposes of paragraph (a) of this Item, the term *related person* means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the small business issuer;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the small business issuer, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§ 228.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a *transaction* includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the small business issuer's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the small business issuer's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§ 228.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 228.402) as compensation earned for services to the small business issuer if the executive officer was a named executive officer as that term is defined in Item 402(a)(2) (§ 228.402(a)(2)), and such compensation had been approved, or recommended to the board of directors of the small business issuer for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the small business issuer.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(f) (§ 228.402(f)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the small business issuer shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the small business issuer and all holders of that class of equity securities of the small business issuer received the same benefit on a pro rata basis.

8. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

9. Information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small business issuer's last fiscal year.

(b) *Parents.* List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

(c) *Promoters and control persons.* (1) Small business issuers that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the small business issuer and the nature and amount of any assets, services or other consideration therefore received or to be received by the small business issuer; and

(ii) As to any assets acquired or to be acquired by the small business issuer from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the small business issuer or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the small business issuer, also state the cost thereof to the promoter.

(2) Small business issuers shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a small business issuer that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a small business issuer, that acquired control of a small business issuer that is a shell company. For purposes of this Item, *shell company* has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2).

■ 8. Add § 228.407 to read as follows:

§ 228.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the small business issuer under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence

requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the small business issuer does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the small business issuer must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the small business issuer shall use the applicable definition of independence, as follows:

(i) If the small business issuer is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the small business issuer's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the small business issuer. When determining whether the members of a committee of the board of directors are independent, the small business issuer's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent. If the small business issuer does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the small business issuer uses for determining if a majority of the board of directors are independent.

(ii) If the small business issuer is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the small business issuer chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) or Form SB–2 (§ 239.10 of this chapter) under the Securities Act or on a Form 10 (§ 249.210 of this chapter) or Form 10–SB (§ 249.210b of this chapter) under the Exchange Act where the small business issuer has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the small business issuer uses for determining if a majority of the board of directors is independent, and the definition of independence that the small business issuer uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the small business issuer has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the small business issuer uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the small business issuer's Web site. If so, provide the small business issuer's Web site address. If not, include a copy of these policies in an appendix to the small business issuer's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the policies is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§ 228.404(a)) that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a).

1. If the small business issuer is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the small business issuer relied, disclose the exemption relied upon and explain the basis for the small business issuer's conclusion that such exemption is applicable. The same disclosure should be provided if the small business issuer is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the small business issuer has exemptions that are applicable to the small business issuer. Any national securities exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Small business issuers shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the small business issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a), or 78*o*(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

(b) *Board meetings and committees; annual meeting attendance.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the

last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the small business issuer's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2).

In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

(3) State whether or not the small business issuer has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the small business issuer has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) *Nominating committee.* (1) If the small business issuer does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the small business issuer's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the small business issuer's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the small business issuer's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the small business issuer's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: Security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source;

(viii) If the small business issuer pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the small business issuer's nominating committee received, by a date not later than the 120th calendar day before the date of the small business issuer's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the small business issuer's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the small business issuer's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, *provided, however,* that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix).

1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the small business issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the small business issuer receives the security holder recommendation a reasonable time before the small business issuer begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the small business issuer if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the small business issuer to evidence the required ownership percentage and holding period:

a. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§ 240.13d-101 of this chapter), Schedule 13G (§ 240.13d-102 of this chapter), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the small business issuer's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the small business issuer, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2).

For purposes of paragraph (c)(2) of this Item, the term *nominating committee* refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the small business issuer's board of directors, where those changes were implemented after the small business issuer last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3).

1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a small business issuer's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the small business issuer's board of directors, where the small business issuer's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the small business issuer did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1, AU section 380),[1] as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*),[2] as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10–KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If the small business issuer meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The small business issuer is a listed issuer, as defined in § 240.10A–3 of this chapter;

(B) The small business issuer is filing either an annual report on Form 10–KSB (17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(C) The small business issuer is neither:

(*1*) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(*2*) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) *Audit committee financial expert.*

(i)(A) Disclose that the small business issuer's board of directors has determined that the small business issuer either:

(*1*) Has at least one audit committee financial expert serving on its audit committee; or

(*2*) Does not have an audit committee financial expert serving on its audit committee.

(B) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(*1*) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the small business issuer provides the disclosure required by paragraph (d)(5)(i)(A)(*2*) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i).

If the small business issuer's board of directors has determined that the small business issuer has more than one audit committee financial expert serving on its audit committee, the small business issuer may, but is not required to, disclose the names of those additional persons. A small business issuer choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues

[1] Available at *http://www.pcaobus.org/standards/interim_standards/auditing_standards/index_au.asp?series=300&section=300.*

[2] Available at *http://www.pcaobus.org/Standards/Interim_Standards/Independence_Standards/ISB1.pdf.*

that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the small business issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.* (A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5).

1. The disclosure under paragraph (d)(5) of this Item is required only in a small business issuer's annual report. The small business issuer need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction E(3) to Form 10–KSB (17 CFR 249.310b).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the small business issuer shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(a)(4) (§ 228.401(a)(4)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) by a small business issuer, the small business issuer or successor issuer need not make the disclosures required by this Item in its first annual report filed pursuant to section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

Instructions to Item 407(d).

1. The information required by paragraphs (d)(1)–(3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1 through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the small business issuer specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the small business issuer specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)–(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a small business issuer's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the small business issuer does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the small business issuer's processes and procedures for the consideration and determination of executive and director compensation, including:

(i) (A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

(f) *Shareholder communications.* (1) State whether or not the small business issuer's board of directors provides a process for security holders to send communications to the board of directors and, if the small business issuer does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the small business issuer not to have such a process.

(2) If the small business issuer has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the small business issuer's process for determining which communications will be relayed to board members.

Instructions to Item 407(f).

1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the small business issuer may instead provide the small business issuer's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a small business issuer's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the small business issuer's process is approved by a majority of the independent directors.

3. For purposes of this paragraph, communications from an officer or director of the small business issuer will not be viewed as "security holder communications." Communications from an employee or agent of the small business issuer will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

Instructions to Item 407.

1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in § 240.10A–3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)); and

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the small business issuer's Web site, and if so, provide the small business issuer's Web site address. If a current copy of the charter is not available to security holders on the small business issuer's Web site, include a copy of the charter in an appendix to the small business issuer's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the small business issuer's last fiscal year. If a current copy of the charter is not available to security holders on the small business issuer's Web site, and is not included as an appendix to the small business issuer's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u-5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Amend § 229.201 by revising Instruction 2 to paragraph (d) and adding paragraph (e) before the Instructions to Item 201 to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

Instructions to paragraph (d).

1. * * *

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(6)(ii) of Regulation S–K (§ 229.402(a)(6)(ii)).

* * * * *

(e) *Performance graph.* (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing the sum of the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and the difference between the registrant's share price at the end and the beginning of the measurement period; by the share price at the beginning of the measurement period) with:

(i) The cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or are of comparable market capitalization; *provided, however,* that if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of:

(A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (e)(1) of this Item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act (15 U.S.C. 78*l*) for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (e)(1)(ii)(A) of this Item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; *provided, however,* that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return with that of both the newly selected index and the index used in the immediately preceding fiscal year.

Instructions to Item 201(e):

1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (e)(1) of this Item; *provided, however,* that if the registrant constructs its own peer group index under paragraph (e)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

a. The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the

registrant's stock (or in the stocks represented by a given index) with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

b. Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity.

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

6. A registrant that qualifies as a "small business issuer," as defined by Item 10(a)(1) of Regulation S–B (17 CFR 228.10(a)(1)) is not required to provide the information required by paragraph (e) of this Item.

7. The information required by paragraph (e) of this Item need not be provided in any filings other than an annual report to security holders required by Exchange Act Rule 14a-3 (17 CFR 240.14a-3) or Exchange Act Rule 14c-3 (17 CFR 240.14c-3) that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

8. The information required by paragraph (e) of this Item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1–240.14a-104 or 240.14c-1–240.14c-101), other than as provided in this item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

* * * * *

§ 229.306 [Removed and Reserved]

■ 11. Remove and reserve § 229.306.

■ 12. Amend § 229.401 by removing paragraphs (h), (i) and (j) and by revising paragraph (g)(1) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(g) *Promoters and control persons.* (1) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, and which had a promoter at any time during the past five fiscal years, shall describe with respect to any promoter, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this Item that occurred during the past five years and that are material to a voting or investment decision.

* * * * *

■ 13. Revise § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) *General*—(1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20–F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(3) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) All individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year ("PFO"), regardless of compensation level;

(iii) The registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3).

1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a registrant to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* (*"SARs"*) refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other performance measure. An *equity incentive plan* is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, as modified or supplemented ("FAS 123R"). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the registrant's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) *Compensation discussion and analysis.* (1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all material elements of the registrant's compensation of the named executive officers. The discussion shall describe the following:

(i) The objectives of the registrant's compensation programs;

(ii) What the compensation program is designed to reward;

(iii) Each element of compensation;

(iv) Why the registrant chooses to pay each element;

(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay; and

(vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

(i) The policies for allocating between long-term and currently paid out compensation;

(ii) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;

(iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

(iv) How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);

(vii) How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

(ix) The factors considered in decisions to increase or decrease compensation materially;

(x) How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (*e.g.*, how gains from prior option or stock awards are considered in setting retirement benefits);

(xi) With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (*e.g.*, the rationale for providing a single trigger for payment in the event of a change-in-control);

(xii) The impact of the accounting and tax treatments of the particular form of compensation;

(xiii) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

(xiv) Whether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and

(xv) The role of executive officers in determining executive compensation.

Instructions to Item 402(b).

1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item. The Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analysis shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade

secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b–2 (17 CFR 240.24b–2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

5. Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100—102) and Item 10(e) (§ 229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(c) *Summary compensation table*—(1) *General.* Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO.									
PFO.									
A.									
B.									
C.									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(c)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8–K (17 CFR 249.308).

2. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant's program under which stock, equity-based or other forms of non-cash compensation may be received by a named executive officer instead of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation instead of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Summary Compensation Table corresponding to that fiscal year (*e.g.*, stock awards (column (e)); option awards (column (f)); all other compensation (column (i))), or, if made pursuant to a non-equity incentive plan and therefore not reportable in the Summary Compensation Table when granted, a footnote must be added to the salary or bonus column so disclosing and referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the award is reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (f));

Instructions to Item 402(c)(2)(v) and (vi).

1. For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

2. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement

grants, or any other means ("repriced"), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) The sum of the amounts specified in paragraphs (c)(2)(viii)(A) and (B) of this Item (column (h)) as follows:

(A) The aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

Instructions to Item 402(c)(2)(viii).

1. The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. For purposes of this disclosure, the registrant should use the same amounts required to be disclosed pursuant to paragraph (h)(2)(iv) of this Item for the covered fiscal year and the amounts that were or would have been required to be reported for the executive officer pursuant to paragraph (h)(2)(iv) of this Item for the prior completed fiscal year.

2. Regarding paragraph (c)(2)(viii)(B) of this Item, interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the registrant's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market.

3. The registrant shall identify and quantify by footnote the separate amounts attributable to each of paragraphs (c)(2)(viii)(A) and (B) of this Item. Where such amount pursuant to paragraph (c)(2)(viii)(A) is negative, it should be disclosed by footnote but should not be reflected in the sum reported in column (h).

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c)–(h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the registrant and its subsidiaries; or

(*2*) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in columns (e) or (f); and

Instructions to Item 402(c)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock and options, except as specified in paragraph (c)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraphs (c)(2)(viii)(A) and (h) of this Item.

3. Any item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (i). This requirement applies only to compensation for the last fiscal year. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

4. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a named executive officer is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit

that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote. The requirements for identification and quantification apply only to compensation for the last fiscal year. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (i) and are subject to separate quantification and identification as tax reimbursements (paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual named executive officer is less than $10,000 or are required to be identified but are not required to be separately quantified.

5. For purposes of paragraph (c)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(c).

1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (k) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(d) *Grants of plan-based awards table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any plan, including awards that subsequently have been transferred, in the following tabular format:

GRANTS OF PLAN-BASED AWARDS

Name	Grant date	Estimated future payouts under Non-equity incentive plan awards			Estimated future payouts under equity incentive plan awards			All other stock awards: number of shares of stock or units (#)	All other option awards: number of securities underlying options (#)	Exercise or base price of option awards ($/Sh)
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
PEO										
PFO										
A										
B										
C										

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The grant date for equity-based awards reported in the table (column (b)). If such grant date is different than the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column shall be added between columns (b) and (c) showing such date;

(iii) The dollar value of the estimated future payout upon satisfaction of the conditions in question under non-equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in dollars (threshold, target and maximum amount) (columns (c) through (e)).

(iv) The number of shares of stock, or the number of shares underlying options to be paid out or vested upon satisfaction of the conditions in question under equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in the number of shares of stock, or the number of shares underlying options under the award (threshold, target and maximum amount) (columns (f) through (h)).

(v) The number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (i));

(vi) The number of securities underlying options granted in the fiscal

year that are not required to be disclosed in columns (f) through (h) (column (j)); and

(vii) The per-share exercise or base price of the options granted in the fiscal year (column (k)). If such exercise or base price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column showing the closing market price on the date of the grant shall be added after column (k).

Instructions to Item 402(d).

1. Disclosure on a separate line shall be provided in the Table for each grant of an award made to a named executive officer during the fiscal year. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For grants of incentive plan awards, provide the information called for by columns (c), (d) and (e), or (f), (g) and (h), as applicable. For columns (c) and (f), *threshold* refers to the minimum amount payable for a certain level of performance under the plan. For columns (d) and (g), *target* refers to the amount payable if the specified performance target(s) are reached. For columns (e) and (h), *maximum* refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount must be reported as the *target* in columns (d) and (g). In columns (d) and (g), registrants must provide a representative amount based on the previous fiscal year's performance if the target amount is not determinable.

3. In determining if the exercise or base price of an option is less than the closing market price of the underlying security on the date of the grant, the registrant may use either the closing market price as specified in paragraph (a)(6)(v) of this Item, or if no market exists, any other formula prescribed for the security. Whenever the exercise or base price reported in column (k) is not the closing market price, describe the methodology for determining the exercise or base price either by a footnote or accompanying textual narrative.

4. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, need be reported only in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share would be reported only as an option grant in column (j), with the tandem feature noted either by a footnote or accompanying textual narrative.

5. Disclose the dollar amount of consideration, if any, paid by the executive officer for the award in a footnote to the appropriate column.

6. If non-equity incentive plan awards are denominated in units or other rights, a separate, adjoining column between columns (b) and (c) shall be added quantifying the units or other rights awarded.

(e) *Narrative disclosure to summary compensation table and grants of plan-based awards table.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c) and (d) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock, and if so, the applicable dividend rate and whether that rate is preferential. Describe any performance-based conditions, and any other material conditions, that are applicable to the award. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (e) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FAS 123R; and

(iv) An explanation of the amount of salary and bonus in proportion to total compensation.

Instructions to Item 402(e)(1).

1. The disclosure required by paragraph (e)(1)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

2. Instructions 4 and 5 to Item 402(b) apply regarding disclosure pursuant to paragraph (e)(1) of this Item of target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.

(2) [Reserved]

(f) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (f)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the registrant's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option awards					Stock awards			
Name	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested (#)	Equity incentive plan awards: number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(f)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(g) *Option exercises and stock vested table.* (1) Provide the information specified in paragraph (g)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

OPTION EXERCISES AND STOCK VESTED

Name	Option awards		Stock awards	
	Number of shares acquired on exercise (#)	Value realized on exercise ($)	Number of shares acquired on vesting (#)	Value realized on vesting ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of securities for which the options were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise of options, or upon the transfer of an award for value (column (c));

(iv) The number of shares of stock that have vested (column (d)); and

(v) The aggregate dollar value realized upon vesting of stock, or upon the transfer of an award for value (column (e)).

Instruction to Item 402(g)(2).

Report in column (c) the aggregate dollar amount realized by the named executive officer upon exercise of the options or upon the transfer of such instruments for value. Compute the dollar amount realized upon exercise by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registrant is required to be disclosed in accordance with paragraph (c)(2)(ix) of this Item.) Report in column (e) the aggregate dollar amount realized by the named executive officer upon the vesting of stock or the transfer of such instruments for value. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date. For any amount realized upon exercise or vesting for which receipt has been deferred, provide a footnote quantifying the amount and disclosing the terms of the deferral.

(h) *Pension benefits.* (1) Provide the information specified in paragraph (h)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

PENSION BENEFITS

Name	Plan name	Number of years credited service (#)	Present value of accumulated benefit ($)	Payments during last fiscal year ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (c));

(iv) The actuarial present value of the named executive officer's accumulated benefit under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (d)); and

(v) The dollar amount of any payments and benefits paid to the named executive officer during the registrant's last completed fiscal year (column (e)).

Instructions to Item 402(h)(2).

1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. For purposes of the amount(s) reported in column (d), the registrant must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except that retirement age shall be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. The registrant must disclose in the accompanying textual narrative the valuation method and all material assumptions applied in quantifying the present value of the current accrued benefit. A benefit specified in the plan document or the executive's contract itself is not an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

3. For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, apply the limitations applicable to tax qualified defined benefit plans established by the Internal Revenue Code and the regulations thereunder that applied as of the pension plan measurement date.

4. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and the effect of the form of benefit elected on the amount of annual benefits. For this purpose, normal retirement means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age;

(ii) If any named executive officer is currently eligible for early retirement under any plan, identify that named executive officer and the plan, and describe the plan's early retirement payment and benefit formula and eligibility standards. For this purpose, early retirement means retirement at the early retirement age as defined in the plan, or otherwise available to the executive under the plan;

(iii) The specific elements of compensation (*e.g.*, salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iv) With respect to named executive officers' participation in multiple plans, the different purposes for each plan; and

(v) Registrant policies with regard to such matters as granting extra years of credited service.

(i) *Nonqualified defined contribution and other nonqualified deferred compensation plans.* (1) Provide the information specified in paragraph (i)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

NONQUALIFIED DEFERRED COMPENSATION

Name	Executive contributions in last FY ($)	Registrant contributions in ast FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/ distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The dollar amount of aggregate executive contributions during the registrant's last fiscal year (column (b));

(iii) The dollar amount of aggregate registrant contributions during the registrant's last fiscal year (column (c));

(iv) The dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year (column (d));

(v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant's last fiscal year (column (e)); and

(vi) The dollar amount of total balance of the executive's account as of the end of the registrant's last fiscal year (column (f)).

Instruction to Item 402(i)(2).

Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant's Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant's Summary Compensation Table for previous years.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(j) *Potential payments upon termination or change-in-control.* Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits;

(2) Describe and quantify the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instructions to Item 402(j).

1. The registrant must provide quantitative disclosure under these requirements, applying the assumptions that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate (or a reasonable estimated range of amounts) applicable to the payment or benefit and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

2. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than $10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to paragraph (c)(2)(ix) of this Item. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

3. To the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item, reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph.

4. Where a triggering event has actually occurred for a named executive officer and that individual was not serving as a named executive officer of the registrant at the end of the last completed fiscal year, the disclosure required by this paragraph for that named executive officer shall apply only to that triggering event.

5. The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees.

(k) *Compensation of directors.* (1) Provide the information specified in paragraph (k)(2) of this Item, concerning the compensation of the directors for the registrant's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							

DIRECTOR COMPENSATION—Continued

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (d) through (j) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FAS 123R (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) The sum of the amounts specified in paragraphs (k)(2)(vi)(A) and (B) of this Item (column (f)) as follows:

(A) The aggregate change in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b)–(f), regardless of the amount of the compensation item, must be included in column (g). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instructions to Item 402(k)(2)(vii).

1. Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (k)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

2. Any item reported for a director pursuant to paragraph (k)(2)(vii) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (g). All items of compensation are required to be included in the Director Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

3. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a director is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any director, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a director pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that director must be quantified and disclosed in a footnote. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must

be included in column (g) and are subject to separate quantification and identification as tax reimbursements (paragraph (k)(2)(vii)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual director is less than $10,000 or are required to be identified but are not required to be separately quantified.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(k)(2).

Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(k).

In addition to the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; and Instructions to paragraph (c)(2)(viii) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

Instruction to Item 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

■ 14. Amend § 229.403 by revising paragraph (b) to read as follows:

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

* * * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d–3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

* * * * *

■ 15. Revise § 229.404 to read as follows:

§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the tranaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a).

1. For the purposes of paragraph (a) of this Item, the term related person means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the registrant;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§ 229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§ 229.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§ 229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§ 229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

(b) *Review, approval or ratification of transactions with related persons.* (1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Instruction to Item 404(b).

Disclosure need not be provided pursuant to this paragraph regarding any transaction that occurred at a time before the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a) if such transaction did not continue after the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a).

(c) *Promoters and certain control persons.* (1) Registrants that are filing a registration statement on Form S–1 or Form SB–2 under the Securities Act (§ 239.11 or § 239.10 of this chapter) or on Form 10 or Form 10–SB under the Exchange Act (§ 249.210 or § 249.210b of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell

company. For purposes of this Item, *shell company* has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2).

Instructions to Item 404.

1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S–4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20–F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

■ 16. Add § 229.407 to read as follows:

§ 229.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the registrant shall use the applicable definition of independence, as follows:

(i) If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the registrant's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the registrant. When determining whether the members of a committee of the board of directors are independent, the registrant's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent. If the registrant does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent.

(ii) If the registrant is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the registrant chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) or Form SB–2 (§ 239.10 of this chapter) under the Securities Act or on a Form 10 (§ 249.210 of this chapter) or Form 10–SB (§ 249.210b of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the registrant uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the registrant's Web site. If so, provide the registrant's Web site address. If not, include a copy of these policies in an appendix to the registrant's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the policies is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§ 229.404(a)), or for investment companies, Item 22(b) of Schedule 14A (§ 240.14a–101 of this chapter), that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a).

1. If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the registrant relied, disclose the exemption relied upon and explain the basis for the registrant's conclusion that such exemption is applicable. The same disclosure should be provided if the registrant is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the registrant has exemptions that are applicable to the registrant. Any national

securities exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Registrants shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

(b) *Board meetings and committees; annual meeting attendance.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2).

In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

(3) State whether or not the registrant has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) *Nominating committee.* (1) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the registrant's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: Security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: Security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(viii) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, *provided, however,* that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix).

1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act (or, in the case of a registrant that is an investment company

registered under the Investment Company Act of 1940, the registrant's most recent report on Form N–CSR (§§ 249.331 and 274.128 of this chapter)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

a. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§ 240.13d–101 of this chapter), Schedule 13G (§ 240.13d–102 of this chapter), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2).

For purposes of paragraph (c)(2) of this Item, the term *nominating committee* refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3).

1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380),[1] as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

(C) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*),[2] as adopted by the Public Company Accounting Oversight Board in Rule 3600T, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10–K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) and Rule 30d–1 (17 CFR 270.30d–1) thereunder) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If the registrant meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The registrant is a listed issuer, as defined in § 240.10A–3 of this chapter;

(B) The registrant is filing either an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(C) The registrant is neither:

(*1*) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(*2*) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) *Audit committee financial expert.*

[1] Available at *http://www.pcaobus.org/standards/interim_standards/auditing_standards/index_au.asp?series=300&section=300.*

[2] Available at *http://www.pcaobus.org/Standards/Interim_Standards/Independence_Standards/ISB1.pdf.*

(i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(*1*) Has at least one audit committee financial expert serving on its audit committee; or

(*2*) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*1*) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as *independence* for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*2*) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i).

If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.* (A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5).

1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10–K (17 CFR 249.310).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§ 229.401(e)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 229.1101) is not required to disclose the information required by paragraph (d)(5) of this Item.

Instructions to Item 407(d).

1. The information required by paragraphs (d)(1)–(3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1 through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)–(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the registrant does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the registrant's processes and procedures for the consideration and determination of executive and director compensation, including:

(i)(A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.

(4) Under the caption "Compensation Committee Interlocks and Insider Participation":

(i) Identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(A) Was, during the fiscal year, an officer or employee of the registrant;

(B) Was formerly an officer of the registrant; or

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§ 229.404). In this event, the disclosure required by Item 404 (§ 229.404) shall accompany such identification.

(ii) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant, and any former officer of the registrant, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(iii) Describe any of the following relationships that existed during the last completed fiscal year:

(A) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(B) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(C) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(iv) Disclosure required under paragraph (e)(4)(iii) of this Item regarding a compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 with respect to that person.

Instruction to Item 407(e)(4).

For purposes of paragraph (e)(4) of this Item, the term *entity* shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(5) Under the caption "Compensation Committee Report:"

(i) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must state whether:

(A) The compensation committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) (§ 229.402(b)) with management; and

(B) Based on the review and discussions referred to in paragraph (e)(5)(i)(A) of this Item, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the registrant's annual report on Form 10–K (§ 249.310 of this chapter), proxy statement on Schedule 14A (§ 240.14a–101 of this chapter) or information statement on Schedule 14C (§ 240.14c–101 of this chapter).

(ii) The name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must appear below the disclosure required by paragraph (e)(5)(i) of this Item.

Instructions to Item 407(e)(5).

1. The information required by paragraph (e)(5) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 through 240.14b–2 or 240.14c–1 through 240.14c–101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

2. The disclosure required by paragraph (e)(5) of this Item need not be provided in any filings other than an annual report on Form 10–K (§ 249.310 of this chapter), a proxy statement on Schedule 14A (§ 240.14a–101 of this chapter) or an information statement on Schedule 14C (§ 240.14c–101 of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. If the registrant elects to incorporate this information by reference from the proxy or information statement into its annual report on Form 10–K pursuant to General Instruction G(3) to Form 10–K, the disclosure required by paragraph (e)(5) of this Item will be deemed furnished in the annual report on Form 10–K and will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act as a result as a result of furnishing the disclosure in this manner.

3. The disclosure required by paragraph (e)(5) of this Item need only be provided one time during any fiscal year.

(f) *Shareholder communications.* (1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members.

Instructions to Item 407(f).

1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a

registrant that is an investment company, a majority of the directors who are not "interested persons" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

3. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as "security holder communications." Communications from an employee or agent of the registrant will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

Instructions to Item 407.

1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in § 240.10A–3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)); and

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the registrant's Web site, and if so, provide the registrant's Web site address. If a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter in an appendix to the registrant's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

■ 17. Amend § 229.601 to revise paragraph (b)(10)(iii)(C)(*5*) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(10) * * *

(iii) * * *

(C) * * *

(*5*) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§ 229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home country and is not otherwise publicly disclosed by the registrant.

* * * * *

■ 18. Amend § 229.1107 by revising paragraph (e) to read as follows:

§ 229.1107 (Item 1107) Issuing entities.

* * * * *

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402, 403 404 and 407(a), (c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S–K (§§ 229.401, 229.402, 229.403, 229.404 and 229.407(a), (c)(3), (d)(4), (d)(5) and (e)(4)) for the issuing entity.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 19. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 20. Amend § 232.304 to revise paragraphs (d) and (e) to read as follows:

§ 232.304 Graphic, image, audio and video material.

* * * * *

(d) For electronically filed ASCII documents, the performance graph that is to appear in registrant annual reports to security holders required by Exchange Act Rule 14a-3 (§ 240.14a–3 of this chapter) or Exchange Act Rule 14c–3 (§ 240.14c–3 of this chapter) to precede or accompany proxy statements or information statements relating to annual meetings of security holders at which directors are to be elected (or special meetings or written consents in lieu of such meetings), as required by Item 201(e) of Regulation S–K (§ 229.201(e) of this chapter), and the line graph that is to appear in registrant annual reports to security holders, as required by paragraph (b)(7)(ii) of Item 22 of Form N–1A (§ 274.11A of this chapter), must be furnished to the Commission by presenting the data in tabular or chart form within the electronic ASCII document, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, electronically filed HTML documents must present the following information in an HTML graphic or image file within the electronic submission in compliance with the formatting requirements of the EDGAR Filer Manual: The performance graph that is to appear in registrant annual reports to security holders required by Exchange Act Rule 14a–3 (§ 240.14a–3 of this chapter) or Exchange Act Rule 14c–3 (§ 240.14c–3 of this chapter) to precede or accompany registrant proxy statements or information statements relating to annual meetings of security holders at which directors are to be elected (or special meetings or written consents in lieu of such meetings), as required by Item 201(e) of Regulation S–K (§ 229.201(e) of this chapter); the line graph that is to appear in registrant annual reports to security holders, as required by paragraph (b)(7)(ii) of Item 22 of Form N–1A (§ 274.11A of this chapter); and any other graphic material required by rule or form to be filed with the Commission. Filers may, but are not required to, submit any other graphic material in a HTML document by presenting the data in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. However, filers may not present in a graphic or image file information such as text or tables that users must be able to search and/or download into spreadsheet form (*e.g.*, financial statements); filers must present such material as text in an ASCII document or as text or an HTML table in an HTML document.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 21. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 77mm, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 22. Amend Form SB–2 (referenced in § 239.10) by revising Item 15 to read as follows:

Note: The text of Form SB–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form SB–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 15. Certain Relationships and Transactions and Corporate Governance.

Furnish the information required by Item 404 of Regulation S–B and Item 407(a) of Regulation S–B.

* * * * *

■ 23. Amend Form S–1 (referenced in § 239.11) by revising Item 11, paragraphs (l) and (n) to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Information with Respect to the Registrant.

* * * * *

(l) Information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and information required by paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407 of this chapter), corporate governance;

* * * * *

(n) Information required by Item 404 of Regulation S–K (§ 229.404 of this chapter), transactions with related persons, promoters and certain control persons, and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter), corporate governance.

* * * * *

■ 24. Amend Form S–3 (referenced § 239.13) by revising General Instruction I.A.3.(b) and the introductory text of General Instruction I.B.4.(c) to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3 * * *

A. *Registrant Requirements.* * * *

3. * * *

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

B. *Transaction Requirements.* * * *

4. * * *

(c) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402, 403 and 407(c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S–K (§ 229.401—§ 229.403 and § 229.407(c)(3),(d)(4), (d)(5) and (e)(4) of this chapter) to:

* * * * *

■ 25. Amend Form S–4 (referenced in § 239.25) by revising Items 18(a)(7)(ii) and (iii) and 19(a)(7)(ii) and (iii) to read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407(e)(4) of this chapter), corporate governance;

(iii) Item 404 of Regulation S–K (§ 229.404 of this chapter), transactions with related persons, promoters and certain control persons, and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter), corporate governance.

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) * * *

(7) * * *

(ii) Item 402 of Regulation S–K (§ 229.402 of this chapter), executive compensation, and paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407(e)(4) of this chapter), corporate governance;

(iii) Item 404 of Regulation S–K (§ 229.404), transactions with related persons, promoters and certain controls persons, and Item 407(a) of Regulation S–K (§ 229.407(a)), corporate governance.

* * * * *

■ 26. Amend Form S–11 (referenced in § 239.18) by revising Items 22 and 23 to read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–11

For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

* * * * *

Item 22. Executive Compensation.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter), and the information required by paragraph (e)(4) of Item 407 of Regulation S–K (§ 229.407(e)(4) of this chapter).

Item 23. Certain Relationships and Related Transactions and Director Independence.

Furnish the information required by Items 404 and 407(a) of Regulation S–K (§§ 229.404 and 229.407(a) of this chapter). If a transaction involves the purchase or sale of assets by or to the registrant, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Furthermore, if the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 27. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 28. Amend § 240.13a–11 by revising paragraph (c) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

■ 29. Add § 240.13a–20 to read as follows:

§ 240.13a–20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 13(a) of the Act (15 U.S.C. 78m(a)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–B (§§ 228.402, 228.403, 228.404 or 228.407 of this chapter) or Item 402, 403, 404 or 407 of Regulation S–K (§§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) [Reserved]

Note to § 240.13a–20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

■ 30. Amend § 240.14a–3 to revise paragraph (b)(9) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Items 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter). If the report precedes or accompanies a proxy statement or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), furnish the performance graph required by Item 201(e) (§ 229.201(e) of this chapter).

* * * * *

■ 31. Amend § 240.14a–6 to revise paragraph (a)(4) to read as follows:

§ 240.14a–6 Filing requirements.

(a) * * *

(4) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(6)(ii) of this chapter) or amendments to such a plan;

* * * * *

■ 32. Amend § 240.14a–101 by:

■ a. Removing paragraphs (f), (g), and (h) of Item 7 and paragraph (b)(13)(iii) of Item 22;

■ b. Revising "$60,000" to read "$120,000" in the introductory text of Items 22(b)(7), (b)(8), and (b)(9); Instruction 2 to Item 22(b)(7); and Instruction 6 to Item 22(b)(9);

■ c. Revising Note C, Item 7(b), (c), (d), and (e), the introductory text of Item 8, the undesignated paragraph following Item 8(d), Item 10(b)(1)(ii), the Instruction to Item 10(b)(1)(ii), Instruction 1 to Item 10, the introductory text of Item 22(b), Item 22(b)(11), the Instruction to paragraph (b)(11) of Item 22, and the introductory text of Item 22(b)(13); and

■ d. Adding Items 22(b)(15), (b)(16), and (b)(17).

The revisions and additions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes.

* * * * *

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationship at any time during the period. Information, other than information required by Item 404 of Regulation S–B (§ 228.404 of this chapter) or Item 404 of Regulation S–K (§ 229.404 of this chapter), need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

* * * * *

Item 7. Directors and executive officers. * * *

(b) The information required by Items 401, 404(a) and (b), 405 and 407(d)(4) and (d)(5) of Regulation S–K (§ 229.401, § 229.404(a) and (b), § 229.405 and § 229.407(d)(4) and (d)(5) of this chapter).

(c) The information required by Item 407(a) of Regulation S–K (§ 229.407 of this chapter).

(d) The information required by Item 407(b), (c)(1), (c)(2), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3) and (f) of Regulation S–K (§ 229.407(b), (c)(1), (c)(2), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3) and (f) of this chapter).

(e) In lieu of the information required by this Item 7, investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) must furnish the information required by Item 22(b) of this Schedule 14A.

Item 8. Compensation of directors and executive officers.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter) and paragraphs (e)(4) and (e)(5) of Item 407 of Regulation S–K (§ 229.407(e)(4) and (e)(5) of this chapter) if action is to be taken with regard to:

* * * * *

(d) * * *

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered

under the Investment Company Act of 1940 (15 U.S.C. 80a), furnish the information required by Item 22(b)(13) of this Schedule 14A.

* * * * *

Item 10. Compensation Plans. * * *

(b)(1) *Additional information regarding specified plans subject to security holder action.* * * *

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (h)(2) of Item 402 of Regulation S–K (§ 229.402(h)(2) of this chapter).

Instruction to paragraph (b)(1)(ii).

In the case of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a), refer to Instruction 4 in Item 22(b)(13)(i) of this Schedule in lieu of paragraph (h)(2) of Item 402 of Regulation S–K (§ 229.402(h)(2) of this chapter).

* * * * *

Instructions

1. The term *plan* as used in this Item means any plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(6)(ii) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) *Election of Directors.* If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to, in the case of business development companies, the information (and in the format) required by Item 7 and Item 8 of this Schedule 14A.

* * * * *

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), and 405 of Regulation S–K (§§ 229.401(f) and (g), 229.404(a), and 229.405 of this chapter).

Instruction to paragraph (b)(11).

Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S–K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

* * * * *

(13) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), for all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons"):

* * * * *

(15)(i) Provide the information (and in the format) required by Items 407(b)(1), (b)(2) and (f) of Regulation S–K (§ 229.407(b)(1), (b)(2) and (f) of this chapter); and

(ii) Provide the following regarding the requirements for the director nomination process:

(A) The information (and in the format) required by Items 407(c)(1) and (c)(2) of Regulation S–K (§ 229.407(c)(1) and (c)(2) of this chapter); and

(B) If the Fund is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for nominating committee members, identify each director that is a member of the nominating committee that is not independent under the independence standards described in this paragraph. In determining whether the nominating committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the nominating committee are independent in compliance with the independence standards applicable for the members of the nominating committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the nominating committee, use the independence standards for the nominating committee in the listing standards applicable to the Fund.

Instruction to paragraph (b)(15)(ii)(B).

If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's conclusion that such exemption is applicable.

(16) In the case of a Fund that is a closed-end investment company:

(i) Provide the information (and in the format) required by Item 407(d)(1), (d)(2) and (d)(3) of Regulation S–K (§229.407(d)(1), (d)(2) and (d)(3) of this chapter); and

(ii) Identify each director that is a member of the Fund's audit committee that is not independent under the independence standards described in this paragraph. If the Fund does not have a separately designated audit committee, or committee performing similar functions, the Fund must provide the disclosure with respect to all members of its board of directors.

(A) If the Fund is a listed issuer (as defined in § 240.10A–3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for audit committee members, in determining whether the audit committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the audit committee are independent in compliance with the independence standards applicable for the members of the audit committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the audit committee, use the independence standards for the audit committee in the listing standards applicable to the Fund.

(B) If the Fund is not a listed issuer whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3(a)), in determining whether the audit committee members are independent, use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 780–3(a)) which has requirements that a majority of the board of directors be independent and that has been approved by the Commission, and state which definition is used. Whatever such definition the Fund chooses, it must use the same definition with respect to all directors and nominees for director. If the national securities exchange or national securities association whose standards are used has independence standards for the members of the audit committee, use those specific standards.

Instruction to paragraph (b)(16)(ii).

If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's

conclusion that such exemption is applicable. The same disclosure should be provided if the Fund is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the Fund has exemptions that are applicable to the Fund.

(17) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

* * * * *

■ 33. Amend § 240.14c–5 to revise paragraph (a)(4) before the undesignated paragraph to read as follows:

§ 240.14c–5 Filing requirements.

(a) * * *

(4) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(6)(ii) of this chapter) or amendments to such a plan.

* * * * *

■ 34. Amend § 240.15d–11 by revising paragraph (c) to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e) or 6.03 of Form 8-K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

■ 35. Add § 240.15d—20 to read as follows:

§ 240.15d—20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–B (§§ 228.402, 228.403, 228.404 or 228.407 of this chapter) or Item 402, 403, 404 or 407 of Regulation S–K (§§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and subheadings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) [Reserved]

Note to § 240.15d–20. In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

■ 36. Amend § 240.16b–3 by:

■ a. Adding "and" at the end of paragraph (b)(3)(i)(B);

■ b. Removing "; and" at the end of paragraph (b)(3)(i)(C) and in its place adding a period;

■ c. Removing paragraph (b)(3)(i)(D); and

■ d. Adding Note (4) to read as follows:

§ 240.16b–3 Transactions between an issuer and its officers or directors.

* * * * *

Notes to § 240.16b–3:

* * * * *

Note (4): For purposes of determining a director's status under those portions of paragraph (b)(3)(i) that reference § 229.404(a) of this chapter, an issuer may rely on the disclosure provided under § 229.404(a) of this chapter for the issuer's most recent fiscal year contained in the most recent filing in which disclosure required under § 229.404(a) is presented. Where a transaction disclosed in that filing was terminated before the director's proposed service as a Non-Employee Director, that transaction will not bar such service. The issuer must believe in good faith that any current or contemplated transaction in which the director participates will not be required to be disclosed under § 229.404(a) of this chapter, based on information readily available to the issuer and the director at the time such director proposes to act as a Non-Employee Director. At such time as the issuer believes in good faith, based on readily available information, that a current or contemplated transaction with a director will be required to be disclosed under § 229.404(a) in a future filing, the director no longer is eligible to serve as a Non-Employee Director; *provided, however,* that this determination does not result in retroactive loss of a Rule 16b-3 exemption for a transaction previously approved by the director while serving as a Non-Employee Director consistent with this note. In making the determinations specified in this Note, the issuer may rely on information it obtains from the director, for example, pursuant to a response to an inquiry.

PART 245—REGULATION BLACKOUT TRADING RESTRICTION (REGULATION BTR—BLACKOUT TRADING RESTRICTION)

■ 37. The authority citation for Part 245 continues to read in part as follows:

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

* * * * *

§ 245.100 [Amended]

■ 38. Amend § 245.100, paragraph (a)(2), by revising the phrase "paragraph (a) or (b) of Item 404" to read "paragraph (a) of Item 404".

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 39. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 40. Amend Form 10 (referenced in § 249.210) by revising Items 6 and 7 to read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10

General Form for Registration of Securities Pursuant to Section 12(B) or (G) of the Securities Exchange Act of 1934

* * * * *

Item 6. Executive Compensation.

Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter) and paragraph (e)(4) of Item 407 of Regulation S-K (§ 229.407 of this chapter).

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter) and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter).

* * * * *

■ 41. Amend Form 10–SB (referenced in § 249.210b), Information Required in Registration Statement, by revising Item 7 to read as follows:

Note: The text of Form 10–SB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–SB

General Form for Registration of Securities of Small Business Issuers

* * * * *

Information Required in Registration Statement

* * * * *

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–B (§ 228.404 of this chapter) and Item 407(a) of Regulation S–B (§ 228.407(a) of this chapter).

* * * * *

■ 42. Amend Form 20–F (referenced in § 249.220f) by revising Instruction 4.(c)(v) to the Instructions as to Exhibits to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Instructions as to Exhibits

* * * * *

4.(a) * * *

(c) * * *

(v) Public filing of the management contract or compensatory plan, contract or arrangement, or portion thereof, is not required in the company's home country and is not otherwise publicly disclosed by the company.

* * * * *

■ 43. Form 8–K (referenced in § 249.308) is amended by:

■ a. Revising General Instruction D;

■ b. Revising the last sentence of Instruction 1 to Item 1.01;

■ c. Revising the heading of Item 5.02;

■ d. Revising Item 5.02(b), the introductory text of Item 5.02(c), Item 5.02(c)(2) and (c)(3);

■ e. Adding Items 5.02(d)(5), (e) and (f); and

■ f. Adding Instructions 3 and 4 to Item 5.02.

The revisions and additions read as follows:

Note: The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

D. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b-13). To the extent that Item 1.01 and one or more other items of the form are applicable, registrants need not provide the number and caption of Item 1.01 so long as the substantive disclosure required by Item 1.01 is disclosed in the report and the number and caption of the other applicable item(s) are provided. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

* * * * *

Item 1.01 Entry into a Material Definitive Agreement.

* * * * *

Instructions.

1. * * * An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) need not be disclosed under this Item.

* * * * *

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

* * * * *

(b) If the registrant's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, or any named executive officer, retires, resigns or is terminated from that position, or if a director retires, resigns, is removed, or refuses to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), disclose the fact that the event has occurred and the date of the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person performing similar functions, disclose the following information with respect to the newly appointed officer:

(1) * * *

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S-K (17 CFR 229.401(b), (d), (e) and 229.404(a)), or, in the case of a small business issuer, Items 401(a)(4), (a)(5), (c), and Item 404(a) of Regulation S-B (17 CFR 228.401(a)(4), (a)(5), (c), and 228.404(a), respectively); and

(3) a brief description of any material plan, contract or arrangement (whether or not written) to which a covered officer is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(d) * * *

(5) a brief description of any material plan, contract or arrangement (whether or not written) to which the director is a party or in which he or she participates that is entered into or material amendment in connection with the triggering event or any grant or award to any such covered person or modification thereto, under any such plan, contract or arrangement in connection with any such event.

(e) If the registrant enters into, adopts, or otherwise commences a material compensatory plan, contract or arrangement (whether or not written), as to which the registrant's principal executive officer, principal financial officer, or a named executive officer participates or is a party, or such compensatory plan, contract or arrangement is materially amended or modified, or a material grant or award under any such plan, contract or arrangement to any such person is made or materially modified, then the registrant shall provide a brief description of the terms and conditions of the plan, contract or arrangement and the amounts payable to the officer thereunder.

Instructions to paragraph (e).

1. Disclosure under this Item 5.02(e) shall be required whether or not the specified event is in connection with events otherwise triggering disclosure pursuant to this Item 5.02.

2. Grants or awards (or modifications thereto) made pursuant to a plan, contract or arrangement (whether involving cash or equity), that are materially consistent with the previously disclosed terms of such plan, contract or arrangement, need not be disclosed under this Item 5.02(e), provided the registrant has previously disclosed such terms and the grant, award or modification is disclosed when Item 402 of Regulation S–K (17 CFR 229.402) requires such disclosure.

(f) If the salary or bonus of a named executive officer cannot be calculated as of the most recent practicable date and is omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(b)(2)(iii) and (iv) of Regulation S–B or Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K, disclose the appropriate information under this Item 5.02(f) when there is a payment, grant, award, decision or other occurrence as a result of which such amounts become calculable in whole or part. Disclosure under this Item 5.02(f) shall include a new total compensation figure for the named executive officer, using the new salary or bonus information to recalculate the information that was previously provided with respect to the named executive officer in the registrant's Summary Compensation Table for which the salary and bonus information was omitted in reliance on Instruction 1 to Item 402(b)(2)(iii) and (iv) of Regulation S–B (17 CFR 228.402(b)(2)(iii) and (iv)) or Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K (17 CFR 229.402(c)(2)(iii) and (iv)).

Instructions to Item 5.02.

* * * * *

3. The registrant need not provide information with respect to plans, contracts, and arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

4. For purposes of this Item, the term "named executive officer" shall refer to those executive officers for whom disclosure was required in the registrant's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) that required disclosure pursuant to Item 402(c) of Regulation S–K (17 CFR 229.402(c)) or Item 402(b) of Regulation S–B (17 CFR 228.402(b)), as applicable.

* * * * *

■ 44. Amend Form 10–Q (referenced in § 249.308a) by revising Item 5(b) in Part II to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S–K (§ 229.407 of this chapter).

* * * * *

■ 45. Amend Form 10–QSB (referenced in § 249.308b) by revising Item 5(b) in Part II to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

(a) * * *

(b) Furnish the information required by Item 407(c)(3) of Regulation S–B (§ 228.407 of this chapter).

* * * * *

■ 46. Amend Form 10–K (referenced in § 249.310) by revising Item 10 before the instruction and Items 11 and 13 in Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part III

* * * * *

Item 10. Directors, Executive Officers and Corporate Governance.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S–K (§§ 229.401, 229.405, 229.406, and 229.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 11. Executive Compensation.

Furnish the information required by Item 402 of Regulation S–K (§ 229.402 of this chapter) and paragraphs (e)(4) and (e)(5) of Item 407 of Regulation S–K (§ 229.407(e)(4) and (e)(5) of this chapter).

* * * * *

Item 13. Certain Relationships and Related Transactions, and Director Independence..

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter) and Item 407(a) of Regulation S–K (§ 229.407(a) of this chapter).

* * * * *

■ 47. Amend Form 10–KSB (referenced in § 249.310b) by revising Item 9 before the instruction and Item 12 in Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

Item 9. Directors, Executive Officers, Promoters, Control Persons and Corporate Governance; Compliance With Section 16(a) of the Exchange Act.

Furnish the information required by Items 401, 405, 406, and 407(c)(3), (d)(4) and (d)(5) of Regulation S–B (§§ 228.401, 228.405, 228.406, and 228.407(c)(3), (d)(4) and (d)(5) of this chapter).

* * * * *

Item 12. Certain Relationships and Related Transactions, and Director Independence.

Furnish the information required by Item 404 of Regulation S–B (§ 228.404 of this chapter) and Item 407(a) of Regulation S–B (§ 228.407(a) of this chapter).

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 48. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 49. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by:

■ a. Revising "$60,000" to read "$120,000" in the introductory text of Items 12(b)(6), (b)(7), and (b)(8); Instruction 2 to Item 12(b)(6); and Instruction 5 to Item 12(b)(8); and

■ b. Removing the word "relocation," in the second sentence of Instruction 2 to Item 15(b).

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 50. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by:

■ a. Revising "$60,000" to read "$120,000" in the introductory text of paragraphs 9, 10, and 11 of Item 18; Instruction 2 to paragraph 9 of Item 18; and Instruction 5 to paragraph 11 of Item 18;

■ b. Revising the introductory text of paragraph 13 of Item 18;

■ c. Removing paragraph 13(c) of Item 18;

■ d. Redesignating paragraphs 14 and 15 of Item 18 as paragraphs 15 and 16, respectively;

■ e. Adding new paragraph 14 of Item 18;

■ f. Removing "relocation," from the second sentence of Instruction 2 to paragraph 2 of Item 21; and

■ g. Revising the cite "Item 18.15" to read "Item 18.16" in Instruction 8.a. to Item 24.

The addition and revision read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management.

* * * * *

13. In the case of a Registrant that is not a business development company, provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons").

* * * * *

14. In the case of a Registrant that is a business development company, provide the information required by Item 402 of Regulation S–K (17 CFR 229.402).

* * * * *

■ 51. Amend Form N–3 (referenced in §§ 239.17a and 274.11b) by:

■ a. Revising "$60,000" to read "$120,000" in the introductory text of paragraphs (h), (i), and (j) of Item 20; Instruction 2 to paragraph (h) of Item 20; and Instruction 5 to paragraph (j) of Item 20; and

■ b. Removing the word "relocation," in the second sentence of Instruction 2 to Item 22(b).

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

■ 52. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by revising Item 10 to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 10. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S–K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a–101)), or this Item.

Instruction. For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S–K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a–101)), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

* * * * *

Dated: August 29, 2006. .

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–6968 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33–8735; 34–54380; IC–27470; File No. S7–03–06]

RIN 3235–AI80

Executive Compensation Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Request for additional comment.

SUMMARY: The Securities and Exchange Commission is requesting additional comment on a proposed amendment to the disclosure requirements for executive and director compensation. We are requesting comments regarding the proposal to require compensation disclosure for three additional highly compensated employees.

DATES: Comments should be received on or before October 23, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*): or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–03–06 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number S7–03–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Carolyn Sherman, or Daniel Greenspan, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010 or, with respect to questions regarding investment companies, Kieran Brown in the Division of Investment Management, at (202) 551–6784.

SUPPLEMENTARY INFORMATION: We solicit additional comments on a proposal to amend Item 402 [1] of Regulation S–K.[2]

I. Background

On January 27, 2006, we proposed revisions to our rules governing disclosure of executive compensation, director compensation, related party transactions, director independence and other corporate governance matters, current reporting regarding compensation arrangements and beneficial ownership.[3] We received over 20,000 comment letters in response to our proposals. In general, commenters supported the proposals and their objectives. On July 26, 2006 we adopted the rules and amendments substantially as proposed, with certain modifications to address a number of points that commenters raised.[4]

We did not adopt the proposed disclosure requirement regarding the total compensation and job description of up to an additional three most highly compensated employees who are not executive officers or directors but who earn more than any of the named executive officers. Instead we are requesting additional comment. In particular, we have specific requests for comment as to whether the proposal should be modified to apply only to large accelerated filers who would disclose the total compensation for the most recent fiscal year and a description of the job position for each of their three most highly compensated employees whose total compensation is greater than any of the named executive officers, whether or not such persons are executive officers. Under this approach, employees who have no responsibility for significant policy decisions within either the company, a significant subsidiary or a principal business unit, division, or function, would be excluded from the determination of the three most highly compensated employees and no disclosure regarding them would be required.

II. Discussion

As part of the Item 402 narrative disclosure requirements, we had proposed an additional item that would have required disclosure for up to three employees who were not executive officers during the last completed fiscal year and whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers.[5] We received extensive comment on this proposal. Some commenters supported the proposal or suggested that it should go further.[6] Many commenters expressed concern that the benefits of this disclosure to investors would be negligible, yet compliance might require the outlay of considerable company resources.[7] Some commenters expressed concern that the proposed disclosure would raise privacy issues or negatively impact competition for employees.[8] While we continue to consider whether to adopt such a requirement as part of the executive compensation disclosure rules, we are requesting additional comment as to whether potential modifications would address the concerns that commenters have raised.

We note in particular that some commenters questioned the materiality of the information that would have been required by the proposal, given that the covered employees would not be in policy-making positions as executive

---

[1] 17 CFR 229.402.

[2] 17 CFR 229.10 *et seq.*

[3] *Executive Compensation and Related Party Disclosure*, Release No. 33–8655 (Jan. 27, 2006) [71 FR 6542] (the "Proposing Release").

[4] *Executive Compensation and Related Party Disclosure*, Release No. 33–8732A (Aug. 29, 2006) (the "Adopting Release") published in this issue of the **Federal Register**.

[5] Proposed Item 402(f)(2).

[6] See, *e.g.*, letters from the Corporate Library; The Greenlining Institute; Institutional Investor Group; and State Board of Administration (SBA) of Florida.

[7] See, *e.g.*, letters from American Bar Association, Committee on Federal Regulation of Securities; Chamber of Commerce of the United States of America ("Chamber of Commerce"); Eli Lilly and Company ("Eli Lilly"); Leggett & Platt, Incorporated ("Leggett & Platt"); Nancy Lucke Ludgus; and Mercer Human Resource Consulting ("Mercer").

[8] See, *e.g.*, letters from American Bar Association, Joint Committee on Employee Benefits; Business Roundtable; jointly, CBS Corporation, The Walt Disney Company, NBC Universal, News Corporation, and Viacom, Inc. ("Entertainment Industry Group"); Committee on Corporate Finance of Financial Executives International; Chamber of Commerce; Cleary Gottlieb Steen & Hamilton LLP ("Cleary"); CNET Networks, Inc. ("CNET Networks"); Compass Bancshares, Inc. ("Compass Bancshares"); Compensia; Cravath, Swaine & Moore LLP ("Cravath"); DreamWorks Animation SKG ("DreamWorks"); Eli Lilly; Emerson Electric Co.; Fenwick & West LLP; The Financial Services Roundtable ("FSR"); Professor Joseph A. Grundfest, dated April 10, 2006; Investment Company Institute ("ICI"); Intel Corporation ("Intel"); Kellogg Company ("Kellogg"); Kennedy & Baris, LLP ("Kennedy"); Mercer; Peabody Energy Corporation ("Peabody Energy"); Pearl Meyer & Partners; Securities Industry Association ("SIA"); Sullivan & Cromwell LLP; Society of Corporate Secretaries & Governance Professionals ("SCSGP"); and WorldatWork.

officers.[9] After considering the issues raised by these commenters, we remain concerned about disclosure with respect to employees, particularly within very large companies, whether or not they are executive officers, whose total compensation for the last completed fiscal year was greater than that of one or more of the named executive officers. If any of these employees exert significant policy influence at the company, at a significant subsidiary of the company or at a principal business unit, division, or function of the company, then investors seeking a fuller understanding of a company's compensation program may believe that disclosure of these employees' total compensation is important information.[10] Knowing the compensation, and job positions within the organization, of these highly compensated policy-makers whose total compensation for the last fiscal year was greater than that of a named executive officer, should assist in placing in context and permit a better understanding of the compensation structure of the named executive officers and directors.

Our intention is to provide investors with information regarding the most highly compensated employees who exert significant policy influence by having responsibility for significant policy decisions. Responsibility for significant policy decisions could consist of, for example, the exercise of strategic, technical, editorial, creative, managerial, or similar responsibilities. Examples of employees who might not be executive officers but who might have responsibility for significant policy decisions could include the director of the news division of a major network; the principal creative leader of the entertainment function of a media conglomerate; or the head of a principal business unit developing a significant technological innovation. By contrast, we are convinced by commenters that a salesperson, entertainment personality, actor, singer, or professional athlete who is highly compensated but who does not have responsibility for significant policy decisions would not be the type of employee about whom we would seek disclosure. Nor, as a general matter, would investment professionals (such as a trader, or a portfolio manager for an investment adviser who is responsible for one or more mutual funds or other clients) be deemed to have responsibility for significant policy decisions at the company, at a significant subsidiary or at a principal business unit, division or function simply as a result of performing the duties associated with those positions. On the other hand, an investment professional, such as a trader or portfolio manager, who does have broader duties within a firm (such as, for example, oversight of all equity funds for an investment adviser) may be considered to have responsibility for significant policy decisions.

We continue to consider whether it is appropriate to require some level of narrative disclosure so that shareholders will have information about these most highly compensated employees. This consideration includes the appropriate level of information about these employees and their compensation in light of their roles.

As to issues regarding privacy and competition for employees, to the extent that commenters objected that the disclosure could result in a competitor stealing a company's top "talent," [11] we have tried to address these concerns by focusing the disclosure on persons who exert significant policy influence within the company or significant parts of the company.

III. Request for Comment

We request additional comment on the proposal to require compensation disclosure for up to three additional employees. In addition to general comment, we encourage commenters to address the following specific questions:

- Would the rule more appropriately require disclosure of the employees described above if it were structured in the following or similar manner:

For each of the company's three most highly compensated employees, whether or not they were executive officers during the last completed fiscal year, whose total compensation for the last completed fiscal year was greater than that of any of the named executive officers, disclose each such employee's total compensation for that year and describe the employee's job position, without naming the employee; *provided, however,* that employees with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company are not included when determining who are each of the three most highly compensated employees for the purposes of this requirement, and therefore no disclosure is required under this requirement for any employee with no responsibility for significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company?

- Would it be appropriate to determine the highest paid employees in the same manner that named executive officers are determined, by calculating total compensation but excluding pension plan benefits and above-market or preferential earnings on nonqualified deferred compensation plans, and by comparing that amount to the same amount earned by the named executive officers (excluding the amount required to be disclosed for those named executive officers pursuant to paragraph (c)(2)(viii) of Item 402)? If so, should the total amount disclosed include these amounts as it does for named executive officers? Should the pension benefit and above-market earnings be separately disclosed in a footnote so investors can calculate the amounts used in determining highest paid employees?

- Would modifying the proposed rule to apply only to large accelerated filers [12] properly focus this disclosure obligation on companies that are more likely to have these additional highly compensated employees? Would that modification address concerns that the proposed rule would impose disproportionate compliance burdens by limiting the disclosure obligation to companies that are presumptively better able to track the covered employees?

---

[9] See, e.g., letters from California State Teachers' Retirement System; Cleary; CNET Networks; Compass Bancshares; DreamWorks; Entertainment Industry Group; Fried, Frank, Harris, Shriver & Jacobson LLP; FSR; Hewitt Associates LLC; ICI; Intel; Kellogg; Kennedy; Leggett & Platt; Peabody Energy; Pearl Meyer & Partners; SCSGP; SIA; Stradling Yocca Carlson & Rauth; Top Five Data Services, Inc.; Towers Perrin, dated April 10, 2006; and Walden Asset Management.

[10] The Commission expressed similar concerns in 1978, when it stated "a key employee or director of a subsidiary might be the highest-paid person in the entire corporate structure and have managerial responsibility for major aspects of the registrant's overall operations." *Uniform and Integrated Reporting Requirements: Management Remuneration,* Release No. 33–6003 (Dec. 4, 1978) [43 FR 58151] (the "1978 Release"). See the Adopting Release at n. 327 for a discussion of the term "executive officer." In light of some of the comments that we received, we have clarified that the definition of "executive officer" includes all individuals in a registrant policy-making role. See, e.g., letters from SCSGP and Cravath.

[11] See, e.g., letter from Entertainment Industry Group. In addition, we note our intention is not to suggest that these additional employees, whether or not they are executive officers, are individuals whose compensation is required to be reported under the Exchange Act "by reason of such employee being among the 4 highest compensated officers for the taxable year," as stated in Internal Revenue Code Section 162(m)(3)(B) [26 U.S.C. 162(m)(3)(B)]. See letter from Cleary (expressing concern that the additional individuals not fall within the purview of Section 162(m) of the Internal Revenue Code).

[12] The term large accelerated filer is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

Would a different limitation as to applicability be appropriate?

- Is information regarding highly compensated employees, including those who are not executive officers, material to investors? In answering this question, commenters are encouraged to address the following additional questions:
  - Would modifications limiting the disclosure to employees who make significant policy decisions within the company, a significant subsidiary of the company, or a principal business unit, division, or function of the company appropriately focus the disclosure on employees for whom compensation information is material to investors?
  - Would the approach that we are considering provide investors with material information about how policy-making responsibilities are allocated within a company? Are the examples describing responsibility for significant policy decisions too broad or too narrow?
  - Would the proposed rule, with the modifications described above, provide investors with material information necessary to understand the company's compensation policies and structure? How should we address those concerns?
  - What is typically the role of the compensation committee in determining or approving the compensation of the additional employees if they are not executive officers? If the compensation committee does not oversee their compensation, is the additional employee compensation information material to investors? What types of decisions would investors make based on this information?
- Would the proposed rule, with the modifications described above, raise privacy issues or negatively impact competition for employees in a manner that would outweigh the materiality of the disclosure to investors?
- Should we require that the three additional employees be named? If not, what additional information should be required? Should more information be required regarding the employee's compensation or job position?
- Should we define "responsibility for significant policy decisions"? Should we use another test to describe those employees who exert a significant policy influence on the company? Do the examples provided above help identify and delimit the number of employees whose compensation would be subject to disclosure under this provision? What would help companies identify these employees?
- What additional work and costs are involved in collecting the information necessary to identify the three additional employees? What are the types of costs, and in what amounts? In what way can the proposal be further modified to mitigate the costs?
- In connection with the original proposal, we solicited comment on all aspects of the proposal, including this one. No commenter supplied cost estimates. We are now considering whether to limit this provision to only large accelerated filers. For some large accelerated filers, the number of employees potentially subject to this requirement may already be known or easy to identify. Other, more complex companies may need to establish systems to identify such employees. Every large accelerated filer would need to evaluate whether any employees exerted significant policy influence at the company, at a significant subsidiary or at a principal business unit, division or function and would have to track their compensation in order to comply with the proposed requirement. These monitoring costs may be new to some companies. We believe the cost of actually disclosing the compensation would be incremental and minimal. The monitoring and information collection costs are likely to be greatest in the first year and significantly less in later years. We also assume that costs would largely be borne internally, although some companies may seek the advice of outside counsel in determining which employees meet the standard for disclosure. In that event, for purposes of seeking comment, we estimate that 1,700 [13] companies will on average retain outside counsel for 8 hours in the first year and 2 hours in each of two succeeding years, at $400 per hour, for a total estimated average annual cost of approximately $3 million. Assuming all large accelerated filers spend 60 hours in the first year and 10 hours in each of the two succeeding years, with an average internal cost of $175 per hour, the total average annual burden of collecting and monitoring employee compensation would be approximately 45,000 hours, or approximately $8 million. The total average annual cost is therefore estimated to be $11 million. We invite comment on this estimate and its assumptions.

Dated: August 29, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–7405 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[13] We estimate there are approximately 1,700 companies that are large accelerated filers. *See Revisions to Acceleroted Filer Definition and Acceleroted Deadlines for Reporting Periodic Reports*, Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626], at Section V.A.2.

Federal Register

Friday,
September 8, 2006

Part III

Environmental Protection Agency

40 CFR Parts 60, 62, and 63
Standards of Performance, Emission Guidelines, and Federal Plan for Municipal Solid Waste Landfills and National Emission Standards for Hazardous Air Pollutants; Municipal Solid Waste Landfills; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 62, and 63

[EPA–HQ–OAR–2003–0215; FRL–8217–6]

RIN 2060–AJ41 and A2060–AH13

Standards of Performance, Emission Guidelines, and Federal Plan for Municipal Solid Waste Landfills and National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: EPA is proposing amendments to the "Standards of Performance for Municipal Solid Waste Landfills" (Landfills NSPS), to the "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" (landfills emission guidelines), to the "National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills" (Landfills NESHAP), and to the "Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed since May 30, 1991" (landfills Federal plan). The proposed amendments to the Landfills NSPS are supplemental amendments to those proposed on May 23, 2002. Based on public comments on the proposed amendments and additional analysis, we are proposing supplemental amendments to the Landfills NSPS to clarify what constitutes treated landfill gas. We are also proposing amendments to the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP to clarify who is responsible for compliance activities where multiple parties are involved in the ownership or operation of a landfill and the associated landfill gas collection, control, and/or treatment systems. In addition, we are proposing revisions to both the Landfills NSPS and the Landfills NESHAP regarding startup, shutdown, malfunction, and routine maintenance.

The proposed amendments to the Landfills NSPS would also serve to amend the emission guidelines and the Federal plan for existing municipal solid waste landfills because these rules incorporate the provisions of the "Standards of Performance for Municipal Solid Waste Landfills." We are proposing changes to the emission guidelines and Federal plan themselves to reflect the proposed changes to the Landfills NSPS where these rules did not directly incorporate the provisions of the Landfills NSPS.

DATES: Comments must be received on or before November 7, 2006.

Public Hearing. If anyone contacts EPA by September 28, 2006 requesting to speak at a public hearing, EPA will hold a public hearing on October 10, 2006. If you are interested in attending the public hearing, contact Karen Rackley at (919) 541–0634 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0215, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* Send your comments via electronic mail to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2003–0215.
- *Fax:* Fax your comments to (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2003–0215.
- *Mail:* By U.S. Postal Service, send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2003–0215. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B–108, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2003–0215. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006), or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0215. 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.*

Public Hearing: If a public hearing is held, it will be held at the EPA Facility Complex located at 109 T.W. Alexander Drive, Research Triangle Park, NC, or an alternate site nearby.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744,

and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Rackley, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–0634, e-mail address: *rackley.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by the proposed amendments include municipal solid waste (MSW) landfills and owners/operators of combustion devices that burn untreated landfill gas, which may include the following entities:

Category	NAICS* code	Examples of potentially regulated entities
Industry: Air and water resource and solid waste management	924110	Solid waste landfills.
Industry: Refuse systems—solid waste landfills	562212	Solid waste landfills.
State, local, and tribal government agencies	562212 924110	Solid waste landfills; Air and water resource and solid waste management.
Any industry, commercial business, or institution or utility that burns untreated landfill gas in a reciprocating engine, turbine, boiler, or other combustion device (e.g., for energy recovery).	4911	Electric power generation, transmission, or distribution.
	49	Electric, gas, and sanitary services.
	37	Manufacturers of motor vehicle parts and accessories.
	82	Educational services.
	29	Petroleum refineries and manufacturers of coal products.
	28	Chemical manufacturers.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed amendments. To determine whether your facility would be regulated by the proposed amendments, you should carefully examine the applicability criteria in 40 CFR 60.32c of subpart Cc, 40 CFR 60.750 of subpart WWW, 40 CFR 62.14352 of subpart GGG, or 40 CFR 63.1935 and 40 CFR 63.1940 of subpart AAAA. If you have any questions regarding the applicability of the proposed amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the proposed amendments to the Landfills NSPS (40 CFR part 60, subpart WWW), emission guidelines (40 CFR part 60, subpart Cc), Federal plan (40 CFR part 62, subpart GGG), and Landfills NESHAP (40 CFR part 63, subpart AAAA) is Docket ID No. EPA–HQ–OAR–2003–0215. Docket ID No. A–88–09 contains supporting information for the landfills NSPS and emission guidelines and Docket ID No. EPA–OAR–2002–0047 and Docket ID No. A–98–28 contain the supporting information for the Landfills NESHAP. Docket ID No. A–98–03 and Docket ID No. A–88–09 contain supporting information for the landfills Federal plan.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed amendments is available on the WWW through the Technology Transfer Network Website (TTN). Following signature, EPA will post a copy of the proposed amendments on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What rules affect MSW landfills?

On March 12, 1996 (61 FR 9905), we promulgated the emission guidelines for existing MSW landfills and the NSPS for new or modified MSW landfills under authority of section 111 of the Clean Air Act (CAA). The goal of the emission guidelines and NSPS is to control landfill gas emissions to the level achievable through the application of the best system of emissions reductions which (taking into account the cost of such reduction and any non-air quality health and environmental impact and energy requirements) we determine has been adequately demonstrated. This is termed the Abest demonstrated technology." On

November 8, 1999 (64 FR 60689), we promulgated the landfills Federal plan requirements for the purpose of implementing the landfills emission guidelines in States without approved State plans.

The control of landfill gas based on the requirements of the Landfills NSPS, emission guidelines, and Federal plan results in emissions reductions of over 30 volatile organic compounds and air toxics such as toluene, benzene, and vinyl chloride. The reduction of these emissions has direct and indirect health benefits as well as environmental benefits. In addition, the control of landfill gas results in reductions of methane gas emissions, which reduces the potential for fires and explosions near landfills. Control of landfill gas reduces odor problems, which reduces the potential for local property devaluation and poorer quality of life for local residents. Some landfills control landfill gas by combusting it in a boiler, engine, or turbine to produce steam or electricity, taking advantage of landfill gas as a renewable energy source.

The landfills emission guidelines, as implemented through an approved State plan or the landfills Federal plan, and the Landfills NSPS require large landfills (at least 2.5 million megagrams (Mg) and 2.5 million cubic meters in size) with estimated nonmethane organic compound (NMOC) emissions of at least 50 megagrams per year (Mg/yr) to collect and control or treat landfill gas. The Landfills NSPS and emission guidelines provide landfill owners or operators with some degree of flexibility to achieve compliance, allowing them to incorporate site-specific factors into the design of the collection and control or treatment systems, as long as the systems meet specific performance standards. On January 16, 2003 (68 FR 2227), we promulgated the Landfills NESHAP under authority of section 112 of the CAA. The Landfills NESHAP apply to both major and area sources and contain the same requirements as the landfills emission guidelines and Landfills NSPS, but add requirements for startup, shutdown, and malfunction (SSM), add operating condition deviations for out-of-bounds monitoring parameters, require timely control of bioreactor landfills, and change the reporting frequency for one type of report.

On May 23, 2002 (67 FR 36476), we proposed amendments to the Landfills NSPS because implementation activity showed a need for clarification of some issues. Consideration of the public comments received and additional implementation activity has shown the need for even further clarification on implementing the Landfills NSPS, emission guidelines, and Landfills NESHAP.

B. What is the purpose of the proposed amendments?

We are proposing supplemental amendments to the May 23, 2002 proposed amendments to the Landfills NSPS. While today's proposed supplemental amendments would, for the most part, specifically amend the Landfills NSPS, they would also serve to amend the landfills emission guidelines for existing MSW landfills because the emission guidelines incorporate many of the provisions of the Landfills NSPS. In addition, today's proposed supplemental amendments include conforming changes to certain provisions of the landfills emission guidelines that do not directly incorporate the provisions of the Landfills NSPS; make conforming changes to the landfills Federal plan for existing MSW landfills; and would affect changes to the Landfills NESHAP for MSW landfills. The supplemental proposed amendments would, in conjunction with the previously proposed amendments, further clarify the definition of landfill owners/operators; clarify compliance responsibilities in situations where multiple entities own/operate a landfill and the gas collection, control, or treatment systems (either at the landfill or off site); and clarify the definition of treated landfill gas. Today's proposed supplemental amendments do not change how you determine whether a landfill is "new" or "existing," and accordingly subject to the Landfills NSPS or emission guidelines. The determination of whether an affected facility is new or existing is still based on the date of construction or modification of the landfill itself and not the date of installation of the gas collection, control, or treatment system.

In allocating certain responsibilities to the landfill owners/operators and others to the gas collection, control, and/or treatment system owners/operators, it is not our intent to establish a precedent for any other NSPS or NESHAP. We are proposing this compliance approach specifically for landfills because of the unique nature of landfill operations and to encourage energy recovery. Landfill gas is commonly collected and combusted to produce electricity, steam, or other useful energy; combustion for energy recovery often occurs miles away from the landfill itself at a separate industrial, commercial, or institutional facility. Combusting landfill gas for energy recovery is a reasonable approach to meeting the control requirements of the Landfills NSPS and also makes use of a renewable energy resource and reduces combustion of scarce fossil fuels and emissions produced during their combustion. This unique situation raises unique issues on the respective responsibilities of landfill owners/operators and gas collection, control, and/or treatment system owners/operators for complying with the Landfills NSPS.

Although today's proposed supplemental amendments allocate responsibility for complying with certain specified requirements to the owners/operators of the MSW landfill and responsibility for complying with other specified requirements to the owners/operators of gas collection, control and/or treatment systems used to comply with the Landfills NSPS, they do not alter compliance responsibilities where affected sources [1] are under common control.[2] (Today's proposed supplemental amendments also continue to recognize that the owner/operator of the MSW landfill may also be the owner/operator of the gas collection, control, and/or treatment system.) The question of whether affected sources are under common control may be determined as part of permitting activities. In a common control determination, various affected sources are aggregated together, and the owner/operator of the resulting single source is ultimately responsible for ensuring compliance with all applicable requirements (including requirements applicable to each of the affected sources/emissions units that make up the single source). To ensure that the proposed amendments to the Landfills NSPS allocating various compliance responsibilities among the owners/operators of affected sources do not conflict with determining compliance responsibilities when the affected sources are under common control, 40 CFR 60.750(a) of the Landfills NSPS, related sections of the landfills emission guidelines, the landfills Federal plan, and the Landfills NESHAP specify that responsibility for compliance cannot be allocated where landfills and associated

[1] The Landfills NSPS define the affected sources subject to the NSPS and the requirements to which these affected sources are subject. However, a single source is defined by the program in question, e.g., title V, new source review, and in many cases, requires the aggregation of emissions units, including affected sources.

[2] Common control is a key element in defining whether and how activities at a site are to be aggregated in determining whether they constitute a single source. See, for example, *Alabama Power* v. *Costle*, 636 F.2d 323 (District of Columbia Circuit, 1979), section 112(a)(1) of the CAA, 40 CFR 70.2, and 40 CFR 51.166(b)(5) and (6).

gas collection, control, and/or treatment systems are under common control.

It is important to note that in cases of common control, although the owner/operator of the single source (e.g., the owner/operator of the landfill and/or gas collection, control, and/or treatment system) is ultimately responsible for ensuring compliance at the source, enforcement action could be taken by EPA or a State against the owners/operators of individual affected sources/emissions units in addition to the owner/operator of the single source. This is because enforcement action is not limited by the determination of who is ultimately in control of a single source, but rather can be taken against the owners/operators of each individual affected source/emissions unit comprising that source.

Additionally, regardless of the various regulatory approaches that are discussed in today's package, all landfills that are at least 2.5 Mg and 2.5 million cubic meters in size, and all stationary equipment that is required by the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP to collect, control, and/or treat landfill gas from MSW landfills of this size, continue to be subject to the requirement to apply for and obtain a title V permit. This is because section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of a title V permits program. Thus, regardless of the number of affected sources or owner/operators that are relevant in a particular MSW landfill situation, all affected sources are required to be covered by a title V operating permit. The final regulatory language will provide additional clarification on this point after a regulatory approach is selected.

We are proposing further clarifications to the landfill gas treatment compliance option, including more specific definitions of "treated landfill gas" and "treatment system" in the Landfills NSPS.

We are proposing clarifications that would amend the time allowed for malfunction events in the Landfills NSPS. The amendments would also clarify the SSM plan requirements and reports and the incorporation of maintenance activities in those plans in the Landfills NESHAP.

The proposed supplemental amendments would correct a test method citation in the Landfills NSPS; clarify Landfills NSPS temperature monitoring for enclosed combustors; clarify that bioreactor moisture content should be determined on a wet weight basis for the Landfills NESHAP; and correct a compliance date in the Landfills NESHAP.

As stated earlier, the proposed supplemental amendments to the Landfills NSPS would also serve to amend the landfills emission guidelines and Federal plan for MSW landfills where these rules specifically incorporate the provisions of the Landfills NSPS. We are also proposing direct changes to the landfills emission guidelines to maintain consistency with the proposed changes to the Landfills NSPS where the emission guidelines did not directly incorporate the provisions of the Landfills NSPS. Changes to the landfills Federal plan implementing the landfills emission guidelines are being proposed to ensure the plan remains consistent with the landfills emission guidelines.

II. Summary of the Proposed Amendments

A. What changes did we propose to the Landfills NSPS on May 23, 2002?

On May 23, 2002, EPA proposed amendments to the Landfills NSPS to clarify who is responsible for compliance activities where multiple entities are involved in the ownership/operation of a landfill and the associated landfill gas collection, control, and/or treatment systems; clarify what constitutes treated landfill gas; and correct the omission of an exemption for specific boilers and process heaters from the initial performance test.

To be specific, we proposed to amend 40 CFR 60.751 of subpart WWW by adding a landfill-specific definition for MSW landfill owners/operators. This landfill-specific definition would identify MSW landfill owners/operators as entities that own or operate the landfill or any stationary equipment located on the landfill property that is used in the collection, control, and/or treatment of landfill gas. We also proposed to amend 40 CFR 60.752 of subpart WWW to allow landfill owners/operators to transfer untreated landfill gas off site for control or treatment, provided the transferee certifies to us (and provides a copy to the landfill owner/operator) that it will control or treat the landfill gas in accordance with the Landfills NSPS provisions.

We further proposed to amend 40 CFR 60.751 of subpart WWW by adding a definition for treatment system. The May 23, 2002 proposed definition for treatment system specified that the system must filter, de-water, and compress landfill gas.

We proposed to amend 40 CFR 60.752(b)(2)(iii)(C) of subpart WWW to specify that to achieve compliance with this section, landfill gas must be processed in a system that meets the treatment system definition in the proposed amendment. We also proposed to amend this section to clarify that venting of treated landfill gas to the ambient air is not permitted.

We proposed to amend 40 CFR 60.752(b)(2)(iii)(B) of subpart WWW to exempt owners/operators of boilers and process heaters with design input capacities of 44 megawatts (MW) or greater from the requirement to conduct an initial performance test.

B. What supplemental amendments are we proposing to the Landfills NSPS, emission guidelines, and Federal plan?

Public comments on the May 23, 2002 proposed amendments raised new questions and caused us to reconsider the approach we had taken on several proposed amendments. Based on further analysis, we are proposing supplemental amendments that we expect to help owners/operators to comply with the Landfills NSPS. As mentioned previously, the proposed supplemental amendments clarify: The definition of landfill owner/operator; compliance responsibilities when multiple entities own/operate a landfill and the associated landfill gas collection, control, and/or treatment systems; and what constitutes treated landfill gas. Additional proposed amendments, including SSM provisions, and other corrections are discussed later in this section of this preamble.

To address compliance responsibilities at landfills where multiple entities own/operate the landfill and the associated landfill gas collection, control, or treatment systems, we are proposing to add a specific definition of "landfill gas collection, control, or treatment system owner/operator" and to revise the May 2002 proposed definition of "landfill owner/operator" by removing references to stationary gas collection, control, or treatment systems. We are also proposing to revise the applicability section to clarify compliance responsibilities. We are proposing that the landfill owners/operators would be responsible for complying with the requirements of the Landfills NSPS that apply to the landfills and any portion of the collection, control, or treatment system that they own or operate. The owners/operators of the landfill gas collection, control, or treatment systems would be responsible for complying with the requirements of the Landfills

NSPS that apply to the portion of the landfill gas collection, control, or treatment system that they own or operate. To maintain consistency between the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP with regard to owner/operator responsibilities, we are also proposing similar revisions to the landfills emission guidelines, Federal plan, and Landfills NESHAP. As discussed later in this preamble, we are requesting comment on this approach, as well as an alternative approach regarding compliance responsibilities.

To clarify what constitutes landfill gas treatment, we propose to refine the May 23, 2002 proposed definitions of "treated landfill gas" and "treatment system" in the Landfills NSPS. For filtration and de-watering, the refined proposed definitions contain specific numerical values that would provide long-term protection of the combustion equipment, which would support good combustion. For particulate matter filtration, a filter system would be required to have an absolute rating no greater than 10 microns. For de-watering, the system would be required to reduce the dew point by at least 20 degrees Fahrenheit.

We are also clarifying the monitoring requirements for treatment systems. To ensure that treatment systems are operating properly to achieve the filtration and de-watering levels specified in the revised proposed treatment system definition, we are proposing more specific monitoring, recordkeeping, and reporting requirements for treatment systems used to comply with the Landfills NSPS. We are proposing that owners/operators of treatment systems monitor pressure drop across the filtration system and temperature or dew point for de-watering systems, depending on the type of de-watering system. However, we are proposing to allow owners/operators to use other monitoring parameters if they demonstrate that such parameters would effectively monitor filtration or de-watering system performance. We are clarifying that owners/operators must develop operating ranges for each monitored operating parameter based on manufacturer's recommendations or engineering analysis and submit those ranges, along with justification, for approval in the design plan required by 40 CFR 60.752(b)(2) of subpart WWW. Then, owners/operators would be required to monitor the required parameters and keep them within the ranges specified in their approved design plan. For recordkeeping and reporting purposes, we are clarifying that owners/operators would continuously monitor treatment system operating parameters and calculate 24-hour block averages. The 24-hour block averages would be compared with the operating ranges justified in the design plan to determine compliance. The specific recordkeeping and reporting requirements for treatment systems would be similar to those for control device temperature monitoring requirements already detailed in the Landfills NSPS. Owners/operators of treatment systems installed prior to today's proposed supplemental amendments would be required to comply with the revised treatment system requirements as expeditiously as practicable, but no later than 1 year after the date the final amendments are promulgated. We are also proposing clarifications to various sections of the Landfills NESHAP that cross-reference the Landfills NSPS treatment system and monitoring requirements to maintain consistency.

We are not altering the May 23, 2002 proposal to amend 40 CFR 60.752(b)(2)(iii)(B) of subpart WWW to exempt owners/operators of boilers and process heaters with design capacities of 44 MW or greater from the requirement to conduct an initial performance test.

C. What changes are we proposing to the Landfills NSPS and Landfills NESHAP regarding startup, shutdown, and malfunction?

The current Landfills NSPS limit the duration of SSM events to 5 days for the landfill gas collection system and 1 hour for treatment or control devices. Since promulgation of the Landfills NSPS, we have become aware that some malfunctions cannot be corrected within these time frames. Therefore, we propose to revise 40 CFR 60.755(e) of subpart WWW to remove the 5 day and 1 hour time limitations. The proposed revisions would clarify that the NSPS General Provisions in 40 CFR 60.11(d) of subpart A continue to apply during malfunctions, and that routine maintenance activities must be completed and malfunctions must be corrected as soon as practicable after their occurrence in order to minimize emissions. To prevent free venting of landfill gas to the atmosphere during control device malfunctions or maintenance, we would retain the requirement in 40 CFR 60.753(e) of subpart WWW which states that in the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of gas to the atmosphere shall be closed within 1 hour.

The Landfills NESHAP have no allowance for shutdown of control devices for routine maintenance. Furthermore, after the Landfills NESHAP were promulgated, there were revisions to the SSM requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A. The revised General Provisions contain some changes that are not relevant or can be difficult to interpret for landfills. We are, therefore, proposing revisions to the Landfills NESHAP that require routine maintenance of landfill gas collection, control, and treatment systems to be included in the SSM plan. We are also clarifying SSM reporting requirements for landfills and the applicability of SSM sections of the General Provisions to the Landfills NESHAP.

D. What other corrections and clarifications are we proposing?

We propose to amend 40 CFR 60.758(b)(2)(i) and 40 CFR 60.758(c)(1)(i) of subpart WWW by removing the term "combustion" from the requirement to monitor temperature of enclosed combustors. Temperature monitoring is required for enclosed combustors, including enclosed flares, turbines, reciprocating engines, and boilers less than 44 MW. For some enclosed combustors, it is not possible to monitor temperature inside the combustion chamber to determine combustion temperature. The proposed amendment clarifies that the "combustion" temperature does not have to be monitored. Temperature could be monitored at another location, as long as the monitored temperature relates to proper operation of the enclosed combustor.

We propose to correct a test method cross-reference in 40 CFR 60.755(c)(3) of subpart WWW necessitated by the reorganization of Method 21 in appendix A to 40 CFR part 60.

In the Landfills NESHAP, we propose to correct 40 CFR 63.1990 of subpart AAAA to clarify that the 40 percent moisture content in the definition of "bioreactor" is determined on a wet weight basis.

The proposed supplemental amendments would also correct a Landfills NESHAP compliance date for existing major sources to read January 16, 2004 instead of January 13, 2004 in 40 CFR 63.1945(d) of subpart AAAA.

We propose to amend the definition of "household waste" and add a definition of "segregated yard waste" in 40 CFR 60.751 of subpart WWW to clarify our intent regarding the applicability of the Landfills NSPS,

emission guidelines, Federal plan, and Landfills NESHAP to landfills that do not accept household waste, but accept segregated yard waste. We intended the rules to apply to municipal solid waste landfills that accept general household waste (including garbage, trash, sanitary waste), as indicated in the definitions sections of these rules. Our regulatory analyses for the Landfills NSPS, emission guidelines, and Landfills NESHAP were based on landfills containing mixed household waste steams. A question has recently arisen on whether a landfill that accepts only construction and demolition waste and segregated yard waste would be subject to the municipal solid waste Landfills NSPS. We did not intend these rules to apply to landfills that accept only segregated yard waste or that accept a combination of segregated yard waste and non-household waste (such as construction and demolition waste or industrial waste). The proposed definition changes in the Landfills NSPS would also affect the emission guideline, Federal plan, and Landfills NESHAP because they reference the definitions in the Landfills NSPS.

E. Are we requesting public comment on any other issues?

We are requesting public comment on alternative approaches for addressing three issues the landfill industry and regulatory agencies face in implementing the Landfills NSPS, emission guideline, Federal plan, and Landfills NESHAP.

The first issue deals with closed areas of landfills and when they are allowed to remove controls. The current Landfills NSPS define an MSW landfill as: "* * * an entire disposal facility in a contiguous geographical space where household waste is placed in or on land * * *." We have clearly stated in previous documents that the entire contiguous area, including both closed landfill sections and new landfill sections, is considered a single landfill, even if the landfill is bisected by a road, right of way, golf course, etc. Our intent has always been to consider the entire contiguous area in determining whether a landfill meets the design capacity and emission rate criteria for applying controls. Similarly, to remove controls, the entire area would need to meet the control removal criteria in the Landfills NSPS (e.g., the entire landfill must emit less than 50 Mg NMOC per year, must be closed, and the control system must have been in operation for at least 15 years). Also, 40 CFR 60.759(a)(3)(ii) allows landfill owners/operators to stop collecting gas from "nonproductive" areas of the landfill if they demonstrate that the excluded areas emit less than 1 percent of total NMOC emissions from the landfill.

It has come to our attention that in many cases, a contiguous area will contain unconnected landfill sections that were developed sequentially over time. An initial landfill is constructed, filled, closed, and capped. Then a new one with a separate liner opens on contiguous property. Under the Landfills NSPS, these are part of the same landfill and controls cannot be removed from the closed and capped area until it emits less than 1 percent of the total NMOC, or until the entire contiguous landfill is closed and meets the control system removal criteria. In some cases, gas production from the separate section that closed many years ago has declined, and the gas composition has changed to the point where it is difficult to continuously collect and combust the gas. However, the closed area may not meet the 1 percent NMOC criteria that would allow removal of the control system from that section of the landfill. We request comments on any approaches for dealing with such a situation, and the specific criteria that could be applied to determine which areas warrant control and which may remove control.

The second issue deals with approval of collection and control system design plans. The Landfills NSPS and emission guidelines require landfill owners/operators to submit a gas collection and control system design plan within 1 year of when their calculated uncontrolled NMOC emissions reach 50 Mg/yr. The plan may include requests for alternative designs, alternative operational standards, and alternative monitoring and recordkeeping. The plan is submitted to the regulatory authority that implements the Landfills NSPS or emission guidelines (usually a State agency) for approval. The Landfills NSPS and emission guidelines require that landfill gas collection and control systems must be installed and begin operation within 30 months of the report that calculated NMOC emissions have reached 50 Mg/yr, which is 18 months after the design plan is submitted. In the 1999 document "Municipal Solid Waste Landfills, Volume 1: Summary of Requirements for New Source Performance Standards and Emission Guidelines for Municipal Solid Waste Landfills" (EPA–453R/96–004), we stated that EPA expected that implementing agency review and approval of the design plan would take approximately 6 months, leaving approximately 12 months for the landfill to install the gas collection and control system. It has come to our attention that some design plans have been submitted but have not been approved or disapproved for a year or even 2 years. As a result, some landfills may be faced with the prospect of installing a gas collection and control system that they are not sure will be approved or may be implementing monitoring approaches that might later be disapproved.

While there must always be an opportunity for the implementing agency to review and approve or disapprove each design plan, one approach would be that if the implementing agency chooses not to review or act on a design plan within a specified amount of time, then the design plan would have de facto approval. This would be one way to allow the landfill to move ahead to meet the gas collection and control provisions within the time allowed by the Landfills NSPS and emission guidelines. Note that all design plans must be certified by a registered Professional Engineer (P.E.). Also, after the collection and control system is installed, quarterly monitoring of the landfill surface methane concentration is required to verify that the collection system is working properly, and testing and monitoring of control devices is also required. Thus, even if a design plan was not reviewed and approved, the system will be professionally designed and there will still be proof that the collection and control system is achieving the level of control required by the Landfills NSPS and emission guidelines. We request comment on this approach or other alternative approaches to address the issues surrounding timeliness of design plan approvals. We also request comment on what period of time would be appropriate for review and approval of initial design plans, and whether the time period should be different for review and approval of amendments or updates to design plans.

The third issue deals with surface monitoring locations. The intent of the rule is to maintain a tight cover that minimizes any emissions of landfill gas through the surface. The Landfills NSPS and emission guidelines require quarterly surface monitoring to demonstrate that the cover and gas collection system are working properly. The operational requirements in 40 CFR 60.753(d) of the Landfills NSPS specify that the landfill must "* * * operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfills. To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the

collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover." The issue has arisen as to whether the quarterly monitoring path should include monitoring of every cover penetration. Cover penetrations can be observed visually and are clearly a place where gas would be escaping from the cover, so monitoring of them would be required by the regulatory language. The regulatory language gives distressed vegetation and cracks as an example of a visual indication that gas may be escaping, but this example does not limit the places that should be monitored by landfill staff or by enforcement agency inspectors. Thus, under the current language, the landfill should monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. However, monitoring of every cover penetration every quarter could substantially increase monitoring time relative to monitoring only along a path at 30 meter intervals and may not be necessary every quarter. We request comment on this rule interpretation and alternatives for monitoring cover penetrations that do not show distressed vegetation, cracks, or similar indications of high landfill gas levels.

III. Rationale for the Proposed Supplemental Amendments

A. Definition of Landfill Owner/Operator and Allowance for Off-Site Control or Treatment Option

Amendments were proposed in 2002 to clarify which entities are considered landfill owners/operators and are subject to the Landfills NSPS, and to clarify compliance responsibilities when landfill gas is sent off site for treatment or control. The May 2002 proposed amendments and today's proposed supplemental amendments recognize the unique natures of the landfills source category and landfill gas. Because landfill gas contains methane and can be used as a renewable resource to produce useful energy, it is common for landfill gas to be sold to entities, other than the landfill, that combust the gas for energy recovery. These entities often own and/or operate portions of the gas collection system and the control or treatment systems required by the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP. Control or treatment systems may be located on or adjacent to the landfill, or they may be located miles away at a business, institution, or industrial plant that is using landfill gas to fuel a boiler or other combustion device. This situation is different from most source categories where the same entity that generates emissions typically controls the emissions within their facility. We recognize and encourage beneficial use of landfill gas, but we also want to clarify that entities collecting, controlling, or treating the gas are responsible for complying with the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP.

Based on a review of the comments that we received on our May 23, 2002 proposed amendments to clarify the owner/operator definition and responsibilities, we have determined that a new approach and further revisions are needed to effectively address compliance responsibilities in situations where multiple entities own/operate the landfill and associated gas collection, control, and/or treatment systems. In May 2002, we proposed to define "landfill owner/operator" as "* * * any entity that owns or operates a MSW landfill or any stationary equipment located on the same property as the MSW landfill facility that is used to collect, control, or treat landfill gas." We also proposed an allowance for off-site control or treatment by another entity if that entity accepted compliance responsibility through a certification process. The certification process would have allowed transfer of control or treatment responsibility in specified circumstances without holding the landfill owners/operators responsible for the actions of the off-site entity.

However, many commenters stated that the revised definition of "landfill owner/operator" was too broad. Some argued that the inclusion of "* * * any stationary equipment located on the same property as a MSW facility that is used to collect, control, or treat landfill gas * * *" would result in "confusion" as to who is responsible for compliance at a landfill where one or more entities operate on the landfill site or in conjunction with the landfill owner/operator. The commenters explained that the proposed definition was so broad that it potentially included entities that act in a supportive role on a landfill site. Some commenters also objected to the "joint and several liability" they believe is inherent in this definition. Some commenters cited an example where a developer who may own only a portion of the landfill gas collection system and has no rights to gas from other sections of the landfill could be considered responsible for all NSPS compliance issues at the landfill under the proposed definition. Another example cited was a gas collection system operator who has a contract with a landfill to perform specific activities, such as monitoring and adjusting the gas collection system to maintain compliance with the temperature, nitrogen, and oxygen requirements of the Landfills NSPS could now be considered a landfill owner/operator and held liable for compliance with NSPS requirements beyond their contract authority and control. Similarly, a company that owned/operated only the gas control device could be held responsible for landfill and collection system operation activities over which they have no control.

Several of the commenters suggested that compliance responsibility at a landfill that operates with multiple on-site entities be established, on a voluntary basis, through a certification process similar to the off-site certification process proposed in the May 2002 Landfills NSPS amendments. Ownership and operation of on-site landfill gas collection, control, or treatment systems by another entity is a common practice, and the commenters wanted the owner/operator of the landfill and the on-site entity to have the flexibility to determine any division of compliance responsibility. The commenters suggested that the landfill owner/operator and the additional entity provide EPA with a written certification and an outline of compliance responsibilities for the various compliance assurance activities. Other commenters noted that limiting the compliance certification option to off-site entities would unnecessarily inhibit the flexibility EPA seeks to create and would impose an artificial distinction between on-site and off-site recipients of untreated landfill gas.

Based on further consideration, we are proposing supplemental amendments that would replace the May 23, 2002 proposed definition of "landfill owner/operator" and the proposed off-site certification approach. We recognize that many landfills accomplish control of their untreated landfill gas by providing the gas to a business, industry, or institutional facility that combusts the untreated gas in a reciprocating engine or gas turbine to produce electricity or in a boiler, process heater, or furnace to produce steam or heat for a useful purpose. This may occur at the landfill or at another location. The beneficial use of landfill gas, a renewable energy source, offsets the use of fossil fuels that can generate greater emissions. To facilitate the beneficial use of landfill gas, we propose to clarify compliance

responsibilities in cases where multiple entities are involved in a way that will ensure Landfills NSPS compliance and enforceability, but will not discourage beneficial use of the gas.

We are now proposing that compliance responsibility at landfills that operate with multiple entities be divided based on which entity owns/operates each specific collection, control, or treatment system, or a portion thereof. To retain consistency between the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP, the same approach is proposed for all four rules. The proposed supplemental amendments state that the landfill owners/operators are responsible for complying with the requirements of the NSPS for the landfill and any portion of the landfill gas collection, control, or treatment system that they own/operate. The owners/operators of the gas collection, control, and/or treatment system(s) would be responsible for complying with the requirements for the portion of the landfill gas collection, control, or treatment system that they own/operate.

We are proposing to accomplish this division of responsibility through the addition of a definition of "landfill gas collection, control, or treatment system owner/operator," and by revising the May 2002 proposed definition of "landfill owner/operator" to remove any reference to landfill gas collection, control, or treatment systems. We are placing responsibility for compliance with the Landfills NSPS with the owner/operator of the various equipment used to achieve compliance by making landfill gas collection, control, or treatment systems (as well as the landfill itself) affected sources under the Landfills NSPS and assigning responsibility for compliance with requirements applicable to such systems to the owners/operators of the landfill gas collection, control, and/or treatment system located on or off the landfill property. In the proposed supplemental amendments, we are revising the applicability requirements of the Landfills NSPS to indicate that responsibility for compliance with the provisions of the Landfills NSPS is based on which portions of the landfill gas collection, control, and/or treatment system each entity owns or operates. The owner/operator of the landfill itself is responsible for determining when control is required, ensuring that the equipment necessary to comply with the Landfills NSPS is properly installed, and complying with other regulatory requirements that apply to the landfill itself and to any portions of the gas collection, control, and/or treatment system that the landfill itself owns/operates. Furthermore, we are proposing a default compliance provision in the applicability section of the Landfills NSPS that would automatically shift all future responsibilities, including compliance responsibilities, to the landfill owner/operator if another entity that owns/operates the gas collection, control, or treatment system ceases to accept the landfill gas for any reason (e.g., bankruptcy, abandonment of operation).

We believe that this is a reasonable approach to addressing compliance issues at landfills where multiple entities are involved in the emission control infrastructure (regardless of whether treatment or control of the landfill gas is accomplished at the landfill or at another location). This approach enables direct enforcement of the Landfills NSPS on the responsible entity in all cases and is consistent with the original intent of the Landfills NSPS. In many cases, landfill gas control system owners/operators (for example) are different entities from the landfill owners/operators, and the landfill owners/operators have no direct control over the operation of the control system. Because they are distinct entities, it may be impractical and may not be good policy to require the landfill owners/operators to retain responsibility for all aspects of the Landfills NSPS compliance. Landfill owners/operators may not have unrestricted access to the location where the treatment or control of the landfill gas is occurring (e.g., an industrial plant using the gas in a boiler several miles away from the landfill) and often do not have direct control of the daily operation of the treatment or control system. Furthermore, clarification of the division of responsibilities is a practical means to encourage the use of landfill gas for energy recovery and is consistent with EPA policy to foster the use of landfill gas as a renewable energy resource, thereby reducing the use of scarce fossil fuels and associated emissions.

We are also proposing that all entities keep a list documenting which aspects of the Landfills NSPS requirements (by paragraph and section number) each entity will comply with. The list would have to include all requirements of the Landfills NSPS, and would be required as expeditiously as practicable, but no later than 1 year after the final rule amendments are promulgated. The list would help assure that all required compliance activities are considered and will be performed by the responsible entity. The Landfills NSPS would require that the list be kept up-to-date and that all owners/operators maintain a copy of the list onsite and comply with the responsibilities in the list that are assigned to them. The compliance responsibilities of each entity will be incorporated in title V permits if the entities are subject to title V.

Because the landfills emission guidelines and Federal plan cross-reference the Landfills NSPS, the changes to the Landfills NSPS would automatically affect the landfills emission guidelines and Federal plan. However, to be consistent and clear, we are proposing similar language on the responsibilities of the landfill owners/operators and the owners/operators of the gas collection, control, or treatment system to 40 CFR 60.32c of subpart Cc and to 40 CFR 62.14352 of subpart GGG. Because the landfills emission guidelines are implemented through CAA section 111(d) State plans, the States would be required to adopt revisions to their landfills State plans and submit them to EPA for approval within 9 months after the final amendments to the emission guidelines are promulgated. The 9-month time frame is consistent with 40 CFR part 60 subpart B, which establishes procedures for State plans to implement section 111(d) emission guidelines. Similarly, EPA is proposing to amend the landfills Federal plan that implements the landfills emission guidelines in areas where there is no approved State plan.

In addition, we are proposing similar amendments to the Landfills NESHAP. The proposed amendments include revising the sections of 40 CFR part 63, subpart AAAA, that define affected sources and describe who is subject to the Landfills NESHAP, to include owners/operators of gas collection, control, and/or treatment systems. The proposed revisions to the Landfills NESHAP contain similar language on responsibilities and the requirement for all entities to keep a list documenting which aspects of Landfills NESHAP compliance each entity will comply with.

Given the proposed revisions to the definitions and the rule applicability sections describing responsibilities, we believe that compliance responsibilities would be clearly delineated among the entities involved, and EPA would retain clear enforcement ability for all entities subject to compliance with the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP. The entities that own/operate the collection, control, and/or treatment equipment needed to comply with the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP, and are

performing the activities needed to comply with them, would be held directly responsible for compliance.

The proposed approach previously discussed contains a provision that immediately shifts all future compliance responsibilities to the landfill owners/operators if another entity that owns/operates the gas collection, control, or treatment system ceases to accept the landfill gas (e.g., due to bankruptcy, abandonment of operation). We are considering an alternative approach (called alternative approach #1) that would retain this provision and would further require the landfill owners/operators to assume responsibility for future compliance in some situations where the owners/operators of a gas collection, control, or treatment system fail to comply with the Landfills NSPS requirements for which they are responsible. The intent of this approach would be to address situations where the owners/operators of the gas collection, control, or treatment system do not achieve the required levels of collection, control, or treatment, or repeatedly violate other requirements of the Landfills NSPS, and do not correct these violations and come into compliance in a timely manner. In such circumstances, responsibility for future compliance would automatically shift to the landfill owners/operators. As a result, the landfill owners/operators would need to find a way to immediately start meeting all Landfill NSPS requirements. Such a provision would ensure that the landfill owners/operators could not knowingly send landfill gas to entities that flagrantly violate the Landfill NSPS, thereby inflicting potential harm on the environment, and still avoid responsibility for fully complying with the Landfills NSPS. It is not our intent for this approach to shift responsibility to the landfill owners/operators for isolated or minor violations that the collection, control, or treatment system owners/operators timely corrects. We solicit comments on this alternative approach and suggestions for how to make clear within what time frame and under what circumstances responsibility shifts to the landfill owners/operators.

We are also considering a different alternative approach to compliance responsibility (called alternative approach #2) that would add the same definitions of "landfill owner/operator" and "landfill gas collection, control, or treatment system owner/operator" as the proposed approach. Both entities would be subject to the Landfills NSPS. This approach would differ in that the alternative approach would make the landfill owner/operator responsible for compliance with all aspects of the Landfills NSPS. Like the proposed approach, the alternative approach would make the landfill gas collection, control, and/or treatment system owners/operators responsible for complying with only the Landfills NSPS requirements applicable to the portion of the landfill gas collection, control, and/or treatment system they own/operate. Thus, a violation of gas collection, control or treatment requirements could be enforced against both the landfill owners/operators and the collection, control, or treatment system owners/operators. This approach would also include the requirement to document which aspects of the Landfills NSPS requirements (by paragraph and section number) each entity will accept compliance responsibility.

The regulatory language for the alternative approach would be very similar to the regulatory language shown for the proposed approach, except that 40 CFR 60.750(a)(1) of subpart WWW, 40 CFR 60.32c of subpart Cc, 40 CFR 62.14352 of subpart GGG, and 40 CFR 63.1935(d)(1) of subpart AAAA might read as follows: "Municipal solid waste landfill owners/operators are responsible for complying with all requirements of this subpart."

Alternative approach #2 would be consistent with the division of responsibilities in many single source (i.e., common control) determinations for landfills and associated gas collection, control, and/or treatment systems. It would also encourage landfill owners/operators who contract with other companies to collect, control, or treat the landfill gas to be sure to do business only with reliable companies that will meet the Landfills NSPS requirements.

There are some concerns that this alternative approach could inhibit the beneficial use of landfill gas. Landfill owners/operators may choose to flare the gas themselves rather than enter into agreements that allow other entities to combust the untreated landfill gas for energy recovery purposes if the landfill owners/operators are held legally and financially liable for the actions of a separate entity over which they have no control. Landfill owners/operators may be particularly reluctant to enter into such agreements in cases where the landfill gas is used at a separate industrial or commercial facility located several miles away from the landfill and the landfill owners/operators do not have access to the facility or control over its operation.

We specifically request comment on the alternative approach. Based on the public comments, the final Landfills NSPS may incorporate the proposed approach, one of the two alternative approaches, or another similar approach that is a logical outgrowth of the public comments. If, after consideration of comments, we select an alternative approach for the Landfills NSPS, we would use a consistent approach for the emission guidelines, Federal plan, and Landfills NESHAP.

B. Definitions for Treated Landfill Gas and Treatment System and Clarification to the Treatment Option

In the May 23, 2002 proposed amendments, we proposed a definition for "treatment system" that would be used to determine if a facility qualifies for the treatment option provided in 40 CFR 60.752(b)(2)(iii)(C) of subpart WWW. The purpose of this definition was to provide consistency as to what would qualify as a treatment system and to reduce the burden on State and local agencies and EPA Regions currently performing case-by-case determinations related to the adequacy of treatment options being employed across the Nation. The proposed definition of treatment system was "a system that filters, de-waters, and compresses landfill gas."

Following proposal of the treatment system definition, several commenters requested further clarification as to what levels of filtration and de-watering would be considered acceptable to meet the definition of treatment. Some commenters noted that given the different specifications for landfill gas-derived fuels and the different levels of treatment currently practiced, any lack of clarity may result in inconsistent case-by-case determinations by local permitting authorities. Some commenters requested that EPA allow owners/operators to treat their gas such that it would meet the end-use combustion equipment "manufacturer's requirements" for fuel quality as the benchmark for what qualifies as a treatment system. Commenters requested that we link the phrase "refer to manufacturer requirements" to the combustion device's specific level of gas treatment to ensure complete combustion. Other commenters requested that EPA develop specific particulate, moisture, and compression targets that demonstrate "treated landfill gas."

We agree with commenters that the definition of treatment system needs additional detail. We contacted manufacturers of combustion devices that are used to recover energy from landfill gas, and we obtained their written specifications and

recommendations for fuel quality. As suggested by the commenters, we reviewed the available manufacturers' specifications for acceptable moisture and particulate levels. Because different manufacturers have different specifications, our proposed definition of "treatment system" does not refer directly to the manufacturers' requirements. Instead, we developed specific filtration and de-watering targets based on those requirements.

The selected levels of de-watering and filtration are consistent with most manufacturers' specifications for landfill gas burned in energy recovery devices such as reciprocating engines, gas turbines, and boilers; they are protective of the combustion equipment and promote good combustion. The supplemental proposed definition of treatment system is:

> * * * a system that has an absolute filtration rating of 10 microns or less, lowers the water dew point of the landfill gas by at least 20 degrees Fahrenheit with a de-watering process, and compresses the landfill gas.

The term "absolute filtration rating" used in the above definition means the diameter of the largest hard spherical particle that would pass through the filter. The supplemental proposed definition would specify treatment levels that will minimize degradation of the combustion device and promote proper destruction of NMOC.

To ensure continuous compliance with the treatment option, we are clarifying monitoring, recordkeeping, and reporting requirements for treatment systems that are used to comply with the Landfills NSPS. Owners/operators of treatment systems used to comply with the Landfills NSPS would be required to establish, monitor, and record operating parameters that indicate proper operation of the various treatment system components, consistent with the proposed revised definition of treatment system. These requirements would ensure that the treatment system is continuously operating in the manner in which it was designed to operate to achieve the specific filtration, de-watering, and compression targets that define a treatment system for the purposes of the Landfills NSPS. Owners/operators who installed treatment systems prior to today's proposed amendments would be required to comply with the amended treatment system requirements as expeditiously as practicable, but no later than 1 year after the date the final amendments are promulgated. This provides time needed to upgrade the treatment system (if necessary), submit design information, install monitoring equipment, and establish operating parameter levels.

The proposed amendments would require that owners/operators of treatment systems monitor and maintain specified operating parameters or apply to monitor alternative parameters. For filtration systems, the pressure drop (24-hour average) across the filter would be continuously monitored and maintained above the minimum pressure drop established by engineering analysis or manufacturer's specifications. Alternatively, the owners/operators could get approval to monitor another parameter that indicates proper performance of the filtration system. Pressure drop was selected as a monitoring parameter because it is a good indicator of proper filter operation. A noticeable reduction in pressure drop across the filter indicates a breach of the filter material.

Continuous monitoring of temperature reduction for a chiller-based de-watering system, dew point from a de-watering system that is not chiller-based, or another approved parameter that is indicative of proper performance of the de-watering system, would also be required. The monitored parameter (24-hour average) would have to be kept within the operating range established by engineering analysis or manufacturer's specifications. The owners/operators would submit the treatment system design and justification for the operating parameter ranges for approval in the design plan required by 40 CFR 60.752(b)(2) of subpart WWW.

For chiller-based de-watering systems, temperature was selected as a monitoring parameter because it indicates that the chiller is operating properly and the desired reduction in dew point is occurring. Untreated landfill gas is saturated with moisture as it comes out of the landfill (i.e., the relative humidity is 100 percent, and the dew point temperature equals the landfill gas temperature). Therefore, if the gas is chilled by at least 20 degrees, the dew point has been correspondingly reduced, and moisture removal has occurred through condensation. Continuous measurement of the gas temperature at the treatment system inlet and the chiller outlet would be required unless the owners/operators demonstrate that monitoring the temperature at a single location (e.g., the chiller outlet) is sufficient to indicate that the temperature of the gas, and thus, the dew point, has been reduced by at least 20 degrees Fahrenheit. The owners/operators would be required to submit, as part of the design plan, treatment system design specifications that demonstrate the treatment system meets the definition (including the 20 degree dew point reduction) and a justification that their proposed temperature monitoring location(s) are adequate to demonstrate that the gas temperature, and thus, the dew point, has been reduced by at least 20 degrees. For example, owners/operators might submit information demonstrating that the lowest landfill gas temperature at their treatment system inlet during the coldest month of the year is 85 degrees Fahrenheit. They might elect to operate their chiller to reduce the gas temperature to, for example, 60 degrees Fahrenheit, and apply to continuously monitor only chiller outlet temperature and maintain it at or below 60 degrees. Because the design and operation of this system results in a minimum temperature reduction of at least 25 degrees below the site-specific coldest treatment system inlet temperature, the regulatory authority might approve the continuous monitoring of chiller outlet temperature in this case, rather than requiring continuous monitoring at both the treatment system inlet and the chiller outlet. Temperature monitors are readily available, commonly used, reliable, and less expensive than alternative monitoring systems.

If a de-watering system that is not based on chilling, for example, a desiccant system, is used, then temperature would not be an appropriate parameter to monitor. In such cases, monitoring of the dew point would indicate whether the system is operating properly to reduce the dew point by 20 degrees. As with temperature, the dew point would be monitored at the inlet and outlet of the treatment system, unless the owner/operator demonstrates that monitoring at a single location (e.g., the treatment system outlet) is sufficient to indicate that the dew point has been reduced by at least 20 degrees. Dew point monitors are available and suitable for landfill gas applications.

We are proposing continuous monitoring with a 24-hour averaging period for treatment system monitoring parameters for several reasons. Monitoring is needed to assure continuous compliance. Continuous monitoring systems are available for the selected treatment system operating parameters. Data collection would be required at 15-minute intervals, consistent with current Landfills NSPS requirements for flare pilot flame monitoring and enclosed combustor temperature monitoring that apply to landfills that opt to comply with the control options rather than the

treatment option. A 24-hour block average for determining compliance with the treatment system operating parameter limits is sufficient to indicate any significant change in treatment system operation and would be less burdensome than more frequent averaging. Owners/operators of treatment systems would be required to report periods when the 24-hour block average for a monitored parameter (e.g., pressure drop, temperature, dew point) is outside the operating range established in the approved design plan.

IV. Rationale for Proposed Landfills NSPS and Landfills NESHAP Amendments Regarding Startup, Shutdown, and Malfunction

A. Proposed Landfills NSPS Startup, Shutdown, and Malfunction Provisions

The Landfills NSPS specify in 40 CFR 60.755(e) of subpart WWW, that the emission standards do not apply during SSM events, but they limit the duration of SSM events to 5 days for the landfill gas collection system and 1 hour for treatment or control devices. At the time we developed this provision, we believed that malfunctions could be corrected within these time frames. Since promulgation of the Landfills NSPS, we have learned that many malfunctions cannot be corrected within these time limits. This causes landfills that do not have back-up control devices to have unavoidable violations of the Landfills NSPS. Most landfills use flares to control landfill gas emissions and do not have back-up control devices. In developing NSPS, EPA is required by CAA section 111 to consider cost and other impacts. In developing the Landfills NSPS, we did not consider any costs for requiring back-up controls for flares in our determination that the selected requirements were reasonable. We did not intend for the Landfills NSPS to require back-up control devices for flares. For these reasons, we conclude that the 1-hour and 5-day time limitations are not feasible and should be changed. Furthermore, most NSPS do not set specific limits on the duration of SSM events. Most NSPS rely on the NSPS General Provisions (40 CFR part 60, subpart A), which require owners/operators, to the extent practicable, to operate in a manner that minimizes emissions during SSM events.

The Landfills NSPS also has no allowance for shutdown of collection, control, or treatment systems for routine preventive maintenance. Periodic maintenance is needed to provide continued good operation of the gas collection and control systems and to avoid malfunctions, but shutdowns for maintenance could result in a violation. This issue arises because of the unique nature of landfills. Most NSPS regulate manufacturing processes that can be stopped when a control device needs to be maintained or repaired. For example, chemical plants typically shut down their processes on a regular schedule (e.g., for 1 week each year) and maintain their control devices at the same time, when no emissions are being generated from the production process. Landfills are a biological process, and once waste is deposited in the landfill, gas is continuously generated and cannot be stopped. Routine control device maintenance procedures often cannot be completed in 1 hour, and some types of maintenance take days.

Therefore, we propose to amend 40 CFR 60.755(e) of subpart WWW to remove the 1-hour and 5-day time limits on SSM events, and to allow routine maintenance of collection, control, and treatment systems. The proposed amendments also clarify that the NSPS General Provisions in 40 CFR 60.11(d) of subpart A continue to apply during maintenance and malfunctions, and that routine maintenance activities must be completed and malfunctions must be corrected as soon as practicable after their occurrence in order to minimize emissions. To prevent free venting of landfill gas to the atmosphere during control device malfunctions or maintenance, we propose to retain the current requirement in 40 CFR 60.753(e) of subpart WWW. This section requires that in the event the collection or control system is inoperable, the gas mover system must be shut down and all valves in the collection and control system contributing to venting of gas to the atmosphere must be closed within 1 hour.

B. Proposed Landfills NESHAP Startup, Shutdown, and Malfunction Provisions

The Landfills NESHAP has no allowance for shutdown of control devices for routine maintenance. Periodic maintenance is needed to provide continued good operation of the gas collection and control systems and to avoid malfunctions, but shutdowns for maintenance could result in a violation. As explained previously, this issue arises because of the unique nature of landfills. Most NESHAP regulate manufacturing processes that can be stopped when a control device needs to be maintained or repaired. Landfills are a biological process, and once waste is deposited in the landfill, gas is continuously generated and cannot be stopped. To allow for routine maintenance of gas collection, control, and treatment systems, while ensuring that emissions are minimized during routine maintenance events, we propose to amend the Landfills NESHAP to require owners/operators to include routine maintenance in their SSM plans. The Landfills NESHAP already require owners/operators to develop an SSM plan. The plan must describe, in detail, procedures for operating and maintaining the source during SSM events and a program of corrective action for malfunctioning air pollution control and monitoring equipment used to comply with the Landfills NESHAP. The purpose of the SSM plan is to ensure that owners/operators have fully considered how best to comply with the general duty to minimize emissions during SSM events. While the requirements of the SSM plan are not themselves applicable requirements, the SSM plan is a useful tool for sources to demonstrate, and for permitting authorities to confirm that the general duty to minimize emissions is met. We propose to add a requirement that the SSM plan must include a plan for conducting routine maintenance on the landfill gas collection, control, and treatment systems. The routine maintenance plan must include maintenance procedures and actions that will be taken to minimize emissions during maintenance, shutdown frequency, shutdown duration, and procedures for minimizing emissions during startup and shutdown of the collection, control, and/or treatment systems for routine maintenance. A copy of the SSM plan would be maintained on site. Failure to prepare or maintain a copy of the SSM plan on site would be a deviation from the requirements of the Landfills NESHAP.

We are also proposing changes to the periodic reporting and immediate reporting requirements for SSM events. After the Landfills NESHAP were promulgated, there were revisions to the SSM reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A. Because of the unique nature of landfills, some sections of the revised General Provisions are not relevant to landfills or can be difficult to interpret for landfills. We propose to revise the Landfills NESHAP to clarify the SSM reporting requirements for landfills. We propose to remove the Landfills NESHAP cross-reference in table 1 of 40 CFR part 63, subpart AAAA to the periodic and immediate SSM reporting requirements in 40 CFR 63.10(d)(5) of subpart A (the General Provisions), and to instead include similar SSM reporting provisions that apply specifically to landfills in 40 CFR 63.1980 of subpart AAAA.

The Landfills NESHAP and the General Provisions require periodic (semiannual) reporting when actions taken during a startup or shutdown causing an exceedance of an applicable emission limit or a malfunction are consistent with the procedures specified in the SSM plan. Because we are proposing that the landfills SSM plan must include routine maintenance of landfill gas collection, control, and treatment systems, we are proposing to add a requirement in 40 CFR 63.1980 of subpart AAAA that the semiannual SSM report include a description of routine maintenance activities that were conducted during the period. We propose that the landfills periodic SSM report include the date, duration, and identification of each SSM event (including shutdowns of the landfill gas collection, control, or treatment system for routine maintenance) that occurred during the reporting period. For landfills, the duration of such events is particularly important, because, unlike traditional industrial sources, there is no way to stop the biological processes that result in landfill emissions. While collection system blowers can be turned off and vents to the atmosphere closed for a period of hours to a couple of days to retain most gas within the landfill, eventually the pressure in the landfill will build up and the gas will be released uncontrolled through vents or as fugitive emissions. We expect that there will be few malfunction or maintenance events during a 6-month period, and all such events must already be recorded under the Landfills NESHAP and the General Provisions (40 CFR 63.6(e)(3) of subpart A), so including the date and duration of each event in the periodic report is not a burden. If the owners/operators follow their SSM plan during all SSM and routine maintenance events, then no further information is required in the periodic report. This will minimize the reporting burden for owners/operators who follow their SSM plans.

The Landfills NESHAP periodic report would also require a brief description of any actions taken during a malfunction or routine maintenance event that are inconsistent with the SSM plan. This was a requirement of the NESHAP General Provisions at the time the Landfills NESHAP were developed. The General Provisions have since been changed to require sources to "identify" any instance where an action was taken that was inconsistent with the SSM plan but the source did not exceed any applicable emissions limitations. A "description" is required only if an emissions limitation was exceeded. For landfills, it is unclear how to determine if any emissions limitation was exceeded because the Landfills NESHAP do not require continuous emissions monitoring. They require continuous parametric monitoring of control devices, quarterly monitoring of surface methane concentrations, and monthly monitoring of collection system well head parameters. If there is a malfunction or shutdown of a control device for routine maintenance, the collection system blowers must be turned off and vents to the atmosphere must be closed. However, despite these precautions, landfill gas continues to be generated and can escape the landfill as fugitive emissions, potentially increasing landfill NMOC emissions above the level achieved when the control device is operating and increasing surface methane concentrations. To avoid having to make subjective judgments on whether emissions limitations were exceeded, we propose that landfills provide a brief description of any malfunction or maintenance event where actions are taken that are inconsistent with the SSM plan. This is consistent with the intent during development of the Landfills NESHAP, and was already accounted for in the estimates of the recordkeeping and reporting burden for the final rule. Events where the SSM plan is not followed should be infrequent and would not occur during most semiannual reporting periods.

We are proposing revisions in 40 CFR 63.1980 of subpart AAAA to clarify immediate SSM reporting requirements for landfills. We propose that immediate reports be required if actions taken during a startup or shutdown (including shutdown of the collection, control, or treatment system for routine maintenance) that caused an exceedance of an applicable emission limit, or during a malfunction are inconsistent with the SSM plan. Such events would be reported by telephone or fax within 2 days, followed by a letter within 7 days of the end of the event. This is the same timing and method of submission contained in the NESHAP General Provisions requirements for immediate SSM reports. We also propose immediate reports if the duration of a shutdown or malfunction (including shutdown of the landfill gas collection, control, or treatment system for routine maintenance) exceeds 5 days. The Landfills NESHAP compliance provisions have always referred to the Landfills NSPS, which require that control system malfunctions not exceed 1 hour and collection systems malfunctions not exceed 5 days. For the reasons described earlier in this preamble, we are proposing to remove these time limits from the Landfills NSPS, so the Landfills NESHAP would no longer include these time limits by reference. Instead of limiting the duration of malfunction and routine maintenance events to no more than 5 days, we propose to require landfills to report, as part of their Landfills NESHAP immediate SSM reports, any events that last longer than 5 days. This will allow the enforcement agency and the landfill to discuss the specific situation, the reason that more than 5 days is needed, and any actions that can be taken to minimize emissions during the event and complete repairs or maintenance as expeditiously as practicable in the given situation. It should be noted that the Landfills NESHAP already refer to the SSM plan requirements in 40 CFR 63.6(e) of subpart A, which require sources to correct malfunctions as soon as practicable after their occurrence.

Finally, we propose a minor amendment in the calculation of 3-hour block averages for control device operating parameters that are continuously monitored. The proposed amendment would reduce burden, improve consistency with other rules, and ensure that all the necessary information is available for compliance determination. In particular, 40 CFR 63.1975 of subpart AAAA specifies that 3-hour averages are calculated in the same way as the Landfills NSPS except that periods of SSM should not be included. We have received comments that this difference in the calculations requires landfills to keep two sets of records that are similar, but not identical, creating an unnecessary burden. Furthermore, other NESHAP require all operating parameter deviations to be recorded, regardless of whether they occur during an SSM event. For these reasons, we propose to amend the Landfills NESHAP calculations to be more similar to the Landfills NSPS, and no longer exclude periods of SSM. This amendment in the calculations will not change the way in which compliance is determined or the NESHAP are enforced. The enforcement agency still determines whether a deviation is a violation. For example, if a parameter deviation occurred because of a malfunction, and the source took appropriate actions to minimize emissions during the malfunction and to correct the malfunction as soon as practicable, then the enforcement agency may determine that the deviation is not a violation.

V. Rationale for Other Proposed Corrections and Clarifications

A. Clarification for Temperature Monitoring for Enclosed Combustors

Currently, the language in 40 CFR 60.758(b)(2)(i) and (c)(1)(i) of subpart WWW (the Landfills NSPS) requires sources to keep records of the combustion temperature in an enclosed combustion device that is used to meet the NMOC destruction requirements in 40 CFR 60.752(b)(2)(iii) of subpart WWW. The definition of "enclosed combustor" includes enclosed flares, boilers, reciprocating engines, and turbines. The literal meaning of this requirement is that a temperature monitor would be installed in the combustion zone of an enclosed combustor. However, we realize that installing a temperature monitor in the combustion zone of a reciprocating engine or turbine is not feasible, and we did not intend for the Landfills NSPS to specifically require monitoring of combustion chamber temperature. The purpose of the temperature monitoring requirement is to ensure that the enclosed combustor is operating in a manner similar to the conditions at which it was operating during the most recent performance test, thereby demonstrating continuous compliance with the NMOC reduction requirements of the Landfills NSPS. Therefore, the temperature monitor should be located in a place that provides a reasonable indication of the operation of the enclosed combustor. For example, monitoring the temperature at the cylinder exhaust port or in the exhaust manifold before the turbocharger are acceptable temperature monitoring locations for reciprocating engines. To minimize further confusion on this issue, we are revising the language in 40 CFR 60.758(b)(2)(i) and (c)(1)(i) of subpart WWW to remove the word "combustion" prior to "temperature." The Landfills NSPS will continue to require that at least one temperature measurement must be recorded every 15 minutes as specified in 40 CFR 60.758(b)(2)(i) of subpart WWW, and any measurement frequency that is longer than 15 minutes is not acceptable for compliance under the Landfills NSPS. The Landfills NSPS also continue to allow landfill owners/operators to propose site-specific alternatives to the monitoring requirements, subject to Administrator approval, as specified in 40 CFR 60.752(b)(2)(i) of subpart WWW.

B. Correction of Cross-Reference in the Landfills NSPS

We are proposing an amendment to a cross-reference in 40 CFR 60.755(c)(3) of subpart WWW (the Landfills NSPS) as a result of the reorganization of EPA Method 21 in appendix A to 40 CFR part 60. The Landfills NSPS reference section 4.3.1 of EPA Method 21. In 2001, the wording that used to be in section 4.3.1 was moved to section 8.3.1, so the Landfills NSPS need to be corrected to refer to section 8.3.1 of EPA Method 21.

C. Clarification of Bioreactor Moisture Content Determination for the Landfills NESHAP

The Landfills NESHAP definition of bioreactors in 40 CFR 63.1990 of subpart AAAA include a provision that the average moisture content of the waste in the area into which liquid is added must be at least 40 percent (by weight) for the landfill or portion of the landfill to be considered a bioreactor. It was not explicit that the 40 percent moisture content should be determined on a wet weight basis. The information EPA originally used to establish the 40 percent moisture criteria was on a wet weight basis. To clarify this, we are amending the bioreactor definition in 40 CFR 63.1990 of subpart AAAA by adding the words "wet weight basis."

D. Correction of Date in the Landfills NESHAP

We are proposing to amend a typographical error that appears in 40 CFR 63.1945(d) of subpart AAAA. The compliance date for existing major sources should read January 16, 2004, instead of January 13, 2004.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

Information Collection Requests (ICR) were prepared for the Landfills NSPS, the Landfills NESHAP, and the Federal plan that implements the landfills emission guidelines, and all three ICR were approved by OMB. A copy of the Landfills NSPS ICR (ICR No. 1557.04), landfills Federal plan ICR (ICR No. 1893.01), and the Landfills NESHAP ICR (ICR No. 1938.02) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The proposed amendments to the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP will have no impact on the information collection burden estimates made previously. The proposed treatment monitoring system requirements are within the burden estimated in the previous ICR for the Landfills NSPS, Federal plan, and Landfills NESHAP. In the previous ICR burden estimates, we assumed that all landfills meeting the NSPS and emission guidelines criteria would install combustion control devices and would continuously monitor control device operating parameters (*e.g.*, presence of flare pilot flame or temperature of an enclosed combustion device). Thus, the cost of continuous monitoring systems and associated recordkeeping and reporting were included for every landfill. Landfills that choose to comply with the Landfills NSPS, emission guidelines, Federal plan, or Landfills NESHAP by using a treatment system instead of a control device typically make that choice because it is a less expensive compliance alternative. Therefore, the previous cost analysis and ICR provide a conservatively high estimate of the costs of compliance, monitoring, recordkeeping, and reporting, and the proposed treatment system monitoring requirements would not result in a change to the ICR burden estimates. The proposed amendments to clarify the inclusion of control device shutdowns for maintenance in the SSM plan are consistent with the original estimate of costs to prepare an SSM plan in the Landfills NESHAP ICR, No. 1938.02. Consequently, the ICR have not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impact of the proposed amendments, small entity is defined as: (1) A small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 with annual receipts less than $10 million; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed amendments. The proposed amendments clarify the applicability of control requirements in the Landfills NSPS, emission guidelines, Federal plan, and Landfills NESHAP and do not include provisions that create a new burden for regulated entities.

The proposed amendments do not increase the stringency of the Landfills NSPS, emission guidelines, Federal plan, or Landfills NESHAP, nor do the proposed amendments add additional control requirements. The proposed amendments do not increase the control, monitoring, recordkeeping, and reporting requirements of the promulgated Landfills NSPS, emission guidelines, Federal plan, or Landfills NESHAP, and may decrease these requirements under specific conditions for some entities. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publish with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they consist of new definitions and clarifications and do not impose new costs on government entities or the private sector. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed amendments do not have federalism implications. They do 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.

The proposed amendments do not impose additional costs or result in additional control requirements above those considered at promulgation of the 1996 Landfills NSPS and emission guidelines and the 2003 Landfills NESHAP. In developing the 1996 Landfills NSPS and emission guidelines, we consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of those rulemakings. Because the control requirements of the proposed amendments are the same as those developed in 1996, these previous consultations still apply. In addition, State and local government agencies participated in a conference call on the

Landfills NESHAP, and provided comments on the 2000 Landfills NESHAP proposal and a 2002 supplemental proposal, which we considered. For a discussion of our consultations with State and local governments, the nature of the governments' concerns, and our position supporting the need for the specific control requirements included in the Landfills NSPS, emission guidelines, and Landfills NESHAP, see the preamble to the 1996 Landfills NSPS (61 FR 9905, March 12, 1996). Thus, Executive Order 13132 does not apply to the proposed amendments.

On May 23, 2002, in the spirit of Executive Order 13132, we specifically solicited comments on the proposed amendments from State and local officials (67 FR 36479). We are again soliciting comments on today's supplemental proposed amendments.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The proposed amendments do not have tribal implications as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments.

On May 23, 2002, we specifically solicited comment from tribal officials on the proposed amendments (67 FR 36479). None were received. Information received from EPA Regional Offices during development of the landfills Federal plan showed no landfills on tribal land large enough to require control under the landfills emission guidelines/Landfills NSPS.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, we specifically solicit comment on the proposed amendments from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

The proposed amendments are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because they are based on technology performance and not on health and safety risks. Furthermore, as no alternative technologies exist that would provide greater stringency at a reasonable cost, the results of any children's health analysis would have no impact on the stringency decision.

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

The proposed amendments are not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed amendments do not involve new technical standards; thus, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Parts 60, 62, and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 31, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, parts 60, 62, and 63 of the Code of Federal Regulations are proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart Cc—[Amended]

2. Section 60.31c is amended by adding the definitions of "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" and "Municipal solid waste landfill owner/operator," in alphabetical order to read as follows:

§ 60.31c Definitions.

* * * * *

Municipal solid waste landfill gas collection, control, or treatment system owner/operator means any entity that owns or operates any stationary equipment that is used, as specified in § 60.33c, to collect, control, or treat landfill gas from an MSW landfill that is a designated facility under § 60.32c of this subpart, regardless of the location of the control or treatment system.

Municipal solid waste landfill owner/operator means any entity that owns or operates a municipal solid waste landfill that is a designated facility under § 60.32c(a).

3. Section 60.32c is amended by:

a. Revising paragraph (a); and

b. Adding paragraph (e) to read as follows:

§ 60.32c Designated facilities.

(a) The designated facilities to which the guidelines apply are each existing MSW landfill for which construction, reconstruction, or modification was commenced before May 30, 1991 and/or the stationary equipment used to collect, control, or treat the landfill gas from such MSW landfills as required by § 60.33c(c).

* * * * *

(e) For approval, a State plan shall require each MSW landfill owner/

operator and each MSW landfill gas collection, control, or treatment system owner/operator, as defined in § 60.31c, to be responsible for compliance as specified in paragraphs (e)(1) and (2) of this section; provided, however, that if the MSW landfill and the associated gas collection, control, and/or treatment system are under common control, the entity exercising such control shall be responsible for complying with the requirements in both paragraphs (e)(1) and (2) of this section.

(1) Municipal solid waste landfill owners/operators are responsible for complying with the requirements of this subpart for the landfill and any portion of the landfill gas collection, control, or treatment system they own/operate. In addition, if another entity owns/operates the gas collection, control, or treatment system used to comply with the applicable requirements of this subpart and for any reason (e.g., bankruptcy, abandonment of operation) that entity ceases to accept the landfill gas, responsibility for complying with all applicable requirements to which that entity was subject under this subpart shall immediately apply to, and be binding on, the landfill owner/operator. The title V permits for landfill owner/operator must be written to require that the requirements applicable to the owner/operator of the landfill gas collection, control, and/or treatment system immediately become applicable requirements of the landfill owners/operators whenever the owners/operators of the landfill gas collection, control, and/or treatment system cease to accept the landfill gas.

(2) Municipal solid waste landfill gas collection, control, or treatment system owners/operators are responsible for complying with the requirements of this subpart for the portion of the landfill gas collection, control, or treatment system they own/operate.

4. Section 60.33c is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 60.33c Emission guidelines for municipal solid waste landfill emissions.

* * * * *

(c) * * *

(2) A control system designed and operated to reduce nonmethane organic compounds (NMOC) by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or to reduce the outlet to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test to be completed no later than the applicable compliance date specified in § 60.36c. The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(3) Route the collected gas to a treatment system that processes the collected gas for subsequent sale as fuel for combustion or use as a fuel for combustion. Landfill gas sold as fuel for combustion or used as a fuel for combustion shall be treated in a treatment system as defined in § 60.751 that meets the requirements of § 60.752(b)(2)(i)(D) and the monitoring, recordkeeping, and reporting requirements listed in §§ 60.756, 60.757, and 60.758 that apply to treatment systems. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (c)(1) or (2) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (c)(1) or (c)(2) of this section. The owners/operators of the landfill gas treatment system must ensure compliance with these requirements. The owner/operators of a combustion device who use treated landfill gas as fuel in a combustion device or purchase treated landfill gas for fuel in a combustion device shall be exempt from further compliance with this subpart. The treated gas must be used as a fuel, and venting of treated landfill gas to the ambient air or combustion in a flare is not allowed under this option.

* * * * *

5. Section 60.36c is amended by adding paragraph (c) to read as follows:

§ 60.36c Compliance Times.

* * * * *

(c) Within nine months after [DATE THE FINAL RULE AMENDMENTS ARE PUBLISHED IN THE **Federal Register**], each State shall adopt and submit to the Administrator, revisions to their State plan that implement the emission guidelines and compliance times in this subpart, as amended. Except as provided under § 60.24, the revised State plan shall include the revised definitions in § 60.31c; the designated facilities provisions in § 60.32c(a) through (e) and the associated recordkeeping requirement in § 60.758(g); the control and treatment system requirements in § 60.33c(2) and (3); the associated treatment system monitoring, recordkeeping, and reporting requirements in §§ 60.756 through 60.758 that are cross-referenced in §§ 60.34c and 60.35c; and a supplemental revised compliance schedule.

Subpart WWW—[Amended]

6. Section 60.750 is amended by revising paragraph (a) to read as follows:

§ 60.750 Applicability, designation of affected facility, and delegation of authority.

(a) The provisions of this subpart apply to each municipal solid waste (MSW) landfill that commenced construction, reconstruction, or modification on or after May 30, 1991 and the stationary equipment used to collect, control, or treat the landfill gas from such MSW landfills required by § 60.752(b)(2). Physical or operational changes made to an existing MSW landfill solely to comply with an applicable State plan or the Federal plan implementing the requirements of subpart Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) of this part are not considered construction, reconstruction, or modification for the purposes of this subpart. Each MSW landfill owner/operator and each MSW landfill gas collection, control, or treatment system owner/operator, as defined in § .751, is responsible for compliance with this subpart as specified in paragraphs (a)(1) and (2) of this section; provided, however, that if the MSW landfill and the associated gas collection, control, and/or treatment system are under common control, the entity exercising such control shall be responsible for complying with the requirements in both paragraphs (a)(1) and (2) of this section.

(1) MSW landfill owners/operators are responsible for complying with the requirements of this subpart for the landfill and any portion of the landfill gas collection, control, or treatment system they own/operate. In addition, if another entity owns/operates the gas collection, control, or treatment system used to comply with the applicable requirements of this subpart and for any reason (e.g., bankruptcy, abandonment of operation) that entity ceases to accept the landfill gas, responsibility for complying with all applicable requirements to which that entity was subject under this subpart shall immediately apply to, and be binding on, the landfill owner/operator. The title V permits for landfill owners/operators must be written to require that the requirements applicable to the owners/operators of the landfill gas collection, control, and/or treatment system immediately become applicable

requirements of the landfill owner/operator, whenever the owners/operators of the landfill gas collection, control, and/or treatment system cease to accept the landfill gas.

(2) Municipal solid waste landfill gas collection, control, or treatment system owners/operators are responsible for complying with the requirements of this subpart for the portion of the landfill gas collection, control, or treatment system they own/operate.

* * * * *

7. Section 60.751 is amended by:

a. Revising the definition of "Household waste"; and

b. Adding the definitions of "Absolute filtration rating," "Municipal solid waste landfill gas collection, control, or treatment system owner/operator," "Municipal solid waste landfill owner/operator," "Segregated yard waste," "Treated landfill gas," "Treatment system," and "Untreated landfill gas" in alphabetical order to read as follows:

§ 60.751 Definitions.

* * * * *

Absolute filtration rating means the diameter of the largest hard spherical particle that would pass through a filter.

* * * * *

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Household waste does not include fully segregated yard waste.

* * * * *

Municipal solid waste landfill gas collection, control, or treatment system owner/operator means any entity that owns or operates any stationary equipment required by § 60.752(b)(2) of this subpart that is used to collect, control, or treat landfill gas from an MSW landfill that is subject, regardless of the location of the control or treatment system.

Municipal solid waste landfill owner/operator means any entity that owns or operates a municipal solid waste landfill.

* * * * *

Segregated yard waste means vegetative matter resulting exclusively from the cutting of grass, the pruning and/or removal of bushes, shrubs, and trees, the weeding of gardens, and other landscaping maintenance activities.

* * * * *

Treated landfill gas means landfill gas processed in a treatment system according to this subpart.

Treatment system means a system that has an absolute filtration rating of 10 microns or less, lowers the water dew point of the landfill gas by at least 20 degrees Fahrenheit with a de-watering process, and compresses the landfill gas.

Untreated landfill gas means any landfill gas that is not treated landfill gas.

8. Section 60.752 is amended by:

a. Revising paragraph (b)(2)(i)(D), paragraph (b)(2)(iii)(B) introductory text, and paragraph (b)(2)(iii)(C); and

b. Adding paragraph (b)(2)(i)(E) and paragraph (b)(2)(iii)(D) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart and according to the requirements of paragraph (b)(iii)(C) of this section, then the collection and control system design plan must include:

(*1*) Design specifications for the filtration, de-watering, and compression systems that demonstrate conformance with the treatment system definition contained in § 60.751.

(*2*) The minimum pressure drop across the filtration system, or other monitoring parameter(s) and operating ranges that indicate proper performance of the filtration system. The collection and control plan must include information, such as manufacturer's recommendations or engineering analyses, to justify the minimum pressure drop or operating ranges for other monitoring parameters.

(*3*) The minimum landfill gas temperature reduction across a chiller-based de-watering system, the minimum landfill gas dew point reduction for a non-chiller-based de-watering system, or other operating parameters and operating ranges that indicate proper performance of the de-watering system. If the owner/operator requests approval to monitor temperature or dew point at a single location, such as the outlet of the chiller or de-watering system, rather than at both the inlet and outlet, the design plan must demonstrate that the proposed monitoring location and site-specific maximum temperature or maximum dew point are sufficient to indicate that the dew point has been reduced by at least 20 degrees Fahrenheit, according to the treatment system definition. The collection and control plan must include information, such as manufacturer's recommendations or engineering analyses, to justify the operating ranges for temperature, dew point, or other monitoring parameters.

(E) The Administrator shall review the information submitted under paragraphs (b)(2)(i)(A), (B), (C), and (D) of this section and either approve, disapprove, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

* * * * *

(iii) * * *

(B) A control system designed and operated to reduce NMOC by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or to reduce the outlet to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.754(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

* * * * *

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale as a fuel for combustion or use as a fuel for combustion. Landfill gas sold as a fuel for combustion or used as a fuel for combustion shall be treated in a treatment system as defined in § 60.751 that meets the requirements of § 60.752(b)(2)(i)(D) and the monitoring, recordkeeping, and reporting requirements of this subpart that apply to treatment systems. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii)(A) or paragraph (b)(2)(iii)(B) of this section. For purposes of this rule, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements

of paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section. The owner/operator of the landfill gas treatment system must ensure compliance with the treatment requirements. The owner/operator of a combustion device who uses treated landfill gas as a fuel in a combustion device or purchases treated landfill gas for fuel in a combustion device shall be exempt from further compliance with this subpart. The treated gas must be used as a fuel, and venting of treated landfill gas to the ambient air or combustion in a flare is not allowed under this option.

(D) If an owner/operator complied with the requirements of paragraph (b)(2)(iii) of this section by installing and operating a gas treatment system on or before September 8, 2006, the owner/operator must ensure that the treatment system meets the treatment system definition in § 60.751, submit a design plan update including the information specified in paragraph (b)(2)(i)(D) of this section, meet the requirements of paragraph (b)(2)(iii)(C) of this section, and implement all treatment system operating, compliance, monitoring, recordkeeping, and reporting requirements of this subpart as expeditiously as practicable, but no later than [DATE 1 YEAR AFTER THE FINAL RULE AMENDMENTS ARE PUBLISHED IN THE **Federal Register**]. Alternatively, the owner/operator may elect to comply with the control requirements in paragraph (b)(2)(iii)(A) or paragraph (b)(2)(iii)(B) of this section; submit a design plan update for the control system; and comply with all control system operational, testing, compliance, monitoring, recordkeeping, and reporting requirements of this subpart as expeditiously as practicable, but no later than [DATE 1 YEAR AFTER THE FINAL RULE AMENDMENTS ARE PUBLISHED IN THE **Federal Register**].

* * * * *

9. Section 60.755 is amended by revising paragraph (c)(3) and paragraph (e) to read as follows:

§ 60.755 Compliance provisions.

* * * * *

(c) * * *

(3) Surface emission monitoring shall be performed in accordance with section 8.3.1 of Method 21 of appendix A of this part, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

* * * * *

(e) The provisions of the subpart apply at all times, except during periods of startup, shutdown, and malfunction and periods of routine maintenance of the landfill gas collection, control, or treatment systems. The provisions of § 60.11(d) continue to apply during periods of startup, shutdown, malfunction, and routine maintenance of the landfill gas collection, control, or treatment systems. Routine maintenance activities must be completed and malfunctions must be corrected as soon as practicable after their occurrence in order to minimize emissions.

10. Section 60.756 is amended by adding paragraph (g) to read as follows:

§ 60.756 Monitoring of operations.

* * * * *

(g) Each owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a landfill gas treatment system shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment.

(1) A device that monitors pressure drop across, or other approved parameter(s) for, the filtration system that is equipped with a continuous recorder that shall record such parameters at least once every 15 minutes. Records of hourly and 24-hour block averages computed from the continuous monitoring data must also be retained.

(2) A device that monitors the landfill gas temperature for a chiller-based dewatering system, the landfill gas dew point for a non-chiller-based dewatering system, or the approved operating parameter(s) for the dewatering system at the monitoring locations specified in the approved design plan required under § 60.752(b)(2)(i)(D). Each monitoring device must be equipped with a continuous recorder that shall record such parameters at least once every 15 minutes. Records of hourly and 24-hour block averages computed from the continuous monitoring data must also be retained.

(3) A device that records flow to or bypass of the treatment system. The owner or operator shall either:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

11. Section 60.757 is amended by revising paragraphs (f) introductory text and (f)(1) through (f)(3) to read as follows:

§ 60.757 Reporting requirements.

* * * * *

(f) The owner or operator seeking to comply with § 60.752(b)(2) using an active collection system designed in accordance with § 60.752(b)(2)(ii) shall submit to the Administrator annual reports of the recorded information in paragraphs (f)(1) through (6) of this section. The initial annual report shall be submitted within 180 days of installation and start-up of the collection, control, or treatment system, and shall include the initial performance test report required under § 60.8, as applicable. For enclosed combustion devices, treatment systems, and flares, reportable exceedances are defined under § 60.758(c).

(1) Value and length of time for exceedance of applicable parameters monitored under § 60.756(a), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream is diverted from the control device or treatment system through a bypass line or the indication of a bypass flow as specified under § 60.756.

(3) Description and duration of all periods when the control device or treatment system was not operating for a period exceeding 1 hour and length of time the control device or treatment system was not operating.

* * * * *

12. Section 60.758 is amended by:

a. Revising paragraph (b) introductory text, paragraph (b)(2)(i), paragraph (c) introductory text; and paragraph (c)(1)(i); and

b. Adding paragraph (b)(5), paragraph (c)(1)(iii); and paragraph (g) to read as follows:

§ 60.758 Recordkeeping requirements.

* * * * *

(b) Except as provided in § 60.752(b)(2)(i)(B), for controlled landfills, the owner or operator shall keep up-to-date, readily accessible records for the life of the control equipment or treatment system of the data listed in paragraphs (b)(1) through (5) of this section as measured during the initial performance test or compliance demonstration, or as submitted and approved under § 60.752(b)(2)(i)(D). Records of subsequent tests or monitoring shall be maintained for a minimum of 5 years. Records of the control device or treatment system vendor specifications shall be maintained until removal.

* * * * *

(2) * * *

(i) The average temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

* * * * *

(5) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through the use of a treatment system:

(i) The approved minimum pressure drop across the filtration system, or the approved operating ranges for other monitoring parameter(s) that indicate proper performance of the filtration system, as specified in the approved design plan required by § 60.752(b)(2)(i)(D).

(ii) The approved minimum temperature reduction or approved maximum outlet temperature of a chiller-based de-watering system, the approved minimum dew point reduction or maximum outlet dew point of a non-chiller-based de-watering system, or the approved operating ranges for other monitoring parameter(s) that indicate proper performance of the de-watering system, as specified in the approved design plan required by § 60.752(b)(2)(i)(D).

(c) Except as provided in § 60.752(b)(2)(i)(B), for a controlled landfill subject to the provisions of this subpart, the owner or operator shall keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.756 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries measured during the most recent performance test or submitted and approved under § 60.752(b)(2)(i)(D) are exceeded.

(1) * * *

(i) For enclosed combustors, except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal units (Btu) per hour) or greater, all 3-hour periods of operation during which the average temperature was more than 28 °C below the average temperature during the most recent performance test at which compliance with § 60.752(b)(2)(iii) was determined.

* * * * *

(iii) For treatment systems used to demonstrate compliance with § 60.752(b)(2)(iii), all 24-hour periods of operation during which the average operating parameter values are outside of the approved ranges identified in § 60.752(b)(2)(i)(D) as those that indicate proper performance of the treatment system.

* * * * *

(g) Where multiple entities exist under the definitions of "Municipal solid waste landfill owner/operator" and "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" for an individual MSW landfill and its required gas collection, control, or treatment systems, all entities must keep a list that shows regulatory section and paragraph numbers, documenting which aspects of the requirements of §§ 60.752 through 60.759 each party will comply with. The list must include all requirements of this subpart that apply to the MSW landfill and all required gas collection, control, or treatment systems. If the list does not correctly identify all applicable provisions, all entities involved are responsible for compliance with the missing items. All entities must keep an identical copy of the list on site and must comply with those provisions on the applicable list that are assigned to them until such time as the list may be modified. The list must be kept up-to-date. The current list and all previously modified lists must be maintained on site for 5 years after the date each list was modified. If a gas collection, control, or treatment system was installed to comply with this subpart on or before September 8, 2006, the list showing the requirements that each party will comply with must be completed as expeditiously as practicable, but no later than [DATE 1 YEAR AFTER THE FINAL RULE AMENDMENTS ARE PUBLISHED IN THE **Federal Register**]. Entities meeting the definition of "Municipal solid waste landfill owner/operator" or "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" may be held responsible for compliance with this subpart as specified in § 60.750(a)(1) and (2).

PART 62—[AMENDED]

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

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

Subpart GGG—[Amended]

14. Section 62.14351 is amended by adding the definitions of "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" and "Municipal solid waste landfill owner/operator" in alphabetical order to read as follows:

§ 62.14351 Definitions

* * * * *

Municipal solid waste landfill gas collection, control, or treatment system owner/operator means any entity that owns or operates any stationary equipment required by § 62.14353 that is used to collect, control, or treat landfill gas from an MSW landfill that is a designated facility under § 62.14352(a), regardless of the location of the control or treatment system.

Municipal solid waste landfill owner/operator means any entity that owns or operates a municipal solid waste landfill that is a designated facility under § 62.14352(a).

* * * * *

15. Section 62.14352 is amended by:

a. Revising paragraph (a) introductory text; and

b. Adding paragraph (g) to read as follows:

§ 62.14352 Designated facilities.

(a) The designated facility to which this subpart applies is each existing MSW landfill, and the stationary equipment used to collect, control, or treat the landfill gas from such MSW landfills as required by § 62.14353 of this subpart, in all States, protectorates, and Indian Country that meets the conditions of paragraphs (a)(1) and (2) of this section, except for landfills exempted by paragraphs (b) and (c) of this section.

* * * * *

(g) Each MSW landfill owner/operator and each MSW landfill gas collection, control, or treatment system owner/operator, as defined in § 62.14351, is responsible for compliance as specified in paragraphs (g)(1) and (2) of this section; provided, however, that if the MSW landfill and the associated gas collection, control, and/or treatment system are under common control, the entity exercising such control shall be responsible for complying with the requirements in both paragraphs (g)(1) and (2) of this section.

(1) Municipal solid waste landfill owners/operators are responsible for complying with the requirements of this subpart for the landfill and any portion of the landfill gas collection, control, or treatment system they own/operate. In addition, if another entity owns/operates the gas collection, control, or treatment system and for any reason (*e.g.*, bankruptcy, abandonment of operation) that entity ceases to accept the landfill gas, responsibility for complying with all applicable requirements to which that entity was subject under this subpart shall immediately apply to, and be binding on, the landfill owner/operator. The title V permits for landfill owners/operators

must be written to require that the requirements applicable to the owners/operators of the landfill gas collection, control, and/or treatment system immediately become applicable requirements of the landfill owner/operator whenever the owners/operators of the landfill gas collection, control, and/or treatment system cease to accept the landfill gas.

(2) Municipal solid waste landfill gas collection, control, or treatment system owners/operator are responsible for complying with the requirements of this subpart for the portion of the landfill gas collection, control, or treatment system they own/operate.

PART 63—[AMENDED]

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

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

Subpart AAAA—[Amended]

17. Section 63.1935 is amended by adding paragraphs (c) and (d) to read as follows:

§ 63.1935 Am I subject to this subpart?

* * * * *

(c) You are subject to this subpart if you own or operate stationary equipment required by § 63.1947 or § 63.1955 that is used to collect, control, or treat landfill gas from a municipal solid waste landfill that is subject to this subpart (regardless of the location of the control or treatment system).

(d) Each municipal solid waste landfill owner/operator and each municipal solid waste landfill gas collection, control, or treatment system owner/operator, as defined in § 63.1990, is responsible for compliance with this subpart as specified in paragraphs (d)(1) and (2) of this section; provided, however, that if the municipal solid waste landfill and the associated gas collection, control, and/or treatment system are under common control, the entity exercising such control shall be responsible for complying with the requirements in both paragraphs (d)(1) and (2) of this section.

(1) Municipal solid waste landfill owners/operators are responsible for complying with the requirements of this subpart for the landfill and any portion of the landfill gas collection, control, or treatment system they own/operate. In addition, if another entity owns/operates the gas collection, control, or treatment system and for any reason (*e.g.*, bankruptcy, abandonment of operation) that entity ceases to accept the landfill gas, responsibility for complying with all applicable requirements to which that entity was subject under this subpart shall immediately apply to, and be binding on, the landfill owner/operator. The title V permits for landfill owners/operators must be written to require that the requirements applicable to the owners/operators of the landfill gas collection, control, and/or treatment system immediately become applicable requirements of the landfill owner/operator whenever the owners/operators of the landfill gas collection, control, and/or treatment system cease to accept the landfill gas.

(2) Municipal solid waste landfill gas collection, control, or treatment system owners/operators are responsible for complying with the requirements of this subpart for the portion of the landfill gas collection, control, or treatment system they own/operate.

18. Section § 63.1940 is amended by revising paragraph (a) to read as follows:

§ 63.1940 What is the affected source of this subpart?

(a) An affected source of this subpart is a MSW landfill, as defined in § 63.1990, that meets the criteria in § 63.1935(a) or § 63.1935 (b). The affected source includes the entire disposal facility in a contiguous geographic space where household waste is placed in or on land, including any portion of the MSW landfill operated as a bioreactor. The affected source also includes stationary equipment required by § 63.1947 or § 63.1955 that is used to collect, control, or treat landfill gas from a MSW landfill that is subject to this subpart (regardless of the location of the control or treatment system).

* * * * *

19. Section 63.1945 is amended by revising paragraph (d) to read as follows:

§ 63.1945 When do I have to comply with this subpart?

* * * * *

(d) If your landfill is an existing affected source and is a major source or is collocated with a major source, you must comply with the requirements in § 63.1955(b) and §§ 63.1960 through 63.1980 by the date your landfill is required to install a collection and control system by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or EPA approved and effective State or tribal plan that applies to your landfill or by January 16, 2004, whichever occurs later.

* * * * *

20. Section 63.1955 is amended by revising paragraph (c) to read as follows:

§ 63.1955 What requirements must I meet?

* * * * *

(c) For approval of collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions, you must follow the procedures in 40 CFR 60.752(b)(2) of subpart WWW. If alternatives have already been approved under 40 CFR part 60, subpart WWW, or the Federal plan, or EPA-approved and effective State or tribal plan, those alternatives can be used to comply with this subpart, except that all affected sources must comply with the startup, shutdown, and malfunction requirements in subpart A of this part as specified in Table 1 of this subpart; and all affected sources must submit compliance reports every 6 months as specified in § 63.1980(a) and (b), including information on all deviations that occurred during the 6-month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3-hour monitoring block average for control systems used to demonstrate compliance with 40 CFR 60.752(b)(iii)(B) of subpart WWW, or a 24-hour monitoring block average for treatment systems used to demonstrate compliance with 40 CFR 60.752(b)(iii)(C) of subpart WWW.

* * * * *

21. Section 63.1960 is revised to read as follows:

§ 63.1960 How is compliance determined?

Compliance is determined in the same way it is determined for 40 CFR part 60, subpart WWW, including performance testing, monitoring of the collection system, continuous parameter monitoring, and other credible evidence. In addition, continuous parameter monitoring data, collected under 40 CFR 60.756(b)(1), (c)(1), (d) and (g) of subpart WWW, are used to demonstrate compliance with the operating conditions for control systems or treatment systems. If a deviation occurs, you have failed to meet the control device or treatment system operating conditions described in this subpart and have deviated from the requirements of this subpart. Finally, you must develop a written SSM plan according to the provisions in § 63.6(e)(3). Your SSM plan must include a plan for conducting routine maintenance on the landfill gas collection, control, and treatment systems. The routine maintenance plan must include maintenance procedures, actions that will be taken to minimize

emissions during maintenance, shutdown frequency, shutdown duration, and procedures for minimizing emissions during startup and shutdown of the collection, control, and/or treatment systems for routine maintenance. A copy of the SSM plan must be maintained on site. Failure to write or maintain a copy of the SSM plan is a deviation from the requirements of this subpart.

22. Section 63.1965 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.1965 What is a deviation?

* * * * *

(a) A deviation occurs when the control device or treatment system operating parameter boundaries described in 40 CFR 60.758(c)(1) of subpart WWW are exceeded.

(b) A deviation occurs when 1 hour or more of the hours during the applicable 3-hour, or 24-hour, block averaging period specified in 40 CFR 60.758(c)(1) of subpart WWW does not constitute a valid hour of data. A valid hour of data must have measured values for at least three 15-minute monitoring periods within the hour.

* * * * *

23. Section 63.1975 is revised to read as follows:

§ 63.1975 How do I calculate the block average used to demonstrate compliance?

Averages are calculated in the same way as they are calculated in 40 CFR part 60, subpart WWW, except that averages computed under this subpart shall not include periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments.

24. Section 63.1980 is amended by adding paragraphs (i) and (j) to read as follows:

§ 63.1980 What records and reports must I keep and submit?

* * * * *

(i) In lieu of meeting the requirements of § 63.10(d)(5)(i) and (ii) of subpart A for periodic and immediate startup, shutdown, and malfunction reports, you must comply with the requirements of paragraphs (i)(1) and (2) of this section.

(1) *Periodic startup, shutdown, and malfunction reports.* The owner or operator shall report each startup, shutdown, and malfunction (including startups and shutdowns of the landfill gas collection, control, or treatment system for routine maintenance) that occurred during the semiannual compliance reporting period. Such report shall include the date, duration, and identification of each startup, shutdown, and malfunction event (including startups and shutdowns of the landfill gas collection, control, or treatment system for routine maintenance) and any actions taken that were inconsistent with the SSM plan. In any instance where any action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction and actions taken during startup or shutdown of the landfill gas collection, control, or treatment system for routine maintenance) is not consistent with the affected source's SSM plan, the report also shall include a brief description of the startup, shutdown, or malfunction event. Reports shall be required only if a startup, shutdown, or malfunction (including startups or shutdowns of the landfill gas collection, control, or treatment system for routine maintenance) occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator every 6 months with the reports described in paragraph (a) or paragraph (c) through (f) of this section.

(2) *Immediate startup, shutdown, and malfunction reports.* Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction and actions taken during startup or shutdown of the landfill gas collection, control, or treatment system for routine maintenance) is not consistent with the procedures specified in the affected source's SSM plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. If the duration of any shutdown or malfunction event (including any shutdown of the landfill gas collection, control, or treatment system for routine maintenance) exceeds 5 days, the owner or operator shall report the event within 2 working days of the date the duration of the event exceeds 5 days, followed up by a letter within 7 working days after the end of the event. The immediate reports required under this paragraph (i)(2) shall consist of a telephone call (or facsimile (fax) transmission) to the Administrator within 2 working days, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event and the reasons for not following the SSM plan. If the duration of any shutdown or malfunction event (including any shutdown of the landfill gas collection, control, or treatment system for routine maintenance) exceeds 5 days, the immediate report shall also include the reasons that the duration of the event exceeded 5 days and actions taken to minimize the duration of the event. Notwithstanding the requirements of the previous sentences in this paragraph (i)(2), after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph (i)(2) are specified in § 63.9(i) of subpart A.

(j) Where multiple entities exist under the definitions of "Municipal solid waste landfill owner/operator" and "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" for an individual MSW landfill and its required gas collection, control, or treatment systems, all entities must keep a list that shows regulatory section and paragraph numbers, documenting which aspects of the requirements of §§ 63.1945 through 63.1980 each entity will comply with. The list must include all requirements of this subpart that apply to the MSW landfill and all required gas collection, control, or treatment systems. If the list does not correctly identify all applicable provisions, all entities involved are responsible for compliance with the missing requirements. All entities must keep an identical copy of the list on site and must comply with those provisions on the applicable list that are assigned to them until such time as the list may be modified. The list must be kept up-to-date. The current list and all previously modified lists must be maintained on site for 5 years after the date each list was modified. If a gas collection, control, or treatment system was installed to comply with this subpart on or before September 8, 2006, the list showing the requirements that each party will comply with must be completed no later than [DATE 1 YEAR AFTER THE FINAL RULE AMENDMENTS ARE PUBLISHED IN THE **Federal Register**]. Entities meeting the definition of "Municipal solid waste landfill owner/operator" or "Municipal solid waste landfill gas collection,

control, or treatment system owner/operator" may be held responsible for compliance with this subpart as specified in § 63.1935(d)(1) and (2).

25. Section 63.1990 is amended by revising the definition of "Bioreactor" and adding a definition of "Municipal solid waste landfill gas collection, control, or treatment system owner/operator" in alphabetical order to read as follows:

§ 63.1990 What definitions apply to this subpart?

Bioreactor means an MSW landfill or portion of a municipal solid waste landfill where any liquid other than leachate (leachate includes landfill gas condensate) is added in a controlled fashion into the waste mass (often in combination with recirculating leachate) to reach a minimum average moisture content of at least 40 percent by weight, calculated on a wet weight basis, to accelerate or enhance the anaerobic (without oxygen) biodegradation of the waste.

* * * * *

Municipal solid waste landfill gas collection, control, or treatment system owner/operator means any entity that owns or operates any stationary equipment required by 40 CFR 60.752(b)(2) of subpart WWW or § 63.1947 or § 63.1955 that is used to collect, control, or treat landfill gas from a municipal solid waste landfill that is subject to this subpart (regardless of the location of the control or treatment system).

* * * * *

26. Table 1 to subpart AAAA of part 63 is amended by:

a. Revising the entry for § 63.6(e).

b. Adding a new entry in numerical order for § 63.9(i).

c. Removing the entry for § 63.10(d)(5) to read as follows:

TABLE 1 TO SUBPART AAAA OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART AAAA

Part 63 citation	Description	Explanation
* *	* * *	* *
§ 63.6(e), except § 63.6(e)(3)(iv)	Operation and maintenance requirements, SSM plan provisions.	Affected sources are subject to the provisions in § 63.1980(i)(2) instead of § 63.6(e)(3)(iv).
* *	* * *	* *
§ 63.9(i)	Provisions to adjust the time periods for postmark deadlines for submitting required reports.	Allows adjustment of timing of reports.

[FR Doc. 06–7493 Filed 9–7–06; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Friday,
September 8, 2006

Part IV

The President

Proclamation 8046—National Days of Prayer and Remembrance, 2006

Federal Register
Vol. 71, No. 174
Friday, September 8, 2006

Presidential Documents

Title 3—

The President

Proclamation 8046 of September 5, 2006

National Days of Prayer and Remembrance, 2006

By the President of the United States of America

A Proclamation

This year, we mark the fifth anniversary of the brutal and ruthless terrorist attacks carried out against our Nation on September 11, 2001. We will always remember the thousands of lives lost, and the innocent men, women, and children forever changed by those acts of evil. During these National Days of Prayer and Remembrance, we honor the heroism of the police officers, firefighters, rescue personnel, members of the military, and private citizens who responded selflessly in the face of terror. We also honor the courage and spirit of the mothers and fathers, sons and daughters, brothers and sisters, and husbands and wives who continue to grieve for their irreplaceable loss.

As we pray for the families of the victims and reflect upon that defining moment in our history, we are inspired by the knowledge that from the pain and sorrow of that September morning rose a Nation united by our love for freedom. We remember that we are a people determined to defend our way of life and to care for our neighbors in need. The scenes of distress and devastation we witnessed in the heart of New York City, at the Pentagon, and in Pennsylvania were overcome by sacrifice, bravery, and compassion. We resolved to answer history's call to bring justice to our enemies and to ensure the survival and success of liberty. Since that day, we have confronted a murderous ideology by taking the fight to our adversaries and by spreading the universal hope of freedom to millions around the world.

We are grateful for the service and sacrifice of the men and women of our Armed Forces who are advancing liberty and protecting our country, and we pray for their safety. We ask that God continue to comfort the families of those who have lost their lives or who have been injured while defending our freedom. We will succeed in this struggle against evil, and the legacy of peace we leave behind will be the greatest memorial to the victims of September 11, 2001, and all those who have paid the ultimate price while wearing our Nation's uniform.

On these Days of Prayer and Remembrance, we mourn with those who still mourn, and find comfort through faith. We give thanks to the Almighty for our liberty, and we pray for His blessing on all those who were lost and for strength in the work ahead. May God continue to watch over the United States of America, and may His will guide us in the days to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 8, through Sunday, September 10, 2006, as National Days of Prayer and Remembrance. I ask that the people of the United States and their places of worship mark these National Days of Prayer and Remembrance with memorial services, the ringing of bells, and evening candlelight remembrance vigils. I also invite the people of the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–7593
Filed 9–7–06; 11:40 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 174

Friday, September 8, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
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**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51973–52284	1
52285–52402	5
52403–52732	6
52733–52980	7
52981–53298	8

CFR PARTS AFFECTED DURING SEPTEMBER

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:
7463 (See Notice of September 5, 2006) 52733
8044 52281
8045 52283
8046 53297
Executive Orders:
13411 52729
Administrative Orders:
Notices:
Notice of September 5, 2006 52733
Presidential Determinations:
No. 2006-19 of August 17, 2006 51973
No. 2006-21 of August 21, 2006 51975

6 CFR

29 52262

7 CFR

6 51977
301 ..... 52981, 52982
800 52403
810 52403
916 51982
917 51982
983 51985
985 52735
1219 52285
1437 52738
Proposed Rules:
246 52209
457 52013
1000 52502
1001 52502
1005 52502
1006 52502
1007 52502
1030 52502
1032 52502
1033 52502
1124 52502
1126 52502
1131 52502
1435 53051

9 CFR

55 52983
81 52983

11 CFR

Proposed Rules:
100 52295

13 CFR

Proposed Rules:
120 52296

14 CFR

13 52406
21 52250
23 52407
39 ..... 51988, 51990, 52410, 52413, 52415, 52416, 52418, 52421, 52423, 52983, 52988, 52990, 52992, 52994, 52998, 52999
71 ..... 51993, 52426, 52740, 52741
91 ..... 52250, 52287
121 52287
125 52287
135 52287
Proposed Rules:
25 52755
39 52300
71 52502
91 52382
121 52382
125 52382

15 CFR

736 52426
740 52956
743 52956
772 52956
774 ..... 52428, 52956
Proposed Rules:
922 ..... 52757, 52758

16 CFR

Proposed Rules:
1307 52758
1410 52758
1500 52758
1515 52758

17 CFR

228 53158
229 53158
232 53158
239 53158
240 53158
245 53158
249 53158
274 53158
Proposed Rules:
4 52211
229 53267

19 CFR

101 52288

20 CFR

320 53003
341 53004

21 CFR

520 51995
522 51995

556.....53005
558 .....51995, 52429, 53005, 53006
1308.....51996
Proposed Rules:
1306.....52724

22 CFR

181.....53007

26 CFR

1.....52430, 53009
301.....52444
602.....52430, 53009
Proposed Rules:
1.....52876, 53052

28 CFR

94.....52446
Proposed Rules:
20.....52302

29 CFR

2700.....52211

30 CFR

Proposed Rules:
100.....53054

32 CFR

706.....52741
2002.....52743

33 CFR

117.....52744

36 CFR

7.....53020

38 CFR

3 .....52290, 52455, 52744
4.....52457

40 CFR

52 .....52460, 52464, 52467, 52656, 52659, 52664, 52670, 52698, 52703
180 .....51998, 52003, 52483, 52487
710.....52494
Proposed Rules:
52.....52504
60.....53272
62.....53272
63.....52624, 53272
264.....52624
266.....52624

41 CFR

60-2.....53032
102–76.....52498

42 CFR

Proposed Rules:
422.....52014

43 CFR

4100.....52012

47 CFR

1.....52747
90.....52747, 52750
95.....52747

48 CFR

202.....53042
204.....53044
207.....53044
210.....53042
213.....53042
215.....53042
219.....53042
225.....53045
236.....53044
237.....53047
252 .....53044, 53045, 53047

49 CFR

2371.....52751
544.....52291
Proposed Rules:
171.....52017
172.....52017
173.....52017
174.....52017
178.....52017
195.....52504
579.....52040

50 CFR

404.....52874
648.....52499, 53049
679 .....52500, 52501, 52754
Proposed Rules:
16.....52305
648.....52519, 52521
660.....52051

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 SEPTEMBER 8, 2006

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; published 9-8-06
Pine shoot beetle; published 9-8-06

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish; published 8-9-06

DEFENSE DEPARTMENT
Defense Acquisition Regulations System
Acquisition regulations:
Acquisition from communist Chinese military companies; prohibition; published 9-8-06
Acquisition planning; published 9-8-06
Contractor personnel interacting with detainees; training; published 9-8-06
Technical amendments; published 9-8-06
Tiered evaluation of offers; limitations; published 9-8-06

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Federal Student Aid Programs; published 8-9-06

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Nebraska; published 7-10-06

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Oxytetracycline; published 9-8-06
Zilpaterol; published 9-8-06

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New York; published 8-23-06
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Patapsco River, Northwest and Inner Harbors, Baltimore, MD; published 8-24-06

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Cape Lookout National Seashore, NC; personal watercraft use; published 9-8-06

LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Affirmative action and nondiscrimination obligations of contractors and subcontractors:
Equal opportunity survey; published 9-8-06

RAILROAD RETIREMENT BOARD
Railroad Unemployment Insurance Act:
Railroad employers reconsideration requests; electronic filing; published 9-8-06
Sickness benefits paid; electronic notification by railroad employers of settlements and final judgments; published 9-8-06

SOCIAL SECURITY ADMINISTRATION
Supplementary security income:
Social Security Protection Act of 2004—
Income and resources provisions; changes; published 8-9-06

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pratt & Whitney; published 8-4-06
Raytheon; published 9-8-06

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Railroad track maintenance credit; published 9-8-06

RULES GOING INTO EFFECT SEPTEMBER 9, 2006

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Catholic Charities Dragon Boat Races; published 7-19-06
Taste of Italy Fireworks; published 8-15-06

NATIONAL CREDIT UNION ADMINISTRATION
Credit Unions:
Organization and operations—
Loan interest rates; published 7-26-06

RULES GOING INTO EFFECT SEPTEMBER 10, 2006

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
Ocean City Maryland Offshore Challenge; published 8-21-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Grapes grown in southeastern California and imported table grapes; comments due by 9-11-06; published 7-11-06 [FR E6-10769]
National Organic Program:
Livestock; National List of Allowed and Prohibited Substances; amendments; comments due by 9-15-06; published 7-17-06 [FR 06-06103]

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Common crop insurance regulations; basic provisions, and various crop insurance provisions; amendments; comments due by 9-12-06; published 7-14-06 [FR 06-05962]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Uniform Federal Assistance regulations; technical amendments; comments due by 9-11-06; published 7-13-06 [FR 06-06185]

COMMERCE DEPARTMENT
Foreign-Trade Zones Board
Applications, hearings, determinations, etc.:
Georgia
Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Bering Sea and Aleutian Islands Catcher Processor Capacity Reduction Program; comments due by 9-11-06; published 8-11-06 [FR 06-06844]

CONSUMER PRODUCT SAFETY COMMISSION
Federal Hazardous Substances Act:
Fireworks safety standards; comments due by 9-11-06; published 7-12-06 [FR E6-10881]

DEFENSE DEPARTMENT
Privacy Act; implementation; comments due by 9-12-06; published 7-14-06 [FR 06-06011]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Michigan; comments due by 9-14-06; published 8-15-06 [FR E6-13345]
Montana; comments due by 9-11-06; published 7-12-06 [FR 06-06096]
South Dakota; comments due by 9-13-06; published 8-14-06 [FR E6-13165]
Confidential business information and data transfer; comments due by 9-11-06; published 9-5-06 [FR E6-14643]
Meetings:
FIFRA Scientific Advisory Panel; comments due by 9-13-06; published 9-1-06 [FR E6-14537]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 4646/P.L. 109–273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278
To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279
To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280
Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

Last List August 17, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 109th Congress for $317 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

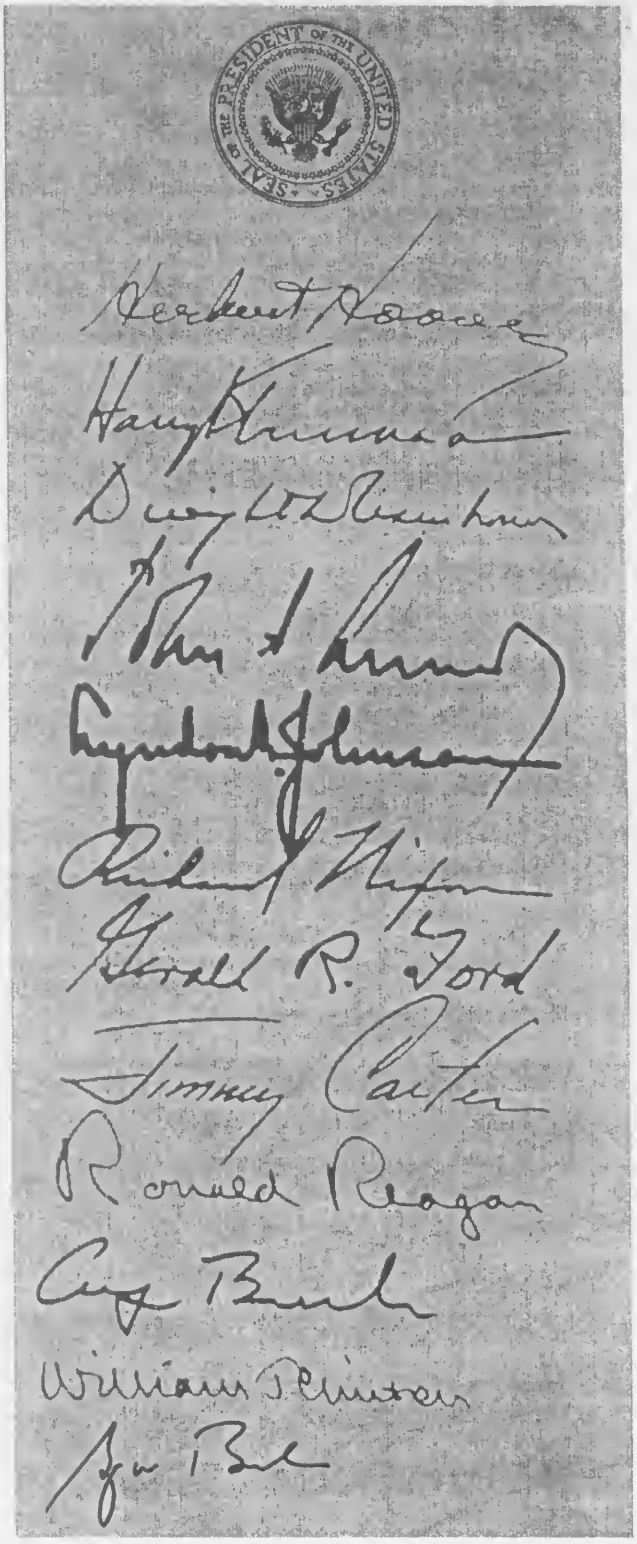
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 6/05

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

William J. Clinton

1997
(Book I) $69.00

1997
(Book II) $78.00

1998
(Book I) $74.00

1998
(Book II) $75.00

1999
(Book I) $71.00

1999
(Book II) $75.00

2000–2001
(Book I) $68.50

2000–2001
(Book II) $63.00

2000–2001
(Book III) $75.00

George W. Bush

2001
(Book I) $70.00

(Book II) $65.00

2002
(Book I) $72.00

2002
(Book II) $79.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954
(Rev 3/06)

Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 109th Congress for $317 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

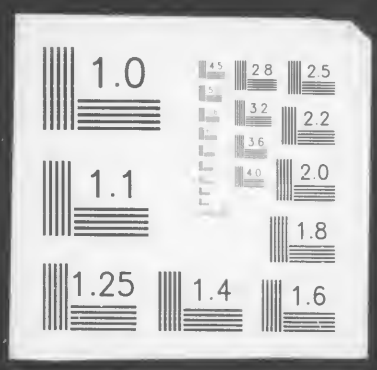
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 6-05

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0